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## 2021 Regular Session

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## CHAPTER 1

( SB 9 )

AN ACT relating to the protection of born-alive infants and declaring an emergency.

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

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

*As used in Sections 1 to 7 of this Act:*

- (1) *"Abortion" has the same meaning as in KRS 311.720. However, as used in Sections 1 to 7 of this Act, an abortion shall not include the use of any means to terminate the pregnancy of a woman if done with an intent to:*
  - (a) *Save the life or preserve the health of the unborn child;*
  - (b) *Remove a dead unborn child caused by spontaneous abortion; or*
  - (c) *Remove an ectopic pregnancy;*
- (2) *"Advanced practice registered nurse" has the same meaning as in KRS 314.011;*
- (3) *"Born-alive" or "live birth" means the complete expulsion or extraction of an infant from his or her mother, regardless of the state of gestational development, who, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including but not limited to one (1) or more of the following:*
  - (a) *Breathing;*
  - (b) *A heartbeat;*
  - (c) *Umbilical cord pulsation; or*
  - (d) *Definite movement of voluntary muscles;*
- (4) *"Consent" means the voluntary agreement or acquiescence by a person of age and with the requisite mental capacity who is not under duress or coercion and who has knowledge or understanding of the act or action to which he or she has agreed or acquiesced;*
- (5) *"Healthcare provider" means any individual who may be asked to participate in any way in a healthcare service, including but not limited to a physician; physician assistant; advanced practice registered nurse; nurse; nurse's aide; medical assistant; hospital employee; clinic employee; nursing home employee; pharmacist; pharmacy employee; researcher; medical or nursing school faculty or employee; or any professional, paraprofessional, or any other person who furnishes or assists in the furnishing of healthcare services;*
- (6) *"Infant" means a child of the species homo sapiens who has been completely expelled or extracted from his or her mother, regardless of the stage of gestational development, until the age of thirty (30) days post birth;*
- (7) *"Medical facility" means any public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location where medical care is provided to any person;*
- (8) *"Nurse" has the same meaning as in KRS 314.011;*
- (9) *"Physician" has the same meaning as in KRS 311.720;*
- (10) *"Physician assistant" has the same meaning as in KRS 311.840; and*
- (11) *"Unborn child" has the same meaning as in KRS 311.781.*

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

- (1) *The General Assembly of the Commonwealth of Kentucky hereby finds that:*
  - (a) *The Commonwealth of Kentucky has a paramount interest in protecting all human life;*

- (b) *If an attempted abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of this Commonwealth;*
  - (c) *Irrespective of the status of court challenges to Kentucky statutes protecting unborn children from abortion, it is not an infringement on a woman's asserted right to terminate her pregnancy for this Commonwealth to affirm its interest in protecting an infant whose live birth occurred as the result of an attempted abortion; and*
  - (d) *Without proper legal protection, newly born infants who survive attempted abortions may be denied appropriate life-saving or life-sustaining medical care and treatment and may be left to die.*
- (2) *Based on the findings in subsection (1) of this section, the purposes of Sections 1 to 7 of this Act are to:*
- (a) *Ensure the protection and promotion of the health and well-being of all infants born-alive in this Commonwealth; and*
  - (b) *Mandate that healthcare providers give medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born-alive infants.*

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

- (1) *A person shall not deny or deprive a born-alive infant of:*
- (a) *Nourishment with the intent to cause or allow the death of the infant for any reason, including but not limited to:*
    - 1. *The infant was born with a disability;*
    - 2. *The infant is not wanted by the parent or guardian; or*
    - 3. *The infant is born-alive by natural or artificial means; or*
  - (b) *Medically appropriate and reasonable medical care, medical treatment, or surgical care.*
- (2) (a) *A physician performing an abortion shall take all medically appropriate and reasonable steps to preserve the life and health of a born-alive infant. If an abortion performed in a:*
- 1. *Hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant, inform the mother of the live birth, and request transfer of the infant to an on-duty resident or emergency care physician who shall provide medically appropriate and reasonable medical care and treatment to the infant; or*
  - 2. *Medical facility other than a hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant and call 911 for an emergency transfer of the infant to a hospital that shall provide medically appropriate and reasonable medical care and treatment to the infant.*
- (b) *If the physician is unable to perform the duties in paragraph (a) of this subsection because he or she is assisting the woman on whom the abortion was performed, then an attending physician assistant, advanced practice registered nurse, nurse, or other healthcare provider shall assume the duties outlined in paragraph (a) of this subsection.*
- (3) *Any born-alive infant, including one born in the course of an abortion procedure, shall be treated as a legal person under the laws of this Commonwealth, with the same rights to medically appropriate and reasonable care and treatment. After birth, a birth certificate shall be issued and, if death occurs after birth, a death certificate shall be issued.*
- (4) *If the parent of a born-alive infant files a petition for voluntary termination of parental rights in accordance with KRS 625.040 because she or he does not wish to keep the infant, the born-alive infant shall become a ward of the Cabinet for Health and Family Services.*
- (5) (a) *The requirements of this section shall not be construed to prevent a born-alive infant's parent or guardian from refusing to give consent to medical care, medical treatment, or surgical care which is not medically appropriate or reasonable, including care or treatment that:*
- 1. *Is not necessary to save the life of the infant;*
  - 2. *Has a potential risk to the infant's life or health that outweighs the potential benefit of the medical care or treatment; or*



3. *Will do no more than temporarily prolong the act of dying when death is imminent.*
- (b) *The parent or guardian of a born-alive infant shall not be held criminally or civilly liable for the actions of a physician, physician assistant, advanced practice registered nurse, nurse, or other healthcare provider that are in violation of this section and to which the parent or guardian did not give consent.*

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

*In addition to whatever remedies are available under the laws of this Commonwealth, failure to comply with the requirements of Section 3 of this Act shall:*

- (1) *Provide a basis for a civil action for compensatory and punitive damages. Any conviction under Section 3 of this Act shall be admissible in a civil suit as prima facie evidence of a failure to provide medically appropriate and reasonable medical care and treatment to a born-alive infant. Any civil action may be based on a claim that the death of or injury to the born-alive infant was a result of simple negligence, gross negligence, wantonness, willfulness, intentional conduct, or another violation of the legal standard of care;*
- (2) *Provide a basis for professional disciplinary action for the suspension or revocation of the license of a physician, physician assistant, advanced practice registered nurse, nurse, or pharmacist. A conviction of any physician, physician assistant, advanced practice registered nurse, nurse, or pharmacist for failure to comply with subsection (2) of Section 3 of this Act shall result in the automatic suspension of his or her license for a period of at least one (1) year and the license shall be reinstated after that time only under such conditions as the licensing body shall require to ensure compliance with Section 3 of this Act; and*
- (3) *Provide a basis for recovery for the parent of the infant, or the parent or guardian of the mother if the mother is a minor, for the wrongful death of the infant, whether or not the infant was viable at the time the attempted abortion was performed.*

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

*Nothing in Sections 1 to 7 of this Act shall be construed:*

- (1) *To affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive;*
- (2) *To affect existing federal or state law regarding abortion;*
- (3) *As creating or recognizing a right to abortion; or*
- (4) *To alter generally accepted medical standards.*

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

*Any provision of Sections 1 to 7 of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be deemed severable and shall not affect the remainder or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.*

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

- (1) *The General Assembly, by joint resolution, may appoint one (1) or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.*
- (2) *Nothing in this section shall be construed as a waiver or diminishment of any constitutional, common law, or statutory defenses, privileges, or immunities that may apply to any legislator, legislative staff, legislative agency or entity, or the legislative branch.*

➔Section 8. KRS 311.595 is amended to read as follows:

If the power has not been transferred by statute to some other board, commission, or agency of this state, the board may deny an application or reregistration for a license; place a licensee on probation for a period not to exceed five (5) years; suspend a license for a period not to exceed five (5) years; limit or restrict a license for an indefinite period; or revoke any license heretofore or hereafter issued by the board, upon proof that the licensee has:

- (1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;

- (2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;
- (3) Committed, procured, or aided in the procurement of an unlawful abortion, including a partial-birth abortion or an abortion in violation of KRS 311.731;
- (4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky of a crime as defined in KRS 335B.010, if in accordance with KRS Chapter 335B;
- (5) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the physician;
- (6) Become addicted to a controlled substance;
- (7) Become a chronic or persistent alcoholic;
- (8) Been unable or is unable to practice medicine according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of medicine;
- (9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof;
- (10) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession;
- (11) Employed, as a practitioner of medicine or osteopathy in the practice of his profession in this state, any person not duly licensed or otherwise aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art;
- (12) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including but not limited to the code of conduct promulgated by the board under KRS 311.601 or any other valid regulation of the board;
- (13) Violated any agreed order, letter of agreement, final order, or emergency order issued by the board;
- (14) Engaged in or attempted to engage in the practice of medicine or osteopathy under a false or assumed name, or impersonated another practitioner of a like, similar, or different name;
- (15) Obtained a fee or other thing of value on the fraudulent representation that a manifestly incurable condition could be cured;
- (16) Willfully violated a confidential communication;
- (17) Had his license to practice medicine or osteopathy in any other state, territory, or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof. This subsection shall not require relitigation of the disciplinary action;
- (18) Failed or refused, without legal justification, to practice medicine in a rural area of this state in violation of a valid medical scholarship loan contract with the trustees of the rural Kentucky medical scholarship fund;
- (19) Given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring, or otherwise inducing a person to communicate with a person licensed under KRS 311.530 to 311.620 in his professional capacity or for any professional services not actually and personally rendered; provided, however, that nothing contained in this subsection shall prohibit persons holding valid and current licenses under KRS 311.530 to 311.620 from practicing medicine in partnership or association or in a professional service corporation authorized by KRS Chapter 274, as now or hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation, or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. Nothing contained in this subsection shall abrogate the right of two (2) or more persons holding valid and current licenses under KRS 311.530 to 311.620 to receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each;

- (20) Been removed, suspended, expelled, or disciplined by any professional medical association or society when the action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action;
- (21) Been disciplined by a licensed hospital or medical staff of the hospital, including removal, suspension, limitation of hospital privileges, failing to renew privileges for cause, resignation of privileges under pressure or investigation, or other disciplinary action if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action;
- (22) Failed to comply with the requirements of KRS 213.101, 311.782, or 311.783 or failed to submit to the Vital Statistics Branch in accordance with a court order a complete report as described in KRS 213.101;
- (23) Failed to comply with any of the requirements regarding making or maintaining medical records or documents described in KRS 311.7704 or 311.7707;
- (24) Failed to comply with the requirements of KRS 311.7705 or 311.7706; ~~or~~
- (25) Been convicted of female genital mutilation under KRS 508.125, which shall result in mandatory revocation of a license; *or*
- (26) *As provided in subsection (2) of Section 4 of this Act, been convicted of a violation of subsection (2) of Section 3 of this Act.*

➔Section 9. KRS 311.850 is amended to read as follows:

- (1) The board may revoke, suspend, deny, decline to renew, limit, or restrict the license of a physician assistant, or may fine, reprimand or place a physician assistant on probation for no more than five (5) years upon proof that a physician assistant has:
  - (a) Knowingly made or presented or caused to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other document relating to an application for licensure;
  - (b) Practiced, aided, or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy relating to an examination for licensure;
  - (c) Been convicted of a crime as defined in KRS 335B.010, if in accordance with KRS Chapter 335B;
  - (d) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient or a felony offense under KRS Chapter 510, KRS 530.064, or 531.310, or has been found by the board to have had sexual contact, as defined in KRS 510.010, with a patient while the patient was under the care of the physician assistant or the physician assistant's supervising physician;
  - (e) Become addicted to a controlled substance, as defined in KRS 311.550(26);
  - (f) Become a chronic or persistent alcoholic, as defined in KRS 311.550(25);
  - (g) Been unable or is unable to practice medicine according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of medicine;
  - (h) Knowingly made or caused to be made or aided or abetted in the making of a false statement in any document executed in connection with the practice of medicine or osteopathy;
  - (i) Performed any act or service as a physician assistant without a designated supervising physician;
  - (j) Exceeded the scope of medical services described by the supervising physician in the applications required under KRS 311.854;
  - (k) Exceeded the scope of practice for which the physician assistant was credentialed by the governing board of a hospital or licensed health care facility under KRS 311.856 and 311.858;
  - (l) Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any healing art, including the unlawful practice of physician assistants;
  - (m) Willfully violated a confidential communication;

- (n) Performed the services of a physician assistant in an unprofessional, incompetent, or grossly or chronically negligent manner;
  - (o) Been removed, suspended, expelled, or placed on probation by any health care facility or professional society for unprofessional conduct, incompetence, negligence, or violation of any provision of this section or KRS 311.858 or 311.862;
  - (p) Violated any applicable provision of administrative regulations relating to physician assistant practice;
  - (q) Violated any term of probation or other discipline imposed by the board;
  - (r) Failed to complete the required number of hours of approved continuing education; ~~[-or]~~
  - (s) Engaged in dishonorable, unethical, or unprofessional conduct of character likely to deceive, defraud, or harm the public or any member thereof, as described in KRS 311.597; **or**
  - (t) ***As provided in subsection (2) of Section 4 of this Act, been convicted of a violation of subsection (2) of Section 3 of this Act.***
- (2) All disciplinary proceedings against a physician assistant shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593, 311.599, and KRS Chapter 13B and related administrative regulations promulgated under KRS Chapter 311.
- ➔Section 10. KRS 311.990 is amended to read as follows:
- (1) Any person who violates KRS 311.250 shall be guilty of a violation.
  - (2) Any college or professor thereof violating the provisions of KRS 311.300 to 311.350 shall be civilly liable on his bond for a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation, which may be recovered by an action in the name of the Commonwealth.
  - (3) Any person who presents to the county clerk for the purpose of registration any license which has been fraudulently obtained, or obtains any license under KRS 311.380 to 311.510 by false or fraudulent statement or representation, or practices podiatry under a false or assumed name or falsely impersonates another practitioner or former practitioner of a like or different name, or aids and abets any person in the practice of podiatry within the state without conforming to the requirements of KRS 311.380 to 311.510, or otherwise violates or neglects to comply with any of the provisions of KRS 311.380 to 311.510, shall be guilty of a Class A misdemeanor. Each case of practicing podiatry in violation of the provisions of KRS 311.380 to 311.510 shall be considered a separate offense.
  - (4) Each violation of KRS 311.560 shall constitute a Class D felony.
  - (5) Each violation of KRS 311.590 shall constitute a Class D felony. Conviction under this subsection of a holder of a license or permit shall result automatically in permanent revocation of such license or permit.
  - (6) Conviction of willfully resisting, preventing, impeding, obstructing, threatening, or interfering with the board or any of its members, or of any officer, agent, inspector, or investigator of the board or the Cabinet for Health and Family Services, in the administration of any of the provisions of KRS 311.550 to 311.620 shall be a Class A misdemeanor.
  - (7) Each violation of KRS 311.375(1) shall, for the first offense, be a Class B misdemeanor, and, for each subsequent offense shall be a Class A misdemeanor.
  - (8) Each violation of KRS 311.375(2) shall, for the first offense, be a violation, and, for each subsequent offense, be a Class B misdemeanor.
  - (9) Each day of violation of either subsection of KRS 311.375 shall constitute a separate offense.
  - (10) (a) Any person who intentionally or knowingly performs an abortion contrary to the requirements of KRS 311.723(1) shall be guilty of a Class D felony; and
  - (b) Any person who intentionally, knowingly, or recklessly violates the requirements of KRS 311.723(2) shall be guilty of a Class A misdemeanor.
  - (11) (a) 1. Any physician who performs a partial-birth abortion in violation of KRS 311.765 shall be guilty of a Class D felony. However, a physician shall not be guilty of the criminal offense if the partial-birth abortion was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury.

2. A physician may seek a hearing before the State Board of Medical Licensure on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness, or injury. The board's findings, decided by majority vote of a quorum, shall be admissible at the trial of the physician. The board shall promulgate administrative regulations to carry out the provisions of this subparagraph.
  3. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing, referred to in subparagraph 2. of this paragraph, to occur.
- (b) Any person other than a physician who performs a partial-birth abortion shall not be prosecuted under this subsection but shall be prosecuted under provisions of law which prohibit any person other than a physician from performing any abortion.
- (c) No penalty shall be assessed against the woman upon whom the partial-birth abortion is performed or attempted to be performed.
- (12) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of KRS 311.732 is guilty of a Class A misdemeanor.
- (13) Any person who negligently releases information or documents which are confidential under KRS 311.732 is guilty of a Class B misdemeanor.
- (14) Any person who performs an abortion upon a married woman either with knowledge or in reckless disregard of whether KRS 311.735 applies to her and who intentionally, knowingly, or recklessly fails to conform to the requirements of KRS 311.735 shall be guilty of a Class D felony.
- (15) Any person convicted of violating KRS 311.750 shall be guilty of a Class B felony.
- (16) Any person who violates KRS 311.760(2) shall be guilty of a Class D felony.
- (17) Any person who violates KRS 311.770 shall be guilty of a Class D felony.
- (18) Except as provided in KRS 311.787(3), any person who intentionally violates KRS 311.787 shall be guilty of a Class D felony.
- (19) A person convicted of violating KRS 311.780 shall be guilty of a Class C felony.
- (20) Except as provided in KRS 311.782(6), any person who intentionally violates KRS 311.782 shall be guilty of a Class D felony.
- (21) Any person who violates KRS 311.783(1) shall be guilty of a Class B misdemeanor.
- (22) Any person who violates KRS 311.7705(1) is guilty of a Class D felony.
- (23) Any person who violates KRS 311.7706(1) is guilty of a Class D felony.
- (24) Except as provided in KRS 311.731(7), any person who violates KRS 311.731(2) shall be guilty of a Class D felony.
- (25) *Any physician, physician assistant, advanced practice registered nurse, nurse, or other healthcare provider who intentionally violates subsection (2) of Section 3 of this Act shall be guilty of a Class D felony. As used in this subsection, "healthcare provider" has the same meaning as in Section 1 of this Act.***
- ~~(26)(25)~~ Any person who violates KRS 311.810 shall be guilty of a Class A misdemeanor.
- ~~(27)(26)~~ Any professional medical association or society, licensed physician, or hospital or hospital medical staff who shall have violated the provisions of KRS 311.606 shall be guilty of a Class B misdemeanor.
- ~~(28)(27)~~ Any administrator, officer, or employee of a publicly owned hospital or publicly owned health care facility who performs or permits the performance of abortions in violation of KRS 311.800(1) shall be guilty of a Class A misdemeanor.
- ~~(29)(28)~~ Any person who violates KRS 311.905(3) shall be guilty of a violation.
- ~~(30)(29)~~ Any person who violates the provisions of KRS 311.820 shall be guilty of a Class A misdemeanor.

- ~~(31)~~~~(30)~~ (a) Any person who fails to test organs, skin, or other human tissue which is to be transplanted, or violates the confidentiality provisions required by KRS 311.281, shall be guilty of a Class A misdemeanor.
- (b) Any person who has human immunodeficiency virus infection, who knows he is infected with human immunodeficiency virus, and who has been informed that he may communicate the infection by donating organs, skin, or other human tissue who donates organs, skin, or other human tissue shall be guilty of a Class D felony.
- ~~(32)~~~~(31)~~ Any person who sells or makes a charge for any transplantable organ shall be guilty of a Class D felony.
- ~~(33)~~~~(32)~~ Any person who offers remuneration for any transplantable organ for use in transplantation into himself shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).
- ~~(34)~~~~(33)~~ Any person brokering the sale or transfer of any transplantable organ shall be guilty of a Class C felony.
- ~~(35)~~~~(34)~~ Any person charging a fee associated with the transplantation of a transplantable organ in excess of the direct and indirect costs of procuring, distributing, or transplanting the transplantable organ shall be fined not less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).
- ~~(36)~~~~(35)~~ Any hospital performing transplantable organ transplants which knowingly fails to report the possible sale, purchase, or brokering of a transplantable organ shall be fined not less than ten thousand dollars (\$10,000) or more than fifty thousand dollars (\$50,000).
- ~~(37)~~~~(36)~~ (a) Any physician or qualified technician who violates KRS 311.727 shall be fined not more than one hundred thousand dollars (\$100,000) for a first offense and not more than two hundred fifty thousand dollars (\$250,000) for each subsequent offense.
- (b) In addition to the fine, the court shall report the violation of any physician, in writing, to the Kentucky Board of Medical Licensure for such action and discipline as the board deems appropriate.
- ~~(38)~~~~(37)~~ Any person who violates KRS 311.691 shall be guilty of a Class B misdemeanor for the first offense, and a Class A misdemeanor for a second or subsequent offense. In addition to any other penalty imposed for that violation, the board may, through the Attorney General, petition a Circuit Court to enjoin the person who is violating KRS 311.691 from practicing genetic counseling in violation of the requirements of KRS 311.690 to 311.700.
- ~~(39)~~~~(38)~~ Any person convicted of violating KRS 311.728 shall be guilty of a Class D felony.

➔Section 11. KRS 314.091 is amended to read as follows:

- (1) The board shall have power to reprimand, deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the board or applied for in accordance with this chapter or the privilege to practice as a nurse recognized by the board in accordance with this chapter, or to otherwise discipline a licensee, credential holder, privilege holder, or applicant, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:
- (a) Is guilty of fraud or deceit in procuring or attempting to procure a license, credential, or privilege to practice nursing;
- (b) Has been convicted of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state or of the United States, if in accordance with KRS Chapter 335B. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;
- (c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;
- (d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;
- (e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;
- (f) Abuses controlled substances, prescription medications, illegal substances, or alcohol;

- (g) Has misused or misappropriated any drugs placed in the custody of the nurse for administration, or for use of others;
  - (h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;
  - (i) Has a license, privilege, or credential to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or privilege to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth, including action by another jurisdiction for failure to repay a student loan;
  - (j) Has violated any of the provisions of this chapter;
  - (k) Has violated any lawful order or directive previously entered by the board;
  - (l) Has violated any administrative regulation promulgated by the board;
  - (m) Has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property;
  - (n) Has violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law;
  - (o) Used or possessed a Schedule I controlled substance;
  - (p) Has used or been impaired as a consequence of the use of alcohol or drugs while practicing as a nurse;
  - (q) Has violated KRS 304.39-215;~~[-or]~~
  - (r) Has engaged in conduct that is subject to the penalties under KRS 304.99-060(4) or (5); *or*
  - (s) ***As provided in subsection (2) of Section 4 of this Act, has been convicted of a violation of subsection (2) of Section 3 of this Act.***
- (2) All hearings shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license, privilege, or credential may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.
  - (3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.
  - (4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.
  - (5) A final order of the board shall be by majority vote thereof.
  - (6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.
  - (7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license, privilege, or credential may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.
  - (8) The board may, by administrative regulation, provide for the recovery of the costs of an administrative hearing.
- ➔Section 12. KRS 315.121 is amended to read as follows:
- (1) The board may refuse to issue or renew a license, permit, or certificate to, or may suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these actions against any licensee, permit holder, or certificate holder for the following reasons:
    - (a) Unprofessional or unethical conduct;

- (b) Mental or physical incapacity that prevents the licensee, permit holder, or certificate holder from engaging or assisting in the practice of pharmacy or the wholesale distribution or manufacturing of drugs with reasonable skill, competence, and safety to the public;
  - (c) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more of the following, if in accordance with KRS Chapter 335B:
    1. A crime as defined in KRS 335B.010; or
    2. A violation of the pharmacy or drug laws, rules, or administrative regulations of this state, any other state, or the federal government;
  - (d) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician is incapable of engaging or assisting in the practice of pharmacy with reasonable skill, competence, and safety to the public and failing to report any relevant information to the board;
  - (e) Knowingly making or causing to be made any false, fraudulent, or forged statement or misrepresentation of a material fact in securing issuance or renewal of a license, permit, or certificate;
  - (f) Engaging in fraud in connection with the practice of pharmacy or the wholesale distribution or manufacturing of drugs;
  - (g) Engaging in or aiding and abetting an individual to engage or assist in the practice of pharmacy without a license or falsely using the title of "pharmacist," "pharmacist intern," "pharmacy technician," or other term which might imply that the individual is a pharmacist, pharmacist intern, or pharmacy technician;
  - (h) Being found by the board to be in violation of any provision of this chapter, KRS Chapter 217, KRS Chapter 218A, or the administrative regulations promulgated pursuant to these chapters;
  - (i) Violation of any order issued by the board to comply with any applicable law or administrative regulation;
  - (j) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician has engaged in or aided and abetted the unlawful distribution of legend medications, and failing to report any relevant information to the board;~~[-or]~~
  - (k) Failure to notify the board within fourteen (14) days of a change in one's home address; **or**
  - (l) ***As provided in subsection (2) of Section 4 of this Act, being convicted of a violation of subsection (2) of Section 3 of this Act.***
- (2) Unprofessional or unethical conduct includes but is not limited to the following acts of a pharmacist, pharmacist intern, or pharmacy technician:
- (a) Publication or circulation of false, misleading, or deceptive statements concerning the practice of pharmacy;
  - (b) Divulging or revealing to unauthorized persons patient information or the nature of professional services rendered without the patient's express consent or without order or direction of a court. In addition to members, inspectors, or agents of the board, the following are considered authorized persons:
    1. The patient, patient's agent, or another pharmacist acting on behalf of the patient;
    2. Certified or licensed health-care personnel who are responsible for care of the patient;
    3. Designated agents of the Cabinet for Health and Family Services for the purposes of enforcing the provisions of KRS Chapter 218A;
    4. Any federal, state, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person; or
    5. An agency of government charged with the responsibility of providing medical care for the patient, upon written request by an authorized representative of the agency requesting such information;



- (c) Selling, transferring, or otherwise disposing of accessories, chemicals, drugs, or devices found in illegal traffic when the pharmacist, pharmacy intern, or pharmacy technician knows or should have known of their intended use in illegal activities;
  - (d) Engaging in conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or engaging in conduct which substantially departs from accepted standards of pharmacy practice ordinarily exercised by a pharmacist or pharmacy intern, with or without established proof of actual injury;
  - (e) Engaging in grossly negligent professional conduct, with or without established proof of actual injury;
  - (f) Except as provided in KRS 315.500, selling, transferring, dispensing, ingesting, or administering a drug for which a prescription drug order is required, without having first received a prescription drug order for the drug;
  - (g) Willfully or knowingly failing to maintain complete and accurate records of all drugs received, dispensed, or disposed of in compliance with federal and state laws, rules, or administrative regulations;
  - (h) Obtaining any remuneration by fraud, misrepresentation, or deception;
  - (i) Accessing or attempting to access confidential patient information for persons other than those with whom a pharmacist has a current pharmacist-patient relationship and where such information is necessary to the pharmacist to provide pharmacy care;
  - (j) Failing to exercise appropriate professional judgment in determining whether a prescription drug order is lawful;
  - (k) Violating KRS 304.39-215; or
  - (l) Engaging in conduct that is subject to the penalties under KRS 304.99-060(4) or (5).
- (3) Any licensee, permit holder, or certificate holder entering an "Alford" plea, pleading nolo contendere, or who is found guilty of a violation prescribed in subsection (1)(c) of this section shall within thirty (30) days notify the board of that plea or conviction. Failure to do so shall be grounds for suspension or revocation of the license, certificate, or permit.
- (4) Any person whose license, permit, or certificate has been revoked in accordance with the provisions of this section, may petition the board for reinstatement. The petition shall be made in writing and in a form prescribed by the board. The board shall investigate all reinstatement petitions, and the board may reinstate a license, permit, or certificate upon showing that the former holder has been rehabilitated and is again able to engage in the practice of pharmacy with reasonable skill, competency, and safety to the public. Reinstatement may be on the terms and conditions that the board, based on competent evidence, reasonably believes necessary to protect the health and welfare of the citizens of the Commonwealth.
- (5) Upon exercising the power of revocation provided for in subsection (1) of this section, the board may reasonably prohibit any petition for reinstatement for a period up to and including five (5) years.
- (6) Any licensee, permit holder, or certificate holder who is disciplined under this section for a minor violation may request in writing that the board expunge the minor violation from the licensee's, permit holder's, or certificate holder's permanent record.
- (a) The request for expungement may be filed no sooner than three (3) years after the date on which the licensee, permit holder, or certificate holder has completed disciplinary sanctions imposed and if the licensee, permit holder, or certificate holder has not been disciplined for any subsequent violation of the same nature within this period of time.
  - (b) No person may have his or her record expunged under this section more than once.

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

➔Section 13. This Act may be cited as the Born-Alive Infant Protection Act and as the Avacyn Act.

➔Section 14. Whereas the Commonwealth of Kentucky has a paramount interest in protecting all human life, 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.

**Became law without Governor's signature January 29, 2021.**

## CHAPTER 2

### ( HB 3 )

AN ACT relating to civil actions and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 452 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in KRS 5.005, and notwithstanding any other statute to the contrary, the venue for any civil action that:*
- (a) *Challenges the constitutionality of a Kentucky:*
    - 1. *Statute;*
    - 2. *Executive order;*
    - 3. *Administrative regulation; or*
    - 4. *Order of any cabinet, program cabinet, or department established under KRS Chapter 12;*
  - (b) *Includes a claim for declaratory judgment or injunctive relief; and*
  - (c) *Is brought individually, jointly, or severally against:*
    - 1. *Any state official in his or her official capacity, including any public servant as defined in KRS 11A.010; or*
    - 2. *Any body, subdivision, caucus, committee, or member of the General Assembly, or the Legislative Research Commission;*
- shall be as provided in this section.*
- (2) (a) *A plaintiff who is a resident of Kentucky shall file a complaint or petition in the office of the Circuit Court clerk in the county where the plaintiff resides. If more than one (1) plaintiff is a party to the action, the complaint or petition may be filed in any county where any plaintiff resides.*
- (b) *A plaintiff who is not a resident of Kentucky shall file a complaint or petition in the Franklin Circuit Court.*
- (3) *The plaintiff shall certify in the complaint or petition filed under this section that a copy of the complaint or petition has been served upon the Attorney General before or at the time of filing, and the Attorney General shall be entitled to be heard.*
- (4) *In any appeal to the Kentucky Court of Appeals or Supreme Court, or the federal appellate courts in any forum that involves the constitutional validity of a statute, executive order, administrative regulation, or order of any cabinet, program cabinet, or department established under KRS Chapter 12, the Attorney General shall, before the filing of the appellant's brief, be served with a copy of the pleading, paper, or other document that initiates the appeal in the appellate forum. This notice shall specify the challenged statute, executive order, administrative regulation, or order of a cabinet, program cabinet, or department established under KRS Chapter 12, and the nature of the alleged constitutional defect.*
- (5) *The Attorney General shall notify the Legislative Research Commission of:*
- (a) *The receipt of a complaint or petition and the nature of any proceedings involving the validity of any statute or regulation, or order of a cabinet, program cabinet, or department established under KRS Chapter 12; and*

- (b) *The entering of a final judgment in those proceedings, if the Attorney General is a party to the action.*
- (6) *To protect the rights of the citizens of the Commonwealth of Kentucky as guaranteed by the Constitution of Kentucky, it is the intent of the General Assembly that any action brought or pursued under this section be given priority and prosecuted in an expeditious manner.*
- (7) *Pursuant to Sections 43 and 231 of the Constitution of Kentucky, members of the General Assembly, organizations within the legislative branch of state government, or officers or employees of the legislative branch shall not be made parties to any action challenging the constitutionality or validity of any statute or regulation, without the consent of the member, organization, or officer or employee.*
- (8) *Nothing in this section is intended to waive, nor shall it be interpreted or applied to waive or abrogate in any way, any legislative immunity or legislative privilege of any body, subdivision, caucus, committee, or member of the General Assembly, or the Legislative Research Commission, as provided by the Constitution of Kentucky, KRS 418.075, any other statute of this Commonwealth, or federal or state common law.*

➔Section 2. KRS 13B.140 is amended to read as follows:

- (1) *Except as provided in Section 1 of this Act*, all final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.
- (2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.
- (3) Within twenty (20) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. The court may require or permit subsequent correction or additions to the official record. If the court requests a transcript of proceedings that have not been transcribed, the cost of the transcription shall be paid by the party initiating the appeal, unless otherwise agreed to by all parties.
- (4) A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:
- An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
  - A stay is permitted by the agency and granted upon request; or
  - A stay is ordered by the Circuit Court of jurisdiction upon petition.

➔Section 3. KRS 13B.150 is amended to read as follows:

- (1) *Except as provided in Section 1 of this Act*, review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs. ***Challenges to the constitutionality of a final order shall be reviewed in accordance with Section 1 of this Act.***
- (2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:
- In violation of constitutional or statutory provisions;
  - In excess of the statutory authority of the agency;
  - Without support of substantial evidence on the whole record;
  - Arbitrary, capricious, or characterized by abuse of discretion;

- (e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;
- (f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or
- (g) Deficient as otherwise provided by law.

→Section 4. Whereas protecting the constitutional rights of the citizens of Kentucky is of utmost importance, 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.

**Veto overridden February 2, 2021.**

### CHAPTER 3

#### ( HB 1 )

AN ACT relating to reopening the economy in the Commonwealth of Kentucky in response to the state of emergency declared by the Governor of Kentucky beginning in March 2020 and continuing throughout the year of 2021 and declaring an emergency.

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

→Section 1. Notwithstanding any state law, administrative regulation, executive order, or executive directive to the contrary, during the current state of emergency declared by the Governor in response to COVID-19 or any future state of emergency related to any virus or disease, including but not limited to any mutated strain of the current COVID-19 virus, until January 31, 2022:

(1) (a) Any business, for-profit or not-for-profit organization, local government, association, or any school or school district, public, private, or religiously affiliated, may remain open and fully operational for in-person services so long as it adopts an operating plan that:

1. Meets or exceeds all applicable guidance issued by the Centers for Disease Control and Prevention or by the executive branch, whichever is least restrictive;

2. Details how the business, for-profit or not-for-profit organization, local government, association, or school or school district, whether public, private, or religiously affiliated, will foster the safety of employees, customers, attendees and patrons, including social distancing requirements; and

3. Is posted in a conspicuous place on the main entrance door of the physical location of the business, for-profit or not-for-profit organization, local government, association, or school or school district, whether public, private, or religiously affiliated, and on the Web site of the business, for-profit or not-for-profit organization, local government, association, or school or school district, whether public, private, or religiously affiliated, if one exists; and

(b) The business, for-profit or not-for-profit organization, local government, association, or school or school district, whether public, private, or religiously affiliated, may prepare the plan detailed in paragraph (a) of this subsection itself or may utilize a plan prepared by a local or state government agency, local or state chamber of commerce, trade association, or any other recognized affiliated organization; and

(c) No state or local agency shall enforce restrictions related to the state of emergency impacting the ability of the entities listed in this subsection to remain open and fully operational for in-person services that exceed current applicable guidelines issued by the Centers for Disease Control and Prevention or the executive branch, whichever is least restrictive.

(2) Interest and penalties on unpaid employer contributions pursuant to KRS 341.300 shall not accrue, shall not be charged against an employer, shall not be considered due and owing, and shall not be collected by the Labor Cabinet through December 31, 2021.

(3) Existing court orders regarding in-person noncustodial parental visitation, fictive kin visitation, parenting time, or timesharing pursuant to a valid court order shall not be restricted, modified, or suspended by the Cabinet for Health and Family Services.

(4) The Cabinet for Health and Family Services shall develop regulations and guidelines authorizing and regulating visitation by family members or legal guardians, or outside caregivers, friends, or volunteers who provided regular care and support to the resident prior to the pandemic, that are designated as being important to the mental, physical, or social well-being of the resident in a long-term care facility as defined in KRS 216A.010 or a residential long-term care facility as defined in KRS 216.510 that:

(a) Set forth procedures for the designation of a family member or legal guardian whose visitation is important to the mental, physical, or social well-being of the resident as an "essential personal care visitor";

(b) Allow visitation by essential personal care visitors;

(c) Require that, provided the residential long-term care facility is compliant with Kentucky State Health Department guidelines, essential care visitors assume the risk for exposure to COVID-19 and other viruses;

(d) Provide that a resident may designate no more than one (1) essential personal care visitor along with procedures for changing the designation a personal care visitor;

(e) Provide that essential personal care visitors shall be exempt from any prohibitions on visitation at a long-term care facility subject to the provisions of this subsection;

(f) Require all essential personal care visitors to follow safety protocols required for long-term residential care staff, including testing of communicable disease, checking body temperature, health screenings, the use of appropriate personal protection equipment, social distancing, and any other requirement the facility deems appropriate in accordance with guidance from the Centers for Disease Control and Prevention. If testing of communicable disease is not provided by the long-term care facility, the essential personal care visitor is responsible for obtaining testing per protocol mandated by the facility;

(g) Set forth the frequency of visitation, the duration of visits, and the total number of essential personal care visitors allowed at the long-term care facility at any one time;

(h) Provide that the long-term care facility may require a written agreement with the essential personal care visitor; and

(i) Provide that facilities are not required to accept visitors.

(5) The Cabinet for Health and Family Services shall develop regulations and guidelines authorizing and regulating visitation by family members or legal guardians, or outside caregivers, friends, or volunteers who provided regular care and support to the resident prior to the pandemic, that are designated as being important to the mental, physical, or social well-being of a resident in critical situations such as end of life, or in the instance of significant mental or social decline of the resident, or when exigent circumstances exist regarding a resident in a long-term care facility as defined in KRS 216A.010 or a residential long-term care facility as defined in KRS 216.510 that:

(a) Set forth procedures for the designation of a family member or legal guardian whose visitation is important to the mental, physical, or social well-being of the resident during critical situations such as end of life, or in the instance of significant mental or social decline of the resident, or when exigent circumstances exist regarding a resident as an "essential compassionate care visitor";

(b) Require all essential compassionate care visitors to follow safety protocols required for long-term residential care staff, including testing of communicable disease, checking body temperature, health screenings, the use of appropriate personal protection equipment, social distancing, and any other requirement the facility deems appropriate in accordance with guidance from the Centers for Disease Control and Prevention. If testing of communicable disease is not provided by the long-term care facility, the essential personal care visitor is responsible for obtaining testing per protocol mandated by the facility;

(c) Restrict visitation of essential compassionate care visitors to one room to provide compassionate care to the resident;

(d) Provide that essential compassionate care visitors shall be exempt from any prohibitions on visitation at a long-term care facility subject to the provisions of this subsection;

(e) Provide that the long-term care facility may require a written agreement with the essential personal care visitor;

(f) Require that, provided the residential long-term care facility is compliant with Kentucky State Health Department guidelines, essential compassionate care visitors assume the risk for exposure to COVID-19 and other viruses; and

(g) Provide that facilities are not required to accept visitors.

➔Section 2. Whereas the economic impact of the state of emergency declared in response to COVID-19 on Kentucky's citizens and businesses is of the utmost importance, 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.

**Veto overridden February 2, 2021.**

#### CHAPTER 4

( HB 2 )

AN ACT relating to medical procedures and declaring an emergency.

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

➔Section 1. KRS 15.241 is amended to read as follows:

- (1) The Attorney General ~~may~~ ~~[upon certification by the secretary of the Cabinet for Health and Family Services, shall]~~ seek injunctive relief **as well as civil and criminal penalties in courts** ~~[a course]~~ of proper jurisdiction to prevent, **penalize, and remedy** violations of ~~[the provisions of]~~:
- (a) KRS Chapter 216B regarding abortion facilities ~~and~~ ~~[or]~~ the administrative regulations promulgated in furtherance thereof;
  - (b) **KRS 311.710 to 311.830 regarding abortions and the administrative regulations promulgated in furtherance thereof; and**
  - (c) **KRS Chapter 39A and any orders or directives issued thereunder relating to elective medical procedures, including but not limited to abortions** ~~[in cases where other administrative penalties and legal sanctions imposed have failed to prevent or cause a discontinuance of the violation].~~
- (2) **Nothing in this section shall limit or preclude such authority as the secretary of the Cabinet for Health and Family Services has to seek the relief set forth in subsection (1) of this section.**

➔Section 2. Notwithstanding any law to the contrary, under any state of emergency declared by the Governor in response to COVID-19 or any orders or directives thereunder issued in response to COVID-19:

- (1) An abortion facility licensed under KRS Chapter 216B and administrative regulations promulgated thereunder shall not deem an abortion to be an emergent or urgent medical procedure; and
- (2) A physician shall not deem an abortion to be performed in an abortion facility licensed under KRS Chapter 216B to be an emergent or urgent medical procedure."

➔Section 3. Whereas the Governor has declared that a state of emergency exists in the Commonwealth of Kentucky as a result of COVID-19, 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.

**Veto overridden February 2, 2021.**

#### CHAPTER 5

( HB 5 )

AN ACT relating to reorganizations and declaring an emergency.

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

➔Section 1. KRS 12.028 is amended to read as follows:

- (1) Recognizing the necessity for grouping related functions of organizational units and administrative bodies in order to promote greater economy, efficiency and improved administration, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers may propose to the General Assembly, for its approval, changes in the state government organizational structure which may include the creation, alteration or abolition of any organizational unit or administrative body and the transfer of functions, personnel, funds, equipment, facilities, and records from one (1) organizational unit or administrative body to another.
- ~~(2) Recognizing that changes in the state government organizational structure may need to be made as rapidly as possible to achieve greater economy, efficiency, and improved administration as the needs of government dictate, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers may, between sessions of the General Assembly, temporarily effect a change in the state government organizational structure as described in subsection (1) of this section if such temporary reorganization plan is first reviewed by the interim joint legislative committee with appropriate jurisdiction. The Governor may not effect a temporary reorganization plan under this subsection that would change the organizational structure of an organizational unit or administrative body headed by the Kentucky Economic Development Partnership as created in KRS 154.10-010, or another elected state executive officer unless requested in writing by that officer. An elected state executive officer other than the Governor may only change the organizational structure of an organizational unit or administrative body that he heads.~~
- ~~(3)~~ Any reorganization proposed under subsection (1) ~~or (2)~~ of this section shall be set forth in a reorganization plan which shall be filed with the Legislative Research Commission. The plan shall include:
  - (a) An explanation of each proposed change, including the need for the change;
  - (b) An estimate of any reduction or increase in expenditures, itemized as far as practicable, which the promulgating officer expects will result from the reorganization;
  - (c) A description of any improvements in the management, delivery of state services, and efficiency of state government operations which the promulgating officer expects will be realized as a result of the reorganization; and
  - (d) Specification of the effects of the reorganization on the budget and personnel of each affected organizational unit or administrative body, including but not limited to the amount of funds and the number of employees that will be transferred from one (1) organizational unit or administrative body to another, any reductions in the state workforce resulting from the reorganization, and the methods to be utilized to achieve such reductions.
- ~~(4) When a proposed reorganization plan is submitted for review under subsection (2) of this section the presiding co-chairman of the Legislative Research Commission shall determine which interim joint legislative committee has appropriate jurisdiction and shall refer the plan to such committee within ten (10) days after the director of the Legislative Research Commission receives the proposal. The interim joint legislative committee to which it is referred shall review the plan to determine whether the plan can reasonably be expected to achieve greater economy, efficiency or improved administration in state government. The committee shall report its findings to the Legislative Research Commission. The committee shall review and report on the plan within sixty (60) days after it is filed with the Legislative Research Commission. If the committee does not report on a proposed plan within the time specified in this subsection, the plan shall be considered reviewed by the interim joint legislative committee with appropriate jurisdiction.~~
- ~~(5) A temporary reorganization effected under subsections (2) to (4) of this section shall be terminated ninety (90) days after sine die adjournment of the next regular session of the General Assembly unless otherwise specified by the General Assembly. The Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, or other officer who promulgated a temporary reorganization plan under this section shall recommend legislation to the General Assembly to confirm the temporary reorganization plan. The subject matter of each executive order relating to reorganization shall be presented to the General Assembly in a separate bill. If the General Assembly fails to enact the temporary reorganization plan or an alternative to such plan, the organizational structure that existed immediately prior to the implementation of the temporary plan shall be reinstated upon the termination of the temporary plan. If the General Assembly fails to enact a temporary reorganization plan, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers shall not effect the plan prior to the next succeeding session of the General Assembly.]~~

~~(3)(6)~~ The Legislative Research Commission or the legislative program review and investigations committee may monitor the implementation of any reorganization plan to determine the extent to which the anticipated improvements in economy, efficiency, or administration have been realized as a result of the reorganization and shall report its findings to the General Assembly.

~~(4)(7)~~ Funds transferred due to reorganization shall be maintained in separately designated accounts. Any excess funds resulting from a reorganization shall lapse to the general fund surplus account.

→Section 2. The following KRS section is repealed:

12.027 Temporary reorganization orders.

→Section 3. Whereas, ensuring checks and balances on the executive branch of government help ensure a balance of power within the three branches of government, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Veto overridden February 2, 2021.**

## CHAPTER 6

### ( SB 1 )

AN ACT relating to emergencies and declaring an emergency.

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

→Section 1. KRS 39A.020 is amended to read as follows:

As used in KRS Chapters 39A to 39F, unless the context requires otherwise:

- (1) "Adjutant general" means the executive head of the Department of Military Affairs vested with general direction and control authority for the department and the division of emergency management;
- (2) "Catastrophe" means a disaster or series of concurrent disasters which adversely affect the entire Commonwealth of Kentucky or a major geographical portion thereof;
- (3) "Chief executive officer" means a:
  - (a) County judge/executive of a county;
  - (b) Mayor of a consolidated local government;
  - (c) Mayor of an urban-county government;
  - (d) Chief executive officer of a charter county government;
  - (e) Chief executive officer of a unified local government; or
  - (f) Mayor of a city;
- (4) "Comprehensive emergency management program" means the public safety program developed, organized, implemented, administered, maintained, and coordinated by the Division of Emergency Management and local emergency management agencies created pursuant to the provisions of KRS Chapters 39A to 39F, to assess, mitigate, prepare for, respond to, or recover from, an emergency, declared emergency, disaster, or catastrophe, or threat of any of those, as contemplated in KRS 39A.010 or as defined in this section;
- (5) "Coordination" means having and exercising primary state or local executive branch oversight for the purpose of organizing, planning, and implementing;
- (6) "County" means a county, urban-county government, charter county government, consolidated local government, or unified local government;
- (7) "Declared emergency" means any incident or situation declared to be an emergency by executive order of the Governor, or a county judge/executive, or a mayor, or the chief executive of other local governments in the Commonwealth pursuant to the provisions of KRS Chapters 39A to 39F;



- (8) "Director" means the director of the Division of Emergency Management of the Department of Military Affairs;
- (9) "Disaster" means any incident or situation declared as such by executive order of the Governor, or the President of the United States, pursuant to federal law;
- (10) "Disaster and emergency response" means the performance of all emergency functions, other than war-related functions for which military forces are primarily responsible, including, but not limited to: direction and control, incident command, or management; communications; fire protection services; police services; medical and health services; ambulance services; rescue; search and rescue or recovery; urban search and rescue; engineering; alerting and warning services; resource management; public works services; nuclear, chemical, biological, or other hazardous material or substance monitoring, containment, decontamination, neutralization, and disposal; emergency worker protection, site safety, site operations and response planning; evacuation of persons; emergency welfare services; emergency transportation; physical plant protection; temporary restoration of public utility services; emergency lighting and power services; emergency public information; incident investigation, hazards analysis, and damage assessment; and other functions related to effective reaction to a disaster or emergency or catastrophe, or the potential, threatened, or impending threat of any disaster or emergency or catastrophe, together with all other activities necessary or incidental to the preparation for and carrying out of the functions set out in this subsection;
- (11) "Division" means the Division of Emergency Management of the Department of Military Affairs;
- (12) "Emergency" means any incident or situation which poses a major threat to public safety so as to cause, or threaten to cause, loss of life, serious injury, significant damage to property, or major harm to public health or the environment~~[- and which a local emergency response agency determines is beyond its capabilities];~~
- (13) "Integrated emergency management system" means the unified and multidisciplinary disaster and emergency response infrastructure developed in the Commonwealth, under the coordination of the division, using methods which align state or local administrative, organizational, and operational resources, to accomplish the mission, goals, and objectives of the comprehensive emergency management program of the Commonwealth;
- (14) "Local disaster and emergency services organization" means that organization of public and private entities developed to carry out the multiagency disaster and emergency response of a city, county, urban-county or charter county pursuant to KRS Chapters 39A to 39F;
- (15) "Local emergency management agency" means the agency created, operated, and maintained to coordinate the local comprehensive emergency management program and disaster and emergency response of a city, county, and urban-county or charter county government pursuant to KRS Chapters 39A to 39F;
- (16) "Local emergency management director" or "Local director" means the executive head of the local emergency management agency, appointed pursuant to the provisions of KRS Chapters 39A to 39F;
- (17) "State emergency management agency" means the Division of Emergency Management of the Department of Military Affairs; and
- (18) "State emergency management director" means the director of the Division of Emergency Management.

➔Section 2. KRS 39A.090 is amended to read as follows:

- (1) The Governor may make, amend, and rescind any executive orders as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.
- (2) (a) *Executive orders, administrative regulations, or other directives issued under this chapter by the Governor shall be in effect no longer than thirty (30) days unless an extension, modification, or termination is approved by the General Assembly prior to the extension of any executive order or directive that:*
1. *Places restrictions on the in-person meeting or places restrictions on the functioning of the following:*
    - a. *Elementary, secondary, or postsecondary educational institutions;*
    - b. *Private businesses or nonprofit organizations;*
    - c. *Political, religious, or social gatherings;*
    - d. *Places of worship; or*

*e. Local governments; or*

*2. Imposes mandatory quarantine or isolation requirements.*

- (b) *All other executive orders, administrative regulations, or directives that are not described in paragraph (a) of this subsection may exceed thirty (30) days if requested by a chief executive officer or a legislative body of a local government only for that local government and only for the period of time requested by the chief executive officer or a legislative body. The chief executive officer or a legislative body may make a written request for extensions or early termination of the executive order.*
- (3) *Upon the expiration of an executive order or other directive described in subsection (2)(a) of this section declaring an emergency or other implementation of powers under this chapter, the Governor shall not declare a new emergency or continue to implement any of the powers enumerated in this chapter based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.*
- (4) *The General Assembly, by joint resolution, may terminate a declaration of emergency at any time.*
- (5) *The Commonwealth waives immunity for prospective equitable and declaratory relief only, under the Eleventh Amendment to the Constitution of the United States for cases brought against it in federal jurisdictions pursuant to KRS 446.350 during emergencies declared under KRS Chapters 39A to 39F. No award of monetary damages, costs, or attorney fees is waived or authorized under this subsection.*

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

- (1) In the event of the occurrence or threatened or impending occurrence of any of the situations or events ~~enumerated in~~~~contemplated by~~ KRS 39A.010, 39A.020, or 39A.030, the Governor may declare, in writing, that a state of emergency exists. The Governor shall have and may exercise the following emergency powers during the period in which the state of emergency exists:
- (a) To enforce all laws~~;~~ and administrative regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth;
  - (b) To require state agencies and to request local governments, local agencies, and special districts to respond to the emergency or disaster in the manner directed;
  - (c) To seize, take, or condemn property, ***for the duration of the emergency, and only for public use as defined in KRS 416.675***, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, for the protection of the public or at the request of the President, the Armed Forces, or the Federal Emergency Management Agency of the United States, including:
    1. All means of transportation and communication;
    2. All stocks of fuel of whatever nature;
    3. Food, clothing, equipment, materials, medicines, and all supplies; and
    4. Facilities, including buildings and plants.~~;~~

***Compensation for property seized, taken, or condemned under this paragraph shall be determined using the process in KRS 416.540 to 416.670 to determine value;***
  - (d) To sell, lend, give, or distribute any of the property under paragraph (c) of this subsection among the inhabitants of the Commonwealth and to account to the State Treasurer for any funds received for the property;
  - (e) To make compensation for the property seized, taken, or condemned under paragraph (c) of this subsection;
  - (f) To exclude all nonessential, unauthorized, disruptive, or otherwise uncooperative personnel from the scene of the emergency, and to command those persons or groups assembled at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;

- (g) To declare curfews and establish their limits;
  - (h) To prohibit or limit the sale or consumption of goods, *in the event of a shortage of goods*, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, or commodities for the duration of the emergency;
  - (i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the duration of the emergency;
  - ~~(j) Except as prohibited by this section or other law, to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population;~~
  - ~~(k) To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth; and~~
  - ~~(k)(4) Upon the recommendation of the Secretary of State, to declare by executive order a different time, or place, or manner for holding elections in an election area for which a state of emergency has been declared for part or all of the election area. The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. **The executive order shall remain in effect until the date of the suspended or delayed election regardless of the time limitations in Section 2 of this Act and shall not be changed except by action of the General Assembly.** The State Board of Elections shall establish procedures for election officials to follow. Any procedures established under this paragraph shall be subject to the approval of the Secretary of State and the Governor by respective executive orders; and~~
  - (l) *Except as prohibited by this section or other law, to take action necessary to execute those powers enumerated in paragraphs (a) to (k) of this subsection.*
- (2) *Within thirty (30) days of a declared emergency, and every thirty (30) days thereafter, the Governor shall report to the General Assembly, if in session, or to the Legislative Research Commission if the General Assembly is not in session, on a form provided by the Commission detailing:*
- (a) *All expenditures relating to contracts issued during the emergency under KRS 45A.085 or 45A.095, or under any provision for which a state agency does not solicit bids or proposals for a contract; and*
  - (b) *All revenues received from the federal government in response to the declared emergency, any expenditures or expenditure plan for the federal funds by federal program, the state agency or program that was allocated the federal funds, and any state fund expenditures required to match the federal funds.*
- (3) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in the judgment of a local chief executive officer is of such severity or complexity as to require the exercise of extraordinary emergency measures, the county judge/executive of a county other than an urban-county government, or mayor of a city or urban-county government, or chief executive of other local governments or their designees as provided by ordinance of the affected county, city, or urban-county may declare in writing that a state of emergency exists, and thereafter, subject to any orders of the Governor, shall have and may exercise for the period as the state of emergency exists or continues, the following emergency powers:
- (a) To enforce all laws and administrative regulations relating to disaster and emergency response and to direct all local disaster and emergency response forces and operations in the affected county, city, urban-county, or charter county;
  - (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative personnel from the scene of the emergency, and to command persons or groups of persons at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;
  - (c) To declare curfews and establish their limits;
  - (d) To order immediate purchase or rental of, contract for, or otherwise procure, without regard to procurement codes or budget requirements, the goods and services essential for protection of public health and safety or to maintain or to restore essential public services; and

- (e) To request emergency assistance from any local government or special district and, through the Governor, to request emergency assistance from any state agency and to initiate requests for federal assistance as are necessary for protection of public health and safety or for continuation of essential public services.
- ~~(4)(3)~~ Nothing in this section shall be construed to allow any governmental entity to impose additional restrictions on:
  - (a) The lawful possession, transfer, sale, transport, carrying, storage, display, or use of firearms and ammunition or components of firearms and ammunition;
  - (b) *The right of the people to exercise free speech, freedom of the press, to petition their government for redress of injuries, or to peaceably assemble; or*
  - (c) *The right of the people to worship, worship in person, or to act or refuse to act in a manner motivated by a sincerely held religious belief.*
- (5) *Nothing in this section shall be construed to allow any governmental entity to impose restrictions on the right of the people to:*
  - (a) *Peaceably assemble; or*
  - (b) *Worship, worship in person, or to act or refuse to act in a manner motivated by a sincerely held religious belief.*

➔Section 4. KRS 39A.180 is amended to read as follows:

- (1) The political subdivisions of the state and other agencies designated or appointed by the Governor may make, amend, and rescind orders and promulgate administrative regulations necessary for disaster and emergency response purposes, and to supplement the carrying out of the provisions of this chapter, if not inconsistent with any orders or administrative regulations promulgated by the Governor or by any state agency exercising a power delegated to it by the Governor.
- (2) (a) All written orders and administrative regulations promulgated by the Governor, the director, or by any political subdivision or other agency authorized by KRS Chapters 39A to 39F to make orders and promulgate administrative regulations, shall have the full force of law ***and, if promulgated as administrative regulations, shall follow the requirements for promulgating administrative regulations under KRS Chapter 13A. All written orders authorized by KRS Chapters 39A to 39F shall be*** ~~[when, if issued by the Governor, the director, or any state agency, a copy is] filed with the Legislative Research Commission, or, if promulgated by an agency or political subdivision of the state, when filed in the office of the clerk of that political subdivision or agency. All existing laws, ordinances, and administrative regulations inconsistent with the provisions of KRS Chapters 39A to 39F, or of any order or administrative regulation issued under the authority of KRS Chapters 39A to 39F, shall be suspended during the period of time and to the extent that the conflict exists].~~
  - (b) *The Governor may suspend a statute by executive order when an emergency is declared under KRS Chapter 39A if:*
    - 1. *The statute is specifically enumerated by the Governor in the executive order; and*
    - 2. *The executive order specifying the suspension is approved by the Attorney General in writing.*
  - (c) *A statute suspension authorized in paragraph (b) of this subsection shall only be in effect while the emergency executive order is in effect.*
  - (d) *Any existing administrative regulation that conflicts with a written order issued under this chapter shall be amended, withdrawn, or repealed in accordance with KRS Chapter 13A to conform with the written order.*
  - (e) *When a written order ends, any administrative regulation promulgated under the authority of this section shall:*
    - 1. *Become void; and*
    - 2. *Be withdrawn, amended, or repealed in accordance with KRS Chapter 13A.*
- (3) *Notwithstanding subsection (2) of this section, the Governor shall not suspend any laws in KRS Chapters 39A to 39F, Chapter 13A, 446.350, 527.020, 311.710 to 311.820, or any other statutes related to abortion.*

~~(4)(3)~~ The law enforcement authorities of the state and of its counties, urban-counties, charter counties, and cities shall enforce the written orders and administrative regulations issued pursuant to KRS Chapters 39A to 39F.

➔Section 5. KRS 39A.280 is amended to read as follows:

- (1) Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:
  - (a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.
  - (b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.
  - (c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.
  - (d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of that activity or response, nor shall any person have a right to rely on such an assumption of duty.
- (2) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any of its political subdivisions, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management agency member, or disaster and emergency services member, or disaster and emergency response worker, or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection. This immunity shall not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any Act of Congress.
- (3) Subject to subsection (6) of this section, neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any of its political divisions, nor any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with this chapter or any order or administrative regulation promulgated pursuant to the provisions of this chapter, or other precautionary measures enacted by any city of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of that activity. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.

- (4) Decisions of the director, his subordinates or employees, a local emergency management director, or the local director's subordinates or employees, a rescue chief or the chief's subordinates, concerning the allocation and assignment of personnel and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor the state, county, urban-county, charter county, or city, or local emergency management agency-supervised operating unit formally affiliated with a local disaster and emergency services organization, shall be held liable in the absence of malice or bad faith, even when those decisions are made rapidly in response to the exigencies of an emergency.
- (5) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of the real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster or emergency, together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person. The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self-insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.
- (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and emergency response worker only if the volunteer or worker is enrolled or registered with a local disaster and emergency services organization or with the division in accordance with the division's administrative regulations.
- (7) While engaged in disaster and emergency response activity, volunteers and auxiliary disaster and emergency response workers enrolled or registered with a local disaster and emergency service organization or with the division in accordance with subsection (6) of this section shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, including the provisions of KRS 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of any civil action brought against a volunteer enrolled or registered with a local disaster or emergency service organization or with the division due to an act or omission made in the scope and course of a disaster and emergency response activity.
- (8) (a) Notwithstanding subsections (3) and (6) of this section, a licensed professional engineer as defined in KRS 322.010 or an architect licensed under KRS Chapter 323, who voluntarily and without compensation provides architectural, structural, electrical, mechanical, or other professional services at the scene of a declared emergency, disaster, or catastrophe, shall not be liable for any personal injury, wrongful death, property damage, or other loss of any nature related to the licensed professional engineer's or licensed architect's acts, errors, or omissions in the performance of the services carried out:
1. At the request of or with the approval of a federal, state, or local:
    - a. Emergency management agency official with executive responsibility in the jurisdiction to coordinate disaster and emergency response activity;
    - b. Fire chief or his or her designee; or
    - c. Building inspection official;
 whom the licensed professional engineer or licensed architect believes to be acting in an official capacity;
  2. Within ninety (90) days following the end of the period for the declared emergency, disaster, or catastrophe. ***If the emergency is, unless extended under Section 2 of this Act, the ninety (90) days shall run from the end date of the last extension***~~[by the Governor under KRS 39A.100];~~ and
  3. If the professional services arose out of the declared emergency, disaster, or catastrophe and if the licensed professional engineer or licensed architect acted as an ordinary reasonably prudent member of the profession would have acted under the same or similar circumstances.
- (b) Nothing in this subsection shall provide immunity for wanton, willful, or intentional misconduct.

➔Section 6. KRS 39A.990 is amended to read as follows:

Any person violating any provision of this chapter or any administrative regulation or order promulgated pursuant to this chapter for which another penalty is not specified shall be ***fined an amount not to exceed one hundred dollars (\$100) for a first offense and not to exceed two hundred fifty dollars (\$250) for each subsequent offense*** ~~[guilty of a Class A misdemeanor].~~

➔Section 7. KRS 241.090 is amended to read as follows:

State administrators and all investigators shall have the full police powers of peace officers, and their jurisdiction shall be coextensive with the state. They may inspect any premises where alcoholic beverages are manufactured, sold, stored, or otherwise trafficked in, without first obtaining a search warrant. They may confiscate any contraband property. ***The jurisdiction and police powers of state administrators and all investigators during an emergency declared under KRS Chapter 39A shall be subject to the limitations of Section 2 of this Act.***

➔Section 8. KRS 315.500 is amended to read as follows:

- (1) When the Governor declares a state of emergency pursuant to KRS 39A.100, the Governor may issue an executive order for a period of up to thirty (30) days giving pharmacists emergency authority. The executive order shall designate the geographical area to which it applies. In the executive order, the Governor may vest pharmacists with the authority to:
  - (a) Dispense up to a thirty (30) day emergency supply of medication;
  - (b) Administer immunizations to children pursuant to protocols established by the Centers for Disease Control and Prevention, the National Institutes of Health, or the National Advisory Committee on Immunization Practices or determined to be appropriate by the commissioner of public health or his or her designee;
  - (c) Operate temporarily, a pharmacy in an area not designated on the pharmacy permit; and
  - (d) Dispense drugs as needed to prevent or treat the disease or ailment responsible for the emergency pursuant to protocols established by the Centers for Disease Control and Prevention or the National Institutes of Health or determined to be appropriate by the commissioner of public health or his or her designee to respond to the circumstances causing the emergency.
- (2) The provisions of this section may be extended, in writing, by the Governor if necessary to protect the lives or welfare of the citizens.
- (3) ***Nothing in this section shall be affected by the requirements of Section 2 of this Act.***

➔Section 9. KRS 367.374 is amended to read as follows:

- (1) (a) When a Condition Red has been declared by the United States Department of Homeland Security under the Homeland Security Advisory System or the Governor has declared a state of emergency under KRS 39A.100, the Governor may implement this section by executive order for a period of fifteen (15) days from notification of implementation, as required by KRS 367.376. The order implementing this section shall be limited to the geographical area indicated in the declaration of emergency. The Governor may terminate or limit the scope of the order at any time.
- (b) No person shall sell, rent, or offer to sell or rent, regardless of whether an actual sale or rental occurs, a good or service listed in this paragraph or any repair or reconstruction service for a price which is grossly in excess of the price prior to the declaration and unrelated to any increased cost to the seller. Goods and services to which this section applies are:
  1. Consumer food items;
  2. Goods or services used for emergency cleanup;
  3. Emergency supplies;
  4. Medical supplies;
  5. Home heating oil;
  6. Building materials;
  7. Housing;
  8. Transportation, freight, and storage services; and
  9. Gasoline or other motor fuels.

- (c) A person's price does not violate this subsection if it is:
1. Related to an additional cost imposed by a supplier of a good or other costs of providing the good or service, including an additional cost for labor or materials used to provide a service;
  2. Ten percent (10%) or less above the price prior to the declaration;
  3. Ten percent (10%) or less above the sum of the person's costs and normal markup for a good or service;
  4. Generally consistent with fluctuations in applicable commodity, regional, national, or international markets, or seasonal fluctuations; or
  5. A contract price, or the result of a price formula, established prior to the order implementing this subsection.
- (d) Whether a price violates this subsection is a question of law. In determining if a violation of this subsection has occurred, the court shall consider all relevant circumstances, including prices prevailing in the locality at that time.
- (2) The provisions of this section may be extended for up to three (3) additional fifteen (15) day periods by the Governor, if necessary to protect the lives, property, or welfare of the citizens.
- (3) If a person sold or rented a good or service listed in subsection (1) of this section at a reduced price in the thirty (30) days prior to the Governor's implementation of this section, the price at which that person usually sells or rents the good or service in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.
- (4) If a person did not sell or rent or offer to sell or rent a good or service listed in subsection (1) of this section prior to the Governor's implementation of this section, the price at which a good or service was generally available in the area for which the declaration was issued shall be used in determining if the person is in violation of this section.
- (5) ***Nothing in this section shall be affected by the requirements of Section 2 of this Act.***

→Section 10. It is the intent of the General Assembly that if any part of this Act be held unconstitutional, the remaining parts shall remain in force.

→Section 11. Whereas the impact of the state of emergency declared in response to COVID-19 on Kentucky's citizens and businesses is of the utmost importance, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Veto overridden February 2, 2021.**

## CHAPTER 7

### ( SB 2 )

AN ACT relating to administrative regulations and declaring an emergency.

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

→Section 1. KRS 13A.010 is amended to read as follows:

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

- (1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;
- (2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in



contemplation of a statute, and the amendment or repeal of an existing administrative regulation, but does not include:

- (a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;
  - (b) Declaratory rulings;
  - (c) Intradepartmental memoranda not in conflict with KRS 13A.130;
  - (d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or
  - (e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;
- (3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;
- (4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;
- (5) "Commission" means the Legislative Research Commission;
- (6) "Effective" means ~~that~~ an administrative regulation *that* has completed the legislative ~~committee~~~~subcommittee~~ review established by KRS 13A.290, 13A.330, and 13A.331;
- (7) "Federal mandate" means any federal constitutional, legislative, or executive law or order that requires or permits any administrative body to engage in regulatory activities that impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;
- (8) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;
- (9) "Filed" or "promulgated" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;
- (10) "Last effective date" means the latter of:
- (a) The most recent date an ordinary administrative regulation became effective, without including the date a technical amendment was made pursuant to KRS 13A.040(10), 13A.2255(2), or 13A.312; or
  - (b) The date a certification letter was filed with the regulations compiler for that administrative regulation pursuant to KRS 13A.3104(4), if the letter stated that the administrative regulation shall remain in effect without amendment; ~~or~~
- (11) *"Legislative committee" means an interim joint committee, a House or Senate standing committee, a statutory committee, or a subcommittee of the Legislative Research Commission;*
- (12) "Local government" means and includes a city, county, urban-county, charter county, consolidated local government, special district, or a quasi-governmental body authorized by the Kentucky Revised Statutes or a local ordinance;
- ~~(13)~~~~(12)~~ "Proposed administrative regulation" means an administrative regulation that:
- (a) Has been filed by an administrative body; and
  - (b) Has not become effective or been withdrawn;
- ~~(14)~~~~(13)~~ "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;
- ~~(15)~~~~(14)~~ "Small business" means a business entity, including its affiliates, that:
- (a) Is independently owned and operated; and
  - (b)
    1. Employs fewer than one hundred fifty (150) full-time employees or their equivalent; or
    2. Has gross annual sales of less than six million dollars (\$6,000,000);

- (16)~~(15)~~ "Statement of consideration" means the document required by KRS 13A.280 in which the administrative body summarizes the comments received, its responses to those comments, and the action taken, if any, as a result of those comments and responses;
- (17)~~(16)~~ "Subcommittee" means the Administrative Regulation Review Subcommittee~~[- any other subcommittee]~~ of the Legislative Research Commission~~[- an interim joint committee, or a House and Senate standing committee]~~;
- (18)~~(17)~~ "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities; and
- (19)~~(18)~~ "Written comments" means comments submitted to the administrative body's contact person identified pursuant to KRS 13A.220(6)(d) via hand delivery, United States mail, e-mail, or facsimile and may include but is not limited to comments submitted internally from within the promulgating administrative body or from another administrative body.

➔Section 2. KRS 13A.030 is amended to read as follows:

- (1) The Administrative Regulation Review Subcommittee shall:
- (a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including, but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;
  - (b) Except as provided by KRS 158.6471 and 158.6472, review and comment upon effective administrative regulations pursuant to subsections (2), (3), and (4) of this section or administrative regulations filed with the Commission;
  - (c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and
  - (d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.
- (2) The subcommittee may make a ~~nonbinding~~ determination:
- (a) That an effective administrative regulation or an administrative regulation filed with the Commission is deficient because it:
    1. Is wrongfully promulgated;
    2. Appears to be in conflict with an existing statute;
    3. Appears to have no statutory authority for its promulgation;
    4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;
    5. Fails to use tiering when tiering is applicable;
    6. Is in excess of the administrative body's authority;
    7. Appears to impose an unreasonable burden on government or small business, or both;~~or~~
    8. *Is filed as an emergency administrative regulation without adequate justification of the emergency nature of the situation as described in Section 4(1) of this Act;*
    9. *Has not been noticed in conformance with the requirements of subsection (3) of Section 9 of this Act; or*
    10. Appears to be deficient in any other manner;
  - (b) That an administrative regulation is needed to implement an existing statute; or
  - (c) That an administrative regulation should be amended or repealed.
- (3) The subcommittee may review an effective administrative regulation if requested by a member of the subcommittee.

- (4) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

➔Section 3. KRS 13A.040 is amended to read as follows:

The director of the Legislative Research Commission shall appoint an administrative regulations compiler who shall:

- (1) Receive administrative regulations, and other documents required to be filed by the provisions of this chapter, tendered for filing;
- (2) Stamp administrative regulations tendered for filing with the time and date of receipt;
- (3) Provide administrative and support services to the subcommittee;
- (4) Maintain a file of administrative regulations and other documents required to be filed by this chapter, for public inspection, with suitable indexes;
- (5) Maintain a file of ineffective administrative regulations;
- (6) Maintain a file of material incorporated by reference, including superseded or ineffective material incorporated by reference;
- (7) Prepare the Kentucky Administrative Regulations Service;
- (8) Upon request, certify copies of administrative regulations and other documents that have been filed with the regulations compiler;
- (9) Correct errors that do not change the substance of an administrative regulation, including ~~but~~ but not limited to ~~typographical~~ typographical errors, errors in format, and grammatical errors;
- (10)
  - (a) Change items in an administrative regulation in response to a specific written request for a technical amendment submitted by the administrative body if the regulations compiler determines that the requested changes do not affect the substance of the administrative regulation. Examples of technical amendments include the address of the administrative body, citations to statutes or other administrative regulations if a format change within that statute or administrative regulation has changed the numbering or lettering of parts, or other changes in accordance with KRS 13A.312; and
  - (b) Notify the administrative body within thirty (30) business days of receipt of a technical amendment letter the status of the request, including:
    1. Any requested changes that are accepted as technical amendments; and
    2. Any requested changes that are not accepted as technical amendments;
- (11) Refuse to accept for filing administrative regulations, and other documents required to be filed by this chapter, that do not conform to the drafting, formatting, or filing requirements established by the provisions of KRS 13A.190(5) ~~to (11)(4) to (10)~~, 13A.220, 13A.222(1), (2), and (3), 13A.230, and 13A.280, and notify the administrative body in writing of the reasons for refusing to accept an administrative regulation for filing;
- (12) Maintain a list of all administrative regulation numbers and the corresponding last effective date, based on the information included in the history line of each administrative regulation; and
- (13) Perform other duties required by the Commission or by a *legislative committee* ~~[subcommittee]~~.

➔Section 4. KRS 13A.190 is amended to read as follows:

- (1) An emergency administrative regulation is *an administrative regulation* ~~[one]~~ that:
  - (a) *An administrative body can clearly demonstrate, through documentary evidence submitted with the filing of the emergency administrative regulation, must be placed into effect immediately* in order to:
    1. Meet an imminent threat to public health, safety, ~~or~~ welfare, *or the environment*;
    2. Prevent *an imminent* ~~[a]~~ loss of federal or state funds;
    3. Meet *an imminent* ~~[a]~~ deadline for the promulgation of an administrative regulation that is established by state statute or federal law; or
    4. ~~[Protect human health and the environment]~~ *Comply with an executive order issued under KRS Chapter 39A*; and

- (b) 1. Is temporary in nature and will expire as provided in this section; or
- 2. Is temporary in nature and will be replaced by an ordinary administrative regulation as provided in this section.

*For the purposes of this section, "imminent" means within two hundred seventy (270) days of the filing of the emergency administrative regulation.*

- (2) *An agency's finding of an emergency pursuant to this section shall not be based on the agency's failure to timely process and file administrative regulations through the ordinary administrative regulation process.*
- (3) *An emergency administrative ~~regulation~~ ~~regulations shall~~:*
  - (a) *Shall become effective and shall be considered as adopted upon filing; ~~Emergency administrative regulations shall~~*
  - (b) *Shall be published in the Administrative Register in accordance with the publication deadline established in KRS 13A.050(3);*
  - (c) *Shall be subject to the public comment provisions established in Sections 9 and 10 of this Act;*
  - (d) 1. *May be reviewed at a subsequent meeting of a legislative committee after the filing of the emergency administrative regulation; and*
  - 2. *May, by a vote of the majority of the legislative committee's membership as established by KRS 13A.020(4) and Section 11(9) of this Act, be found to be deficient, and the deficiency shall be reported to the Governor pursuant to KRS 13A.330(2); and*
  - (e) *May be amended:*
    - 1. *By the promulgating administrative body after receiving public comments as established in Section 10 of this Act. The amended after comments version shall:*
      - a. *Become effective upon filing; and*
      - b. *Not require a statement of emergency; or*
    - 2. *At a legislative committee meeting as established in Section 16 of this Act. The amendment shall be approved as established by KRS 13A.020(4) and Section 11(9) of this Act. The amended version shall become effective upon adjournment of the meeting following the procedures established in Section 18 of this Act.*
- (4)(3) (a) *Except as provided by paragraph (b) of this subsection, emergency administrative regulations shall expire two hundred seventy (270) days after the date of filing or when the same matter filed as an ordinary administrative regulation filed for review is adopted, whichever occurs first.*
- (b) *If an administrative body extends the time for filing a statement of consideration **for an ordinary administrative regulation** as provided by KRS 13A.280(2)(b), an emergency administrative regulation shall remain in effect for two hundred seventy (270) days after the date of filing plus the number of days extended under the provisions of KRS 13A.280(2)(b) or when the same matter filed as an ordinary administrative regulation filed for review is adopted, whichever occurs first.*
- (c) *Filing an emergency amended after comments administrative regulation shall not affect the expiration of an emergency regulation as established in paragraphs (a) and (b) of this subsection.*
- (5)(4) *Except as established in subsection (6)(5) of this section, an emergency administrative regulation with the same number or title or governing the same subject matter shall not be filed for a period of **two hundred seventy (270) days** ~~nine (9) months~~ after it has been initially filed. ~~No other emergency administrative regulation that is identical to the previously filed emergency administrative regulation shall be promulgated.~~*
- (6)(5) *If an emergency administrative regulation with the same number or title or governing the same subject matter as an emergency administrative regulation filed within the previous **two hundred seventy (270) days** ~~nine (9) months~~ is filed, it shall contain a detailed explanation of the manner in which it differs from the previously filed emergency administrative regulation. The detailed explanation shall be included in the statement of emergency required by subsection (7)(6) of this section.*
- (7)(6) *Each emergency administrative regulation shall contain a statement of:*
  - (a) *The nature of the emergency;*

- (b) The reasons why an ordinary administrative regulation is not sufficient;
  - (c) Whether or not the emergency administrative regulation will be replaced by an ordinary administrative regulation;
  - (d) If the emergency administrative regulation will be replaced by an ordinary administrative regulation, the following statement: "The ordinary administrative regulation (is or is not) identical to this emergency administrative regulation.";
  - (e) If the emergency administrative regulation will not be replaced by an ordinary administrative regulation, the reasons therefor; and
  - (f) If applicable, the explanation required by subsection (6)~~(5)~~ of this section.
- ~~(8)(7)~~ (a) An administrative body shall attach the:
- 1. Statement of emergency required by subsection (7)~~(6)~~ of this section to the front of the original and each copy of a proposed emergency administrative regulation; ~~and~~
  - 2. **Public hearing and public comment period information required by KRS 13A.270(2)**, regulatory impact analysis, tiering statement, federal mandate comparison, fiscal note, summary of material incorporated by reference if applicable, and other forms or documents required by the provisions of this chapter to the back of the emergency administrative regulation; **and**
  - 3. **Documentary evidence submitted justifying the finding of an emergency in accordance with subsection (1) of this section to the back of the emergency regulation if it is:**
    - a. **No more than four (4) pages in length; and**
    - b. **Typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches, and single-sided.**

**Larger volumes of documentary evidence shall be filed in a separate binder or on a CD-ROM or DVD disc.**
- (b) An administrative body shall file with the regulations compiler:
- 1. The original and five (5) copies of the emergency administrative regulation; and
  - 2. At the same time as, or prior to, filing the paper version, an electronic version of the emergency administrative regulation and the attachments required by paragraph (a) of this subsection saved as a single document for each emergency administrative regulation in an electronic format approved by the regulations compiler.
- (c) The original and four (4) copies of each emergency administrative regulation shall be stapled in the top left corner. The fifth copy of each emergency administrative regulation shall not be stapled. The original and the five (5) copies of each emergency administrative regulation shall be grouped together.
- ~~(8) (a) If an emergency administrative regulation will not be replaced by an ordinary administrative regulation, the administrative body shall schedule a public hearing and public comment period pursuant to KRS 13A.270(1). The public hearing and public comment period information required by KRS 13A.270(2) shall be attached to the back of the emergency administrative regulation.]~~
- ~~(b) If an emergency administrative regulation will be replaced by an ordinary administrative regulation:~~
- ~~1. The ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that will be replaced; and~~
  - ~~2. A public hearing and public comment period shall not be required for the emergency administrative regulation.]~~
- (9) The statement of emergency shall have a two (2) inch top margin. The number of the emergency administrative regulation shall be typed directly below the heading "Statement of Emergency." The number of the emergency administrative regulation shall be the same number as the ordinary administrative regulation followed by an "E."
- (10) Each executive department emergency administrative regulation shall be signed by the head of the administrative body and countersigned by the Governor prior to filing with the Commission. These signatures shall be on the statement of emergency attached to the front of the emergency administrative regulation.

- (11) ***If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that it will replace.***
- ~~(12)(a)~~ If an ordinary administrative regulation that was filed to replace an emergency administrative regulation is withdrawn:~~;~~
- (a) The emergency administrative regulation shall expire on the date the ordinary administrative regulation is withdrawn; ~~and~~;
- (b) ~~If an ordinary administrative regulation that was filed to replace an emergency administrative regulation is withdrawn,~~ The administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.
- ~~(13)(12)~~ (a) If an emergency administrative regulation that was intended to be replaced by an ordinary administrative regulation is withdrawn, the emergency administrative regulation shall expire on the date it is withdrawn.
- (b) If an emergency administrative regulation has been withdrawn, the ordinary administrative regulation that was filed with it shall not expire unless the administrative body informs the regulations compiler that the ordinary administrative regulation is also withdrawn.
- (c) If an emergency administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.
- (14) ***The administrative regulations compiler shall notify all legislative committees of the number, title, and subject matter of all emergency administrative regulations and shall forward any additional information filed about the emergency administrative regulation requested by a legislative committee.***

~~(13) A subcommittee may review an emergency administrative regulation and may recommend to the Governor that the administrative regulation be withdrawn.~~

➔Section 5. KRS 13A.220 is amended to read as follows:

All administrative regulations shall comply with the provisions of KRS 13A.222 and 13A.224.

- (1) (a) An administrative body shall file with the regulations compiler:
1. The original and five (5) copies of an administrative regulation; and
  2. At the same time as, or prior to, filing the paper version, an electronic version of the administrative regulation and required attachments saved as a single document for each administrative regulation in an electronic format approved by the regulations compiler.
- (b) If there are differences between the paper copy and the electronic version of an administrative regulation filed with the regulations compiler, the electronic version shall be the controlling version.
- (2) The original and four (4) copies of each administrative regulation shall be stapled in the top left corner. The fifth copy of each administrative regulation shall not be stapled. The original and the five (5) copies of each administrative regulation shall be grouped together.
- (3) An amendment to an administrative regulation shall not be made on a copy of the administrative regulation reproduced from the Kentucky Administrative Regulations Service or the Administrative Register. It shall be a typed original in the format specified in subsection (4) of this section.
- (4) The format of an administrative regulation shall be as follows:
- (a) An administrative regulation shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches and shall be double-spaced through the last line of the body of the administrative regulation. The first page shall have a two (2) inch top margin. The administrative regulation shall be typed in a twelve (12) point font approved by the regulations compiler. The lines on each page shall be numbered, with each page starting with line number one (1). Pages of an administrative regulation and documents attached to the administrative regulation shall be numbered sequentially. Page numbers shall be centered in the bottom margin of each page. Copies of the administrative regulation may be mechanically reproduced;
- (b) The regulations compiler shall place a stamp indicating the date and time of receipt of the administrative regulation in the two (2) inch margin on the first page;

- (c) The cabinet, department, and division of the administrative body shall be listed on separate double-spaced lines two (2) inches from the top in the upper left hand corner of the first page. This shall be followed on the next double-spaced line by "(New Administrative Regulation)," "(Amendment)," "(Amended After Comments)," "(Repealer)," "(New Emergency Administrative Regulation)," "(Emergency Amendment)," "*(Emergency Amended After Comments)*," or "(Emergency Repealer)," whichever is applicable;
  - (d) The notation shall be followed by the number and title of the administrative regulation on the next double-spaced line. The promulgating administrative body shall contact the regulations compiler prior to filing to obtain an administrative regulation number for a new administrative regulation;
  - (e) On the next double-spaced line following the number and title of an administrative regulation, after the words "RELATES TO;" the administrative body shall list all statutes and other enactments, including any branch budget bills or executive orders, to which the administrative regulation relates or which shall be affected by the administrative regulation. After the words "STATUTORY AUTHORITY:" the administrative body shall list the specific statutes and other enactments, where applicable, authorizing the promulgation of the administrative regulation. Federal statutes and regulations shall be cited in the "RELATES TO:" and "STATUTORY AUTHORITY:" sections as provided by KRS 13A.222(4)(n) and (o); and
  - (f) Following the citations provided for in paragraph (e) of this subsection, and following the words "NECESSITY, FUNCTION, AND CONFORMITY:" the administrative body shall include a brief statement setting forth the necessity for promulgating the administrative regulation, a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b).
- (5) The numbering within the body of an administrative regulation shall be the responsibility of the promulgating body, subject to the authority of the regulations compiler to divide or renumber an administrative regulation. The following format shall be used by the administrative body in the numbering of each administrative regulation. Each section shall begin with the word "Section" followed by an Arabic number, and titles of sections shall be initially capitalized. Subsections shall be designated by an Arabic number in parentheses. Paragraphs shall be designated by lower case letters of the alphabet in parentheses (e.g., (a), (b), (c), etc.). Subparagraphs shall be designated by an Arabic number followed by a period (e.g., 1., 2., etc.). Clauses shall be designated by lower case letters of the alphabet followed by a period (e.g., a., b., c., etc.). Subclauses shall be designated by lower case Roman numerals in parentheses (e.g., (i), (ii), (iii), etc.). A section shall not be divided into subsections, paragraphs, subparagraphs, clauses, or subclauses if there is only one (1) item in that level of division.
- (6) After the complete text of an administrative regulation, on the following page, the administrative body shall include the following information:
- (a) If the provisions of KRS 13A.120(3) are applicable, a statement that the official or the head of the administrative body has reviewed or approved the administrative regulation; the signature of such official or head; and the date on which such review or approval occurred;
  - (b) The authorizing signature of the administrative body promulgating the administrative regulation, and the date on which the administrative body approved the promulgation;
  - (c) Information relating to public hearings and the public comment period required by KRS 13A.270; and
  - (d) The name, position, mailing address, telephone number, e-mail address, and facsimile number of the contact person of the administrative body. The contact person shall be the person authorized by the head of an administrative body to:
    1. Receive information relating to issues raised by the public or by a *legislative committee* ~~[subcommittee]~~ prior to a public meeting of the *legislative committee* ~~[subcommittee]~~;
    2. Negotiate changes in language with a *legislative committee* ~~[subcommittee]~~ in order to resolve such issues; and
    3. Answer questions relating to the administrative regulation.
- (7) The format for signatures required by subsection (6)(a) and (b) of this section shall be as follows:
- (a) The signature shall be placed on a signature line; and

- (b) The name and title of the person signing shall be typed immediately beneath the signature line.
- (8) **An administrative body shall prominently display on its Web site:**
  - (a) **A notice that an administrative regulation has been filed with the Commission;**
  - (b) **A summary of the administrative regulation including:**
    - 1. **The number of the administrative regulation;**
    - 2. **The title of the administrative regulation; and**
    - 3. **Any changes made if it is an existing administrative regulation;**
  - (c) **Information on how to access the administrative regulation on the Commission's Web site; and**
  - (d) **The dates of the public comment period and the place, time, and date of the scheduled public hearing as well as the manner in which interested parties shall submit:**
    - 1. **Notification of attending the public hearing; and**
    - 2. **Written comments.**
- (9) (a) A letter of request, notification, or withdrawal required to be filed with the regulations compiler pursuant to this chapter may be filed electronically if the letter:
  - 1. Is on the administrative body's official letterhead; and
  - 2. Contains the signature of a representative of that administrative body.
- (b) Paragraph (a) of this subsection shall not apply to the letters required by KRS 13A.320(2)(b) for amendments at a **legislative committee** ~~[subcommittee]~~ meeting.

➔Section 6. KRS 13A.2251 is amended to read as follows:

- (1) An administrative body shall incorporate material by reference in the last section of an administrative regulation. This section shall include:
  - (a) The title of the material incorporated by reference placed in quotation marks, followed by the edition date of the material;
  - (b) Information on how the material may be obtained; and
  - (c) A statement that the material is available for public inspection and copying, subject to copyright law, at the main, regional, or branch offices of the administrative body, and the address and office hours of each. Following the required statement, the administrative body **shall** ~~[may]~~ include ~~[optional]~~ information that states the administrative body's Web site address or telephone number or that provides contact information for other sources that may have the material available to the public.
- (2) The section incorporating material by reference shall be titled "Incorporation by Reference".
  - (a) If only one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "(name and edition date of material incorporated) is incorporated by reference."
  - (b) If more than one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "The following material is incorporated by reference: (a) (name and edition date of first item incorporated); and (b) (name and edition date of second item incorporated)."
  - (c) The second subsection of the section incorporating material by reference shall include the following statement: "This material may be inspected, copied, or obtained, subject to applicable copyright law, at (name of administrative body, full address), Monday through Friday, (state the regular office hours)."
- (3) A summary of the incorporated material, in detail sufficient to identify the subject matter to which it pertains, shall be attached to an administrative regulation that incorporates material by reference. This summary shall include:
  - (a) Relevant programs, statutes, funds, rights, duties, and procedures affected by the material and the manner in which they are affected;



- (b) A citation of the specific state or federal statutes or regulations authorizing or requiring the procedure or policy found in the material incorporated by reference; and
  - (c) The total number of pages incorporated by reference.
- (4) (a) **1.** One (1) copy of the material incorporated by reference shall be filed with the regulations compiler when the administrative regulation is filed.
- 2.** *For material incorporated by reference that was developed by the promulgating administrative body:*
- a.** *The material incorporated by reference shall be prominently displayed on the administrative body's Web site; and*
  - b.** *The Uniform Resource Locator (URL) of the address where the material may be directly viewed on the agency's Web site shall be included in the body of the administrative regulation.*
- 3.** *For materials incorporated by reference that are subject to a valid copyright owned by a third party not controlled by the promulgating administrative body, the material shall be referenced by providing sufficient information to assist in locating the material from the third party.*
- (b) Material incorporated by reference shall be placed in a binder, attached to the back of the administrative regulation, or filed on a CD-ROM or DVD.
- 1. If the material is placed in a binder, the administrative body shall indicate, on the front binder cover and on the first page of the material incorporated by reference, the:
    - a. Number of the administrative regulation to which the material incorporated by reference pertains;
    - b. Date on which it is filed; and
    - c. Citation of each item that is included in the binder.
  - 2. The material incorporated by reference may be attached to the back of the administrative regulation if it is:
    - a. No more than four (4) pages in length; and
    - b. Typewritten on white paper, size eight and one-half (8 1/2) by eleven (11) inches, and single-sided.
  - 3. The material incorporated by reference may be filed on a CD-ROM or DVD disc if the material is saved in Adobe Portable Document Format (PDF). The administrative body shall indicate on the disc and the disc's storage case the:
    - a. Number of the administrative regulation to which the material incorporated by reference pertains;
    - b. Date on which it is filed; and
    - c. Citation of each item that is included on the disc.
- (c) If the same material is incorporated by reference in more than one (1) administrative regulation, an administrative body may file one (1) copy of the material in a binder or on a CD-ROM or DVD disc. The numbers of the administrative regulations in which the material is incorporated by reference shall be indicated with the other information as required by paragraph (b) of this subsection.

➔Section 7. KRS 13A.2255 is amended to read as follows:

- (1) When an administrative body amends material that had been previously incorporated by reference, the amendment shall be accomplished by submission of:
- (a) An amendment to the administrative regulation with a new edition date for the material incorporated by reference. The amendment shall be filed in accordance with:
    - 1. KRS 13A.220 to initiate a change in an existing administrative regulation;
    - 2. KRS 13A.280 to amend a proposed administrative regulation as a result of the hearing or written comments received; or

3. KRS 13A.320 to amend a proposed administrative regulation at a *legislative committee*~~[subcommittee]~~ meeting;
- (b) *I.*
  1. An entire new document in which the amendments have been made but are not reflected in the manner specified in KRS 13A.222(2).
  2. *If the new document has been developed by the promulgating administrative body, the entire document shall be displayed prominently on the administrative body's Web site and the Uniform Resource Locator (URL) of the address where the material may be directly viewed on the agency's Web site shall be included in the body of the administrative regulation.*
  3. *If any materials incorporated by reference are subject to a valid copyright owned by a third party not controlled by the promulgating administrative body, the material shall be referenced by providing sufficient information to assist in locating the material from the third party;*
- (c) A detailed summary of the changes and their effect. This summary shall:
  1.
    - a. Describe changes that are being made in the material incorporated by reference, in sufficient detail that a person reading the summary will know the differences between the material previously incorporated by reference and the new material; or
    - b. List each change in the manner required by KRS 13A.320(2)(c) and (d); and
  2. Be attached to the back of the administrative regulation or, if part of an amendment pursuant to KRS 13A.320, to the amendment submitted for the *legislative committee*~~[subcommittee]~~ meeting; and
- (d) The page or pages of any document developed by the promulgating administrative body in which changes have been made, with the changes accomplished in the manner specified in KRS 13A.222(2). Notwithstanding KRS 13A.040(6), the regulations compiler shall not be required to keep these marked copies once the administrative regulation has been adopted or withdrawn.
- (2) (a) If the changes to the material incorporated by reference are technical in nature and authorized by KRS 13A.040(10) or 13A.312, the administrative body may submit to the regulations compiler a copy of the revised material incorporated by reference and a detailed letter explaining what changes are made and the reason for the changes.
- (b) If the regulations compiler determines that the requested change does not affect the substance of the material incorporated by reference and that the change is authorized by KRS 13A.040(10) or 13A.312, the edition date stated in the administrative regulation shall be changed to match the edition date on the revised material and the history line of that administrative regulation shall note that a technical amendment was made.
- (c) If the requested change affects the substance of the material incorporated by reference or is not authorized by KRS 13A.040(10) or 13A.312, the administrative body shall comply with subsection (1) of this section.

➔Section 8. KRS 13A.250 is amended to read as follows:

- (1) An administrative body that promulgates an administrative regulation shall consider the cost that the administrative regulation may cause state or local government to incur. The cost analysis shall include the projected cost or cost savings to the Commonwealth of Kentucky and each of its affected agencies, and the projected cost or cost savings to affected local governments, including cities, counties, fire departments, and school districts. Agencies affected by the administrative regulation may submit comments in accordance with KRS 13A.270(1) to the promulgating administrative body or to a *legislative committee*~~[subcommittee]~~ reviewing the administrative regulation.
- (2) Each administrative body that promulgates an administrative regulation shall prepare and submit with the administrative regulation a fiscal note. The fiscal note shall state:
  - (a) The number of the administrative regulation;
  - (b) The name, e-mail address, and telephone number of the contact person of the administrative body identified pursuant to KRS 13A.220(6)(d), and, if applicable, the name, e-mail address, and telephone number of an alternate person to be contacted with specific questions about the fiscal note;
  - (c) The unit, part, or division of state or local government the administrative regulation will affect;

- (d) In detail, the aspect or service of state or local government to which the administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation; and
  - (e) The estimated effect of the administrative regulation on the expenditures and revenues of a state or local government agency for the first full year the administrative regulation will be in effect. If specific dollar estimates cannot be determined, the administrative body shall provide a brief narrative to explain the fiscal impact of the administrative regulation.
- (3) Any administrative body may request the advice and assistance of the Commission in the preparation of the fiscal note.

➔Section 9. KRS 13A.270 is amended to read as follows:

- (1) (a) In addition to the public comment period required by paragraph (c) of this subsection, following publication in the Administrative Register of the text of an administrative regulation, the administrative body shall, unless authorized to cancel the hearing pursuant to subsection (7) of this section, hold a hearing, open to the public, on the administrative regulation.

(b) The public hearing *for an:*

1. ***Ordinary administrative regulation*** shall not be held before the twenty-first day or ~~after~~<sup>later than</sup> the last workday of the month following the month in which the administrative regulation is published in the Administrative Register; ~~or~~
2. ***Emergency administrative regulation shall not be held before the twenty-first day or after the last workday of the month in which the administrative regulation is published in the Administrative Register.***

***Nothing in this paragraph shall preclude the administrative body from holding additional public hearings in addition to the hearing mandated in subparagraph 1. or 2. of this paragraph.***

- (c) The administrative body shall accept written comments regarding the administrative regulation during the comment period. The comment period shall begin on the date the administrative regulation is filed with the regulations compiler and:
1. ***For an ordinary administrative regulation,*** shall run until 11:59 p.m. on the last day of the calendar month following the month in which the administrative regulation was published in the Administrative Register; ***or***
  2. ***For an emergency administrative regulation, shall run until 11:59 p.m. on the last day of the calendar month in which the administrative regulation is published in the Administrative Register.***

(2) Each administrative regulation shall state:

- (a) The place, time, and date of the scheduled public hearing;
  - (b) The manner in which interested persons shall submit their:
    1. Notification of attending the public hearing; and
    2. Written comments;
  - (c) That notification of attending the public hearing shall be transmitted to the administrative body no later than five (5) workdays prior to the date of the scheduled public hearing;
  - (d) The deadline for submitting written comments regarding the administrative regulation in accordance with subsection (1)(c) of this section; and
  - (e) The name, position, mailing address, e-mail address, and telephone and facsimile numbers of the person to whom a notification and written comments shall be transmitted.
- (3) (a) A person who wishes to be notified that an administrative body has filed an administrative regulation shall:
1. Contact the administrative body by telephone or written letter to request that the administrative body send the information required by paragraph (c) or (d) of this subsection to the person; or

2. Complete an electronic registration form located on a centralized state government Web site developed and maintained by the Commonwealth Office of Technology.
- (b) A registration submitted pursuant to paragraph (a) of this subsection shall:
1. Indicate whether the person wishes to receive notification regarding:
    - a. All administrative regulations promulgated by an administrative body; or
    - b. Each administrative regulation that relates to a specified subject area. The subject areas shall be provided by the administrative bodies and shall be listed on the centralized state government Web site in alphabetical order;
  2. Include a request for the person to provide an e-mail address in order to receive regulatory information electronically;
  3. Be valid for a period of four (4) years from the date the registration is submitted, or until the person submits a written request to be removed from the notification list, whichever occurs first; and
  4. Be transmitted to the promulgating administrative body, if the registration was made through the centralized state government Web site. The collected e-mail addresses shall be used solely for the purposes of this subsection and shall not be sold, transferred, or otherwise made available to third parties, other than the promulgating administrative body.
- (c) A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), shall be e-mailed:
1. To every person who has:
    - a. Registered pursuant to paragraph (a) of this subsection; and
    - b. Provided an e-mail address as part of the registration request;
  2. Within five (5) working days after the date the administrative regulation is filed with the Commission; and
  3. With a request from the administrative body that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation.
- (d) Within five (5) working days after the date the administrative regulation is filed with the Commission, the administrative body shall mail the following information to every person who has registered pursuant to paragraph (a) of this subsection but did not provide an e-mail address:
1. A cover letter from the administrative body requesting that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation;
  2. A copy of the regulatory impact analysis required by KRS 13A.240 completed in detail sufficient to put the individual on notice as to the specific contents of the administrative regulation, including all proposed amendments to the administrative regulation; and
  3. A statement that a copy of the administrative regulation may be obtained from the Commission's Web site, which can be accessed on-line through public libraries or any computer with Internet access. The Commission's Web site address shall be included in the statement.
- (e) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to persons who have registered pursuant to paragraph (a) of this subsection, unless the person requested a copy pursuant to KRS 13A.280(8).
- (4) (a) If small business may be impacted by an administrative regulation, the administrative body shall e-mail a copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), to the chief executive officer of the Commission on Small Business Advocacy within one (1) working day after the date the administrative regulation is filed with the Commission.
- (b) The e-mail shall include a request from the administrative body that the Commission on Small Business Advocacy review the administrative regulation in accordance with KRS 11.202(1)(e) and submit its

report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report shall be filed with the regulations compiler.

- (c) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to the Commission on Small Business Advocacy, unless its chief executive officer requested a copy pursuant to KRS 13A.280(8).
- (5) (a) If a local government may be impacted by an administrative regulation, the administrative body shall send, by e-mail if the local government has an e-mail address, a copy of the administrative regulation as filed and all attachments required by KRS 13A.230(1) to each local government in the state within one (1) working day after the date the administrative regulation is filed with the Commission. If the local government does not have an e-mail address, the material shall not be sent.
- (b) The e-mail shall include a request from the administrative body that the local government review the administrative regulation in the same manner as would the Commission on Small Business Advocacy under KRS 11.202(1)(e), and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report or comments shall be filed with the regulations compiler.
- (c) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to a local government, unless its contact person requested a copy pursuant to KRS 13A.280(8).
- (6) Persons desiring to be heard at the hearing shall notify the administrative body in writing as to their desire to appear and testify at the hearing not less than five (5) workdays before the scheduled date of the hearing.
- (7) The administrative body shall immediately notify the regulations compiler by letter if:
  - (a) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) workdays before the scheduled hearing, and it chooses to cancel the public hearing; and
  - (b) No written comments have been received by the close of the last day of the public comment period.
- (8) (a) 1. Upon receipt from interested persons of their intent to attend a public hearing, the administrative body shall notify the regulations compiler by letter that the public hearing shall be held.
- 2. If the public hearing is held but no comments are received during the hearing, the administrative body shall notify the regulations compiler by letter that the public hearing was held and that no comments were received.
- (b) Upon receipt of written comments, the administrative body shall notify the regulations compiler by letter that written comments have been received.
- (9) If the notifications required by subsections (7) and (8) of this section are not received by the regulations compiler by close of business on the second workday of the calendar month following the end of the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.
- (10) The notifications required by subsections (7) and (8) of this section shall be made by letter. The letter may be sent by e-mail if the administrative body uses an electronic signature and letterhead for the e-mailed document.
- (11) Every hearing shall be conducted in such a manner as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so, whether or not such person has given the notice contemplated by subsection (6) of this section. No transcript need be taken of the hearing, unless a written request for a transcript is made, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section shall not preclude an administrative body from making a transcript or making a recording if it so desires.
- (12) Nothing in this section shall be construed as requiring a separate hearing on each administrative regulation. Administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings required by this section.

➔Section 10. KRS 13A.280 is amended to read as follows:

- (1) Following the last day of the comment period, the administrative body shall give consideration to all comments received at the public hearing and all written comments received during the comment period,

including any report filed by the Commission on Small Business Advocacy in accordance with KRS 11.202(1)(e) and 13A.270(4), or by a local government in accordance with KRS 11.202(1)(e) and 13A.270(5).

- (2) (a) Except as provided in paragraph (b) of this subsection, the administrative body shall file with the commission on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period the statement of consideration relating to the administrative regulation and, if applicable, the amended after comments version.
- (b) If the administrative body has received a significant number of public comments ~~;~~
  1. It may extend the time for filing the statement of consideration *for an ordinary administrative regulation* and, if applicable, the amended after comments version by notifying the regulations compiler in writing on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period; ~~and~~
  2. The administrative body shall file the statement of consideration *for an ordinary administrative regulation* and, if applicable, the amended after comments version, with the Commission on or before 12 noon, eastern time, no later than the fifteenth day of the second calendar month following the end of the public comment period.
- (3) (a) If the administrative regulation is amended as a result of the hearing or written comments received, the administrative body shall forward the items specified in this paragraph to the regulations compiler by 12 noon, eastern time, on the applicable deadline specified in subsection (2) of this section:
  1. The original and five (5) copies of the administrative regulation indicating any amendments ~~[in the original wording]~~ resulting from comments received at the public hearing and during the comment period. *The amendments shall be indicated in:*
    - a. *The original wording for an ordinary administrative regulation; or*
    - b. *The wording of an emergency administrative regulation as amended, for an emergency administrative regulation that was amended at a legislative committee meeting pursuant to Section 4(3) of this Act;*
  2. The original and five (5) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and
  3. The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.
- (b) The original and four (4) copies of the amended after comments version, the statement of consideration, and the attachments required by paragraph (a)3. of this subsection shall be stapled in the top left corner. The fifth copy shall not be stapled.
- (c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the amended after comments version, the statement of consideration, and the required attachments saved as a single document for each amended after comments administrative regulation in an electronic format approved by the regulations compiler.
- (4) (a) If the administrative regulation is not amended as a result of the public hearing, or written comments received, the administrative body shall file the original and five (5) copies of the statement of consideration with the regulations compiler by 12 noon, eastern time, on the deadline established in subsection (2) of this section. The original and four (4) copies of the statement of consideration shall be stapled in the top left corner. The fifth copy of each statement of consideration shall not be stapled.
- (b) If the statement of consideration covers multiple administrative regulations, as authorized by subsection (6)(g)1. of this section, the administrative body shall file with the regulations compiler:
  1. The original and five (5) copies of the statement of consideration as required by paragraph (a) of this subsection; and
  2. Two (2) additional unstapled copies of the statement of consideration for each additional administrative regulation included in the group of administrative regulations.

- (c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the statement of consideration saved as a single document for each statement of consideration in an electronic format approved by the regulations compiler.
- (5) If comments are received either at the public hearing or during the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee following the month in which the statement of consideration is due.
- (6) The format for the statement of consideration shall be as follows:
  - (a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;
  - (b) The first page of the statement of consideration shall have a two (2) inch top margin;
  - (c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and comment period and the name of the promulgating administrative body. The heading shall be centered. This shall be followed by the words "Not Amended After Comments," "***Emergency Not Amended After Comments,***"~~or~~ "Amended After Comments," ***or "Emergency Amended After Comments,"*** whichever is applicable;
  - (d) If a hearing has been held or written comments received, the heading is to be followed by:
    - 1. A statement setting out the date, time and place of the hearing, if the hearing was held;
    - 2. A list of those persons who attended the hearing or who submitted comments and the organization, agency, or other entity represented, if applicable; and
    - 3. The name and title of the representative of the promulgating administrative body;
  - (e) Following the general information, the promulgating administrative body shall summarize the comments received at the public hearing and during the comment period and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:
    - 1. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and
    - 2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;
  - (f) Following the summary and comments, the promulgating administrative body shall:
    - 1. Summarize the statement and the action taken by the administrative body as a result of comments received at the public hearing and during the comment period; and
    - 2. If amended after the comment period, list the changes made to the administrative regulation in the format prescribed by KRS 13A.320(2)(c) and (d); and
  - (g) ***1.*** If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.
    - 2. Emergency administrative regulations shall be in a separate statement of consideration from ordinary administrative regulations.***
- (7) If the administrative regulation is amended pursuant to subsection (3) of this section, the full text of the administrative regulation shall be published in the Administrative Register. The changes made to the administrative regulation shall be typed in bold and made in the format prescribed by KRS 13A.222(2). The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.
- (8) If requested, copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments or who specifically request a copy from the administrative body.

➔Section 11. KRS 13A.290 is amended to read as follows:

- (1) (a) Except as provided by KRS 158.6471 and 158.6472, the Administrative Regulation Review Subcommittee shall meet monthly to review administrative regulations prior to close of business on the fifteenth day of the calendar month.
  - (b) The agenda shall:
    1. Include each administrative regulation that completed the public comment process;
    2. Include each administrative regulation for which a statement of consideration was received on or before 12 noon, eastern time, on the fifteenth day of the prior calendar month;
    3. Include each effective administrative regulation that the subcommittee has decided to review;
    4. Include each administrative regulation that was deferred from the prior month's meeting of the subcommittee; and
    5. Not include an administrative regulation that is deferred, withdrawn, expired, or automatically taken off the agenda under the provisions of this chapter.
  - (c) Review of an administrative regulation shall include the entire administrative regulation and all attachments filed with the administrative regulation. The review of amendments to existing administrative regulations shall not be limited to only the changes proposed by the promulgating administrative body.
- (2) The meetings shall be open to the public.
  - (3) Public notice of the time, date, and place of the Administrative Regulation Review Subcommittee meeting shall be given in the Administrative Register.
  - (4) (a) A representative of the administrative body for an administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon.
  - (b) If a representative of the administrative body with authority to amend a filed administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.
  - (c) If a representative of an administrative body for an effective administrative regulation fails to appear before the subcommittee, the subcommittee may:
    1. Defer the administrative regulation to the next regularly scheduled meeting of the subcommittee; or
    2. Make a ~~nonbinding~~ determination pursuant to KRS 13A.030(2), (3), and (4), **or Section 4(3) of this Act.**
- (5) Following the meeting and before the next regularly scheduled meeting of the Commission, the Administrative Regulation Review Subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The Administrative Regulation Review Subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an effective administrative regulation it has reviewed. The Administrative Regulation Review Subcommittee's findings shall be published in the Administrative Register.
  - (6) (a) After review by the Administrative Regulation Review Subcommittee, the Commission shall, on the first Wednesday of the following month, or if the first Wednesday is a legal holiday, the next workday of the month, assign a filed administrative regulation to **a legislative committee**;
    - ~~1. An interim joint committee with subject matter jurisdiction; or~~
    - ~~2. The Senate and House standing committees with subject matter jurisdiction.~~
  - (b) Upon notification of the assignment by the Commission, the legislative ~~committee~~<sub>subcommittee</sub> to which the administrative regulation is assigned shall notify the regulations compiler:
    1. Of the date, time, and place of the meeting at which it will consider the administrative regulation; or
    2. That it will not meet to consider the administrative regulation.



- (7) (a) Within ninety (90) days of the assignment, the **legislative committee**~~[subcommittee]~~ may hold a public meeting during which the administrative regulation shall be reviewed.
- (b) If the ninetieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday.
- (c) 1. If the administrative regulation is assigned to an interim joint committee and a session of the General Assembly begins during the review period, the assignment shall transfer to the Senate and House standing committees with subject matter jurisdiction.
2. If the administrative regulation is assigned to Senate and House standing committees and a session of the General Assembly adjourns sine die during the review period, the assignment shall transfer to the interim joint committee with subject matter jurisdiction.
3. An administrative regulation may be transferred more than one (1) time under this paragraph. A transfer shall not extend the review period established by this subsection.
- (d) Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.
- (8) Except as provided in subsection (9) of this section, a **legislative committee**~~[subcommittee]~~ shall be empowered to make the same ~~[nonbinding]~~ determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee.
- (9) (a) This subsection shall apply to administrative regulations filed with the Commission.
- (b) A majority of the entire membership of the **legislative committee**~~[subcommittee to which an administrative regulation is referred pursuant to subsection (6)(a) of this section]~~ shall constitute a quorum for purposes of reviewing administrative regulations.
- (c) In order to amend an administrative regulation pursuant to KRS 13A.320, defer an administrative regulation pursuant to KRS 13A.300, or find an administrative regulation deficient pursuant to KRS 13A.030(2), (3), ~~or~~~~[and]~~ (4), **or Section 4(3) of this Act**, the motion to amend, defer, or find deficient shall be approved by a majority of the entire membership of the **legislative committee**~~[subcommittee]~~. Additionally, during a session of the General Assembly, standing committees of the Senate and House of Representatives shall agree in order to amend an administrative regulation, defer an administrative regulation, or find an administrative regulation deficient by:
1. Meeting separately; or
  2. Meeting jointly. If the standing committees meet jointly, it shall require a majority vote of Senate members voting and a majority of House members voting, as well as the majority vote of the entire membership of the standing committees meeting jointly, in order to take action on the administrative regulation.
- (10) (a) The quorum requirements of subsection (9)(b) of this section shall apply to an effective administrative regulation under review by a **legislative committee**~~[subcommittee]~~.
- (b) A motion to find an effective administrative regulation deficient shall be approved by:
1. A majority of the entire membership of the Administrative Regulation Review Subcommittee; **or**
  2. ~~[A majority of a House or Senate standing committee; or~~
  3. ~~]~~A **legislative committee**~~[joint standing committee]~~ in accordance with subsection (9)(c)~~[2.]~~ of this section.
- (11) (a) Upon adjournment of the meeting at which a legislative **committee**~~[subcommittee]~~ has considered an administrative regulation pursuant to subsection (7) or (10) of this section, the **legislative committee**~~[subcommittee]~~ shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.
- (b) Following the meeting and before the next regularly scheduled meeting of the Commission, the **legislative committee**~~[subcommittee]~~ shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The **legislative committee's**~~[subcommittee's]~~ findings shall be published in the Administrative Register.

➔Section 12. KRS 13A.300 is amended to read as follows:

- (1) The administrative body that promulgated an administrative regulation may request that consideration of the administrative regulation be deferred by **a legislative committee** ~~[the subcommittee]~~.
  - (2) The deferral of an administrative regulation scheduled for review by the Administrative Regulation Review Subcommittee shall be governed by **KRS 13A.020(4) and** the following:
    - (a) A request for deferral of an **ordinary** administrative regulation filed with the Commission shall be automatically granted if:
      1. The administrative body submits a written letter to the regulations compiler; and
      2. The letter is received prior to the subcommittee meeting;
    - (b) A request for deferral of an effective administrative regulation **or an emergency administrative regulation** may be granted if:
      1. The administrative body submits a written letter to the regulations compiler;
      2. The letter is received prior to the subcommittee meeting; and
      3. Approved by the co-chairs of the Administrative Regulation Review Subcommittee;
    - (c) A request for deferral may be granted at the discretion of the subcommittee if the request is made by the administrative body orally at a meeting of the subcommittee;
    - (d) The subcommittee may request that consideration of an administrative regulation be deferred by the promulgating administrative body. Upon receipt of the request, the promulgating administrative body may agree to defer consideration of the administrative regulation;
    - (e) Except as provided in paragraph (f) of this subsection, an administrative regulation that has been deferred shall be placed on the agenda of the next scheduled meeting of the subcommittee. If it is an administrative regulation filed with the Commission, the subcommittee shall consider the administrative regulation as if it had met all other requirements of filing. Repromulgation shall not be required in those cases; and
    - (f) An administrative regulation shall not be deferred under this subsection more than twelve (12) times.
  - (3) (a) The deferral of a filed **ordinary** administrative regulation referred to a second **legislative** committee or committees pursuant to KRS 13A.290(6) and (7) shall be governed by this subsection **and the voting requirements of subsection (9) of Section 11 of this Act**.
    - (b) 1. A request for deferral shall be automatically granted if:
      - a. The administrative body submits a written letter to the regulations compiler; and
      - b. The letter is received prior to the **legislative** committee meeting;
    2. A request for deferral may be granted at the discretion of the second **legislative** committee if the request is made by the administrative body orally at a meeting of the **legislative** committee; and
    3. The **legislative** committee may request that consideration of an administrative regulation be deferred by the promulgating administrative body. Upon receipt of the request, the promulgating administrative body may agree to defer consideration of the administrative regulation.
  - (c) 1. An administrative regulation that is deferred may be placed on a subsequent agenda of the **legislative** committee or committees within the review period.
    2. ~~If a filed ordinary administrative regulation that has been deferred is not~~ ~~administrative regulation is~~ ~~placed on a subsequent agenda within the review period, the administrative regulation shall take effect at the expiration of the review period.~~ ~~Unless the deferred~~
- (4) (a) The deferral of an effective administrative regulation **or an emergency administrative regulation** under review by a **legislative committee** ~~[subcommittee]~~ shall be governed by this subsection **and the voting requirements of subsection (9) of Section 11 of this Act**.
  - (b) A request for deferral may be granted if:
    1. The administrative body submits a written letter to the regulations compiler;
    2. The letter is received prior to the **legislative committee** ~~[subcommittee]~~ meeting; and

3. Approved by the presiding chair or chairs.
  - (c) A request for deferral may be granted at the discretion of the **legislative committee**~~[subcommittee]~~ if the request is made by the administrative body orally at a meeting of the **legislative committee**~~[subcommittee]~~.
  - (d) The **legislative committee**~~[subcommittee]~~ may request that consideration of an administrative regulation be deferred by the administrative body. Upon receipt of the request, the administrative body may agree to defer consideration of the administrative regulation.
  - (e) An administrative regulation that is deferred may be placed on a subsequent agenda of the **legislative committee**~~[subcommittee]~~.
- (5) **Except as provided by subsection (4) of Section 11 of this Act, if a representative of an administrative body whose administrative regulation is scheduled for review fails to appear before a legislative committee, the legislative committee in conformance with subsection (9) of Section 11 of this Act may:**
- (a) **Defer the administrative regulation to the next regularly scheduled meeting of the legislative committee; or**
  - (b) **Make a determination pursuant to Section 2(2) or 4(2) of this Act.**

➔Section 13. KRS 13A.310 is amended to read as follows:

- (1) Except as provided in KRS 13A.3102 and 13A.3104, an **ordinary** administrative regulation, once adopted, cannot be withdrawn but shall be repealed if it is desired that it no longer be effective.
- (2) Except as provided in KRS 13A.3102 and 13A.3104, an **ordinary** administrative regulation, once adopted, cannot be suspended but shall be repealed if it is desired to suspend its effect.
- (3) (a) An **ordinary** administrative regulation shall be repealed only by the promulgation of an administrative regulation that:
  1. Is titled "Repeal of (state number of administrative regulation to be repealed)";
  2. Contains the reasons for repeal in the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph;
  3. Includes in the body of the administrative regulation, a citation to the number and title of the administrative regulation or regulations being repealed; and
  4. Meets the filing and formatting requirements of KRS 13A.220.
- (b) 1. Except as provided in subparagraph 2. of this paragraph, on the effective date of an administrative regulation that repeals an administrative regulation, determined in accordance with KRS 13A.330 or 13A.331, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation from the Kentucky Administrative Regulations Service.
2. If the repealing administrative regulation specifies an effective date that is after the administrative regulation would become effective pursuant to KRS 13A.330 or 13A.331, the specified effective date shall be considered the effective date of the repealing administrative regulation. On the specified effective date, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation from the Kentucky Administrative Regulations Service.
- (c) An administrative body may repeal more than one (1) administrative regulation in an administrative regulation promulgated pursuant to paragraph (a) of this subsection if the administrative regulations being repealed are contained in the same chapter of the Kentucky Administrative Regulations Service.
- (4) (a) An ordinary administrative regulation may be withdrawn by the promulgating administrative body at any time prior to its adoption.
- (b) An ordinary administrative regulation that has been found deficient may be withdrawn by the promulgating administrative body ~~or[at any time prior to receipt by the regulations compiler of the determination of the Governor made pursuant to KRS 13A.330 or may be withdrawn]~~ by the Governor **at any time prior to its adoption.**

- (c) ~~If an ordinary administrative regulation is withdrawn, the administrative body or the Governor shall inform the regulations compiler of the reasons for withdrawal in writing.~~
- (5) ~~Once an ordinary administrative regulation is withdrawn, it shall not be reinstated, except by repromulgation as a totally new matter.~~
- (5) (a) *An emergency administrative regulation may be withdrawn by the promulgating administrative body at any time prior to its expiration.*
- (b) *An emergency administrative regulation that has been found deficient may be withdrawn by the promulgating administrative body or by the Governor at any time prior to its expiration.*
- (6) *If an administrative regulation is withdrawn, the administrative body or the Governor shall inform the regulations compiler of the reasons for withdrawal in writing.*

➔Section 14. KRS 13A.312 is amended to read as follows:

- (1) If authority over a subject matter is transferred to another administrative body or if the name of an administrative body is changed by statute or by executive order during the interim between regular sessions of the General Assembly, the administrative regulations of that administrative body in effect on the effective date of the statutory change or the executive order shall remain in effect as they exist until the administrative body that has been granted authority over the subject matter amends or repeals the administrative regulations pursuant to KRS Chapter 13A.
- (2) After receipt of a written request, submitted pursuant to subsection (3) of this section, to make changes to an administrative regulation pursuant to the statutory change or executive order, the regulations compiler shall alter the administrative regulations referenced in subsection (1) of this section to:
- (a) Change the name of the administrative body pursuant to the provisions of the statute or executive order; and
- (b) Make any other technical changes necessary to carry out the provisions of the statute or executive order.
- (3) The administrative body that has been granted statutory authority over the subject matter shall provide to the regulations compiler in writing:
- (a) A listing of the administrative regulations that require any changes; and
- (b) The specific names, terms, or other information to be changed with those changes properly referenced.
- (4) The administrative body that has been granted statutory authority over the subject matter shall submit new forms to replace forms previously incorporated by reference in an administrative regulation if the only changes on the form are the name and mailing address of the administrative body. If there are additional changes to a form incorporated by reference, the administrative body shall promulgate an amendment to the existing administrative regulation and make the changes to the material incorporated by reference in accordance with KRS 13A.2255.
- (5) If an administrative body is abolished by statute or executive order and the authority over its subject matter is not transferred to another administrative body, the Governor, or the secretary of the cabinet to which the administrative body was attached, shall promulgate an administrative regulation to repeal the existing administrative regulations that were promulgated by the abolished administrative body. The repeal shall be accomplished as provided by KRS 13A.310.
- (6) *If an executive order transfers authority over a subject matter to another administrative body or changes the name of an administrative body during the interim between regular sessions of the General Assembly, and the General Assembly does not codify or confirm the executive order during the next regular session, any and all administrative regulations promulgated to implement the unconfirmed executive order shall be returned to their previous form by the administrative body using the promulgation procedures established by KRS Chapter 13A, including but not limited to:*
- (a) *Withdrawal of a proposed administrative regulation;*
- (b) *Amendment or repeal of an existing administrative regulation;*
- (c) *Promulgation of a new administrative regulation; or*
- (d) *Submission of technical changes in the manner established by subsections (3) and (4) of this section.*

➔Section 15. KRS 13A.315 is amended to read as follows:

- (1) An administrative regulation shall expire and shall not be reviewed by a legislative *committee*~~[subcommittee]~~ if:
- (a) It has not been reviewed or approved by the official or administrative body with authority to review or approve;
  - (b) The statement of consideration and, if applicable, the amended after comments version are not filed on or before a deadline specified by this chapter;
  - (c) The administrative body has failed to comply with the provisions of this chapter governing the filing of administrative regulations, the public hearing and public comment period, or the statement of consideration; or
  - (d) The administrative regulation is deferred pursuant to KRS 13A.300(2) more than twelve (12) times.
- (2) (a) An administrative regulation that has been found deficient by a *legislative committee*~~[subcommittee]~~ shall be withdrawn immediately if, pursuant to KRS 13A.330, the Governor has determined that it shall be withdrawn.
- (b) The Governor shall notify the regulations compiler in writing and by telephone that he or she has determined that the administrative regulation found deficient shall be withdrawn.
- (c) The written withdrawal of an administrative regulation governed by the provisions of this subsection shall be made in a letter to the regulations compiler in the following format: "Pursuant to KRS 13A.330, I have determined that (administrative regulation number and title) shall be (withdrawn, or withdrawn and amended to conform to the finding of deficiency, as applicable). The administrative regulation, (administrative regulation number and title), is hereby withdrawn."
- (d) An administrative regulation governed by the provisions of this subsection shall be considered withdrawn upon receipt by the regulations compiler of the written withdrawal.

➔Section 16. KRS 13A.320 is amended to read as follows:

- (1) (a) An administrative body may amend an administrative regulation at a *legislative committee*~~[subcommittee]~~ meeting with the consent of the *legislative committee*~~[subcommittee]~~. A *legislative committee*~~[subcommittee]~~ may amend an administrative regulation at a *legislative committee*~~[subcommittee]~~ meeting with the consent of the administrative body.
- (b) An administrative regulation shall not be amended at a public meeting of a *legislative committee*~~[subcommittee]~~ unless the amendment concerns an issue that was related to the administrative regulation filed with the Legislative Research Commission and was:
1. Considered at the public hearing;
  2. Raised pursuant to a comment received by the administrative body at the public hearing or during the public comment period pursuant to KRS 13A.280(1); or
  3. Raised during the *legislative committee*~~[subcommittee]~~ meeting.
- (c) Nothing in this chapter shall be construed to require the administrative regulation's resubmission or refiling or other action. The administrative regulation may be adopted as amended.
- (d) Following approval of an amendment to an administrative regulation at a *legislative committee*~~[subcommittee]~~ meeting, the administrative regulation as amended shall be published in the Administrative Register, unless all amendments to the administrative regulation that were made at the meeting of the *legislative committee*~~[subcommittee]~~:
1. Relate only to the formatting and drafting requirements of KRS 13A.220(5) and 13A.222(4)(b), (c), (i), (j), and (l); and
  2. Do not alter the intent, meaning, conditions, standards, or other requirements of the administrative regulation.
- (e) If the amendments to an administrative regulation made at a meeting of a *legislative committee*~~[subcommittee]~~ meet the exception requirements of paragraph (d) of this subsection, the regulations compiler shall publish a notice in the Administrative Register that the administrative regulation was amended at a *legislative committee*~~[subcommittee]~~ meeting only to comply with the formatting and drafting requirements of this chapter.

- (2) When an administrative body intends to amend an administrative regulation at a meeting of a **legislative committee**~~[the subcommittee]~~, the following requirements shall be met:
- (a) Amendments offered by the administrative body prior to a **legislative committee**~~[subcommittee]~~ meeting shall be approved by the head of the administrative body.
  - (b) Amendments shall be contained in a letter to the **legislative committee**~~[subcommittee]~~. The letter shall:
    - 1. Identify the administrative body;
    - 2. State the number and title of the administrative regulation;
    - 3. Be dated;
    - 4. Be filed with the regulations compiler at least three (3) workdays prior to the meeting of the **legislative committee**~~[subcommittee]~~ if the amendments are initiated by the administrative body; and
    - 5. Comply with the format requirements in paragraphs (c) and (d) of this subsection if the amendments are initiated by the administrative body.
  - (c) On separate lines, the amendment shall be identified by the number of the:
    - 1. Page;
    - 2. Section, subsection, paragraph, subparagraph, clause, or subclause, as appropriate; and
    - 3. Line.
  - (d)
    - 1. If a word or phrase, whether or not underlined, is to be deleted, the amendment shall identify the word or phrase to be deleted and state that it is to be deleted. If a word or phrase is to be replaced by another word or phrase, the amendment shall specify the word or phrase that is to be deleted and shall specify the word or phrase that is to be inserted in lieu thereof.
    - 2. If new language is to be inserted, the amendment shall state that it is to be inserted, and the new language shall be underlined.
    - 3. If the amendment consists of no more than four (4) words, the words shall be placed between quotation marks. If the amendment consists of more than four (4) words, the amendment shall be indented and not placed between quotation marks.
    - 4. If a section, subsection, paragraph, subparagraph, clause, or subclause is to be deleted in its entirety, the amendment shall identify it and state that it is deleted in its entirety, whether or not it contains underlined or bracketed language.
- (3) If an amendment is drafted by **legislative committee**~~[subcommittee]~~ staff on behalf of a **legislative committee**~~[subcommittee]~~, the amendment shall be made:
- (a) In the format required by subsection (2)(c) and (d) of this section; or
  - (b) By substituting the complete text of the administrative regulation, with the proposed changes made to the administrative regulation typed in bold, italicized, and in the format prescribed by KRS 13A.222(2).
- (4) An amendment to an administrative regulation may be made orally at a **legislative committee**~~[subcommittee]~~ meeting if the requirements of subsection (1)(a) of this section are met.
- (5) Except for an amendment made orally pursuant to subsection (4) of this section:
- (a) For a meeting of the Administrative Regulation Review Subcommittee, an administrative body shall submit twenty (20) copies of an amendment to an administrative regulation to the regulations compiler prior to the Administrative Regulation Review Subcommittee meeting at which the amendment will be considered and, if applicable, in accordance with the deadline established in subsection (2)(b)4. of this section; or
  - (b) For a meeting of a **legislative committee**~~[subcommittee]~~ other than the Administrative Regulation Review Subcommittee, an administrative body shall contact the regulations compiler prior to the **legislative committee**~~[subcommittee]~~ meeting at which the amendment will be considered to find out the number of copies needed for that specific **legislative committee**~~[subcommittee]~~. The original amendment and the specified number of copies shall be submitted to the regulations compiler prior to

the **legislative committee**~~[subcommittee]~~ meeting at which the amendment will be considered and, if applicable, in accordance with the deadline established in subsection (2)(b)4. of this section.

➔Section 17. KRS 13A.330 is amended to read as follows:

- (1) (a) If a filed **ordinary** administrative regulation has been found deficient, the **legislative committee**~~[subcommittee]~~ shall transmit to the Governor and the regulations compiler:
  1. A copy of the finding of deficiency and other relevant findings, recommendations, or comments; and
  2. A request that the Governor determine whether the administrative regulation shall:
    - a. Be withdrawn;
    - b. Be amended at a **legislative committee**~~[subcommittee]~~ meeting pursuant to KRS 13A.320 to conform to the finding of deficiency; or
    - c. Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.
- (b) The Governor shall transmit his or her determination to the Commission and the regulations compiler.
- (c) A filed **ordinary** administrative regulation that has been found deficient shall be considered as adopted and become effective after:
  1.
    - a. The review period established in this chapter has been completed; and
    - b. The regulations compiler has received the Governor's determination that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency; or
  2. The **legislative committee**~~[subcommittee]~~ that found the filed administrative regulation deficient subsequently determines that it is not deficient in accordance with KRS 13A.335, provided that this determination was made prior to receipt by the regulations compiler of the Governor's determination.
- (2) (a) ***If an emergency administrative regulation has been found deficient, the legislative committee finding it deficient shall transmit to the Governor and the regulations compiler:***
  1. ***A copy of the finding of deficiency and other relevant findings, recommendations, or comments; and***
  2. ***A request that the Governor determine whether the emergency administrative regulation shall:***
    - a. ***Be withdrawn;***
    - b. ***Be amended at a legislative committee meeting pursuant to KRS 13A.320 to conform to the finding of deficiency; or***
    - c. ***Remain effective as established in KRS 13A.190(4) notwithstanding the finding of deficiency.***
- (b) ***The Governor shall transmit his or her determination to the Commission and the regulations compiler.***
- (c) ***The legislative committee that found the emergency administrative regulation deficient may subsequently determine that it is not deficient in accordance with KRS 13A.335.***
- (3) If an effective **ordinary** administrative regulation has been found deficient by a **legislative committee**~~[subcommittee]~~, the **legislative committee**~~[subcommittee]~~ shall transmit to the Governor a copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate.

➔Section 18. KRS 13A.331 is amended to read as follows:

A filed **ordinary** administrative regulation that has not been deferred or found deficient **and has been referred by the Commission to a legislative committee** shall be considered as adopted and shall become effective:

- (1) Upon adjournment of a meeting of a **legislative**~~[an interim joint]~~ committee **other than the subcommittee** if:
  - (a) The administrative regulation was on the meeting agenda; and

- (b) A quorum was present;
- (2) ~~Upon adjournment of a meeting of a joint standing committee if:~~
  - ~~(a) The administrative regulation was on the meeting agenda; and~~
  - ~~(b) A quorum was present;~~
- ~~(3) Upon adjournment of a meeting of a House or Senate standing committee if:~~
  - (a) The administrative regulation was on its meeting agenda;
  - (b) A quorum was present; and
  - (c) The administrative regulation has previously been on a meeting agenda of the other standing committee when a quorum was present; or
- ~~(3)~~~~(4)~~ At the expiration of the review period established in KRS 13A.290(7), if within the review period a **legislative committee**~~[subcommittee]~~ has failed to meet or failed to place a filed administrative regulation on a meeting agenda.

➔Section 19. KRS 13A.335 is amended to read as follows:

- (1) (a) A filed administrative regulation found deficient by a **legislative committee**~~[subcommittee]~~ shall not be considered deficient if:
  - 1. A subsequent amendment of that administrative regulation is filed with the Commission by the administrative body;
  - 2. The **legislative committee**~~[subcommittee]~~ that found the administrative regulation deficient approves a motion that the subsequent amendment corrects the deficiency; and
  - 3. Any **legislative committee**~~[subcommittee]~~ that reviews the administrative regulation under the provisions of KRS Chapter 13A finds that the administrative regulation is not deficient.
- (b) A filed administrative regulation found deficient by the Administrative Regulation Review Subcommittee shall not be considered deficient if:
  - 1. The administrative regulation is amended to correct the deficiency at a meeting of the **legislative committee**~~[subcommittee]~~ to which it was assigned by the Commission;
  - 2. That **legislative committee**~~[subcommittee]~~ does not determine that the administrative regulation is deficient for any other reason; and
  - 3. The Administrative Regulation Review Subcommittee approves a motion that the deficiency has been corrected and that the administrative regulation should not be considered deficient.
- (c) A filed administrative regulation found deficient by a **legislative committee**~~[subcommittee]~~ with subject matter jurisdiction shall not be considered deficient if the **legislative committee**~~[subcommittee]~~:
  - 1. Reconsiders the administrative regulation and its finding of deficiency; and
  - 2. Approves a motion that the administrative regulation is not deficient.
- (d) If an amendment to an effective administrative regulation is going through the KRS Chapter 13A promulgation process and is found deficient by a **legislative committee**~~[subcommittee]~~, the administrative regulation shall not be considered deficient if the:
  - 1. Administrative regulation was found deficient due to the amendment;
  - 2. Promulgating administrative body has withdrawn the proposed amendment of the existing administrative regulation; and
  - 3. Regulations compiler has not received the Governor's determination pursuant to KRS 13A.330.
- (2) If an effective administrative regulation is found deficient by a **legislative committee**~~[subcommittee]~~, the administrative regulation shall not be considered deficient if the **legislative committee**~~[subcommittee]~~:
  - (a) Reconsiders the administrative regulation and its finding of deficiency; and
  - (b) Approves a motion that the administrative regulation is not deficient.



- (3) (a) If an administrative regulation has been found deficient by a *legislative committee*~~[subcommittee]~~, the regulations compiler shall add the following notice to the administrative regulation: "This administrative regulation was found deficient by the [name of *legislative committee*~~[subcommittee]~~] on [date]." This notice shall be the last section of the administrative regulation.
- (b) If an administrative regulation has been found deficient by a *legislative committee*~~[subcommittee]~~, subsequent amendments of that administrative regulation filed with the Commission shall contain the notice provided in paragraph (a) of this subsection.
- (c) If an administrative regulation that has been found deficient by a *legislative committee*~~[subcommittee]~~ has subsequently been determined not to be deficient under the provisions of this section, the regulations compiler shall delete the notice required by paragraph (a) of this subsection.

➔Section 20. KRS 13A.336 is amended to read as follows:

- (1) (a) After the last regularly scheduled meeting of the Administrative Regulation Review Subcommittee in a calendar year, but by the thirty-first day of December of that calendar year, the staff of the Administrative Regulation Review Subcommittee shall submit a report to the co-chairs of that subcommittee regarding administrative regulations that were found deficient by any *legislative committee*~~[subcommittee]~~ of the Commission during that calendar year.
- (b) The report in paragraph (a) of this subsection shall contain:
  - 1. Effective administrative regulations that were found deficient; and
  - 2. Administrative regulations filed with the Commission that were found deficient.
- (2) The report shall not contain any administrative regulation that was found deficient and:
  - (a) Has been withdrawn; or
  - (b) Is no longer considered deficient under KRS 13A.335.
- (3) The report shall contain at least the following information for each administrative regulation in the report:
  - (a) Administrative regulation number and title;
  - (b) Name of the promulgating agency;
  - (c) Date of deficiency determination;
  - (d) Name of the *legislative committee*~~[subcommittee]~~ that made the deficiency determination;
  - (e) Effective date, if it is in effect;
  - (f) The finding of deficiency and any other findings, recommendations, or comments sent to the Governor; and
  - (g) If applicable under KRS 13A.330, the Governor's determination regarding the deficiency, if received by the Commission.
- (4) The first page of the report required by subsection (1) of this section shall contain the following text, in fourteen (14) point font or larger:
 

"To ratify the deficiency findings listed in this report, a co-chair or other legislator may request that Legislative Research Commission staff prepare a bill:

  - (a) Declaring that one (1) or more administrative regulations listed in the report shall be void; or
  - (b) Amending the relevant subject matter statutes in conformity with the findings of deficiency."

➔Section 21. KRS 13A.338 is amended to read as follows:

- (1) The General Assembly finds that certain administrative regulations as evidenced by the records of the Legislative Research Commission, including but not limited to the Kentucky Administrative Regulations Service and the Administrative Register of Kentucky, were found deficient but became effective notwithstanding the finding of deficiency, pursuant to KRS 13A.330~~(5)(a)2. or 13A.331(5)(a)2.~~, on or after March 27, 2002, and before March 16, 2004.

- (2) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, each administrative regulation referenced in subsection (1) of this section shall be null, void, and unenforceable as of March 16, 2004.
- (3) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, any of the administrative regulations referenced in subsection (1) of this section for a period beginning on March 16, 2004, and concluding on June 1, 2005.
- (4) A list of the administrative regulations referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.

➔Section 22. KRS 214.020 is amended to read as follows:

- (1) When the Cabinet for Health and Family Services ~~determines~~<sup>believes</sup> that ~~an~~<sup>there is a probability that any</sup> infectious or contagious disease will invade this state, it shall take ~~necessary~~<sup>such</sup> action and ~~promulgate administrative~~<sup>adopt and enforce such rules and</sup> regulations ~~under KRS Chapter 13A to prevent~~<sup>as it deems efficient in preventing</sup> the introduction or spread of such infectious or contagious disease or diseases within this state~~, and to accomplish these objects shall establish and strictly maintain quarantine and isolation at such places as it deems proper.~~

- (2) *Any administrative regulation promulgated under the authority of this section shall:*

- (a) *Be in effect no longer than thirty (30) days if the administrative regulation:*

1. *Places restrictions on the in-person meeting or functioning of the following:*

- a. *Elementary, secondary, or postsecondary educational institutions;*
- b. *Private businesses or non-profit organizations;*
- c. *Political, religious, or social gatherings;*
- d. *Places of worship; or*
- e. *Local governments; or*

2. *Imposes mandatory quarantine or isolation requirements;*

- (b) *Include the penalty, appeal, and due process rights for violations of the administrative regulation; and*

- (c) *Contain the public hearing and written comment period notice required by Section 9 of this Act.*

➔Section 23. KRS 214.990 is amended to read as follows:

- (1) Every head of a family who willfully fails or refuses and every physician who fails or refuses to comply with KRS 214.010 shall be guilty of a violation for each day he neglects or refuses to report. Repeated failure to report is sufficient cause for the revocation of a physician's certificate to practice medicine in this state.
- (2) Any ~~owner or~~ person ~~having charge of any public or private conveyance, including watercraft,~~ who *willfully violates any administrative regulation promulgated under KRS Chapter 13A* ~~refuses to obey the rules and regulations made~~ by the Cabinet for Health and Family Services under KRS 214.020 shall be guilty of a Class B misdemeanor.
- (3) Any physician or other person legally permitted to engage in attendance upon a pregnant woman during pregnancy or at delivery who fails to exercise due diligence in complying with KRS 214.160 and 214.170 shall be guilty of a violation.
- (4) Any person who violates any of the provisions of KRS 214.280 to 214.310 shall be guilty of a Class A misdemeanor.
- (5) Any person who violates any provision of KRS 214.034 or KRS 158.035 shall be guilty of a Class B misdemeanor.
- (6) Any person who violates any provision of KRS 214.420 shall be guilty of a violation. Each violation shall constitute a separate offense.
- (7) Any person who knowingly violates any provision of KRS 214.452 to 214.466 shall be guilty of a Class D felony. Each violation shall constitute a separate offense.

➔Section 24. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

➔Section 25. Whereas, ensuring that Kentucky citizens have adequate access to the administrative regulation process is a compelling and immediate need, 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.

**Veto overridden February 2, 2021.**

## CHAPTER 8

### ( SB 120 )

AN ACT relating to pari-mutuel wagering and declaring an emergency.

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

➔Section 1. KRS 230.210 is amended 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, Appaloosa, Arabian, paint, 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, paint horse, Appaloosa, and Arabian purse fund" means a purse fund established to receive funds as specified in KRS 230.3771 for purse programs established in KRS 230.446 to supplement purses for quarter horse, paint horse, Appaloosa, and Arabian horse races. The purse program shall be administered by the Kentucky Horse Racing Commission;
- (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) *"Licensed premises" means a track or simulcast facility licensed by the racing commission under this chapter;*
- (14) "Paint horse" means a horse registered with the American Paint Horse Association of Fort Worth, Texas;
- (15)~~(14)~~ *"Pari-mutuel wagering," "pari-mutuel system of wagering," or "mutuel wagering" each means any method of wagering previously or hereafter approved by the racing commission in which one (1) or more patrons wager on a horse race or races, whether live, simulcast, or previously run. Wagers shall be placed in one (1) or more wagering pools, and wagers on different races or sets of races may be pooled together. Patrons may establish odds or payouts, and winning patrons share in amounts wagered including any carryover amounts, plus any amounts provided by an association less any deductions required, as approved by the racing commission and permitted by law. Pools may be paid out incrementally over time as approved by the racing commission;*
- (16) "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;
- (17)~~(15)~~ "Quarter horse" means a horse that is registered with the American Quarter Horse Association of Amarillo, Texas;
- (18)~~(16)~~ "Racing commission" means the Kentucky Horse Racing Commission;
- (19)~~(17)~~ "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;
- (20)~~(18)~~ "Simulcast facility" means any facility approved pursuant to the provisions of KRS 230.380 to simulcast *live* racing and conduct pari-mutuel wagering *on live racing*;
- (21)~~(19)~~ "Simulcasting" means the telecast of live audio and visual signals of horse races for the purpose of pari-mutuel wagering;
- (22)~~(20)~~ "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;
- (23)~~(21)~~ "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
- (24)~~(22)~~ "Track" means any association duly licensed by the Kentucky Horse Racing Commission to conduct horse racing *and*~~["Track"]~~ shall include:

- (a) *For facilities in operation as of 2010, the location and physical plant described in the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering," filed for racing to be conducted in 2010;*
- (b) *Real property of an association, if the association received or receives approval from the racing commission after 2010 for a location at which live racing is to be conducted; or*
- (c) *One (1) ~~any~~ facility or real property that is:*
  - 1. Owned, leased, or purchased by *an association* ~~{a track within the same geographic area}~~ within a sixty (60) mile radius of *the association's racetrack* ~~{a track}~~ but not contiguous to *racetrack* ~~{track}~~ premises, upon racing commission approval; ~~and~~
  - 2. ~~{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 230.361 is amended to read as follows:

- (1) (a) The racing commission shall promulgate administrative regulations governing and regulating mutuel wagering on horse races under what is known as the pari-mutuel system of wagering.
- (b) The wagering shall be conducted only by a person licensed under this chapter to conduct a race meeting and only upon the licensed premises, *and provided further that only pari-mutuel wagering on simulcasting shall be allowed at simulcast facilities.*
- (c) The pari-mutuel system of wagering shall be operated only by a totalizator or other mechanical equipment approved by the racing commission. The racing commission shall not require any particular make of equipment.
- (2) The operation of a pari-mutuel system for betting where authorized by law shall not constitute grounds for the revocation or suspension of any license issued and held under KRS 242.1238 and 243.265.
- (3) All reported but unclaimed pari-mutuel winning tickets held in this state by any person or association operating a pari-mutuel or similar system of betting at horse race meetings shall be presumed abandoned if not claimed by the person entitled to them within one (1) year from the time the ticket became payable.
- (4) The racing commission may issue a license to conduct pari-mutuel wagering on steeple chases or other racing over jumps; if all proceeds from the wagering, after expenses are deducted, is used for charitable purposes. If the dates requested for such a license have been granted to a track within a forty (40) mile radius of the race site, the racing commission shall not issue a license until it has received written approval from the affected track. Pari-mutuel wagering licensed and approved under this subsection shall be limited to four (4) days per year. All racing and wagering authorized by this subsection shall be conducted in accordance with applicable administrative regulations promulgated by the racing commission.

➔Section 3. Whereas the horse racing industry is crucial to the overall economy of the Commonwealth, and whereas the definition of pari-mutuel wagering is key to the successful operation of horse racing tracks for the upcoming racing season, 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 February 22, 2021.**

## CHAPTER 9

( HB 208 )

AN ACT relating to education and declaring an emergency.

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

➔Section 1. (1) Notwithstanding the maximum of 10 student attendance days that can be granted by the commissioner of education under KRS 158.070(9), a school district that has a nontraditional instruction plan approved by the commissioner of education:

(a) May request approval for additional student attendance days under the nontraditional instruction plan for when the district is operating with in-person instruction, virtual instruction, or a hybrid plan that includes in-person or virtual instruction due to the COVID-19 public health emergency prior to March 29, 2021. The number of days shall be subject to approval of the commissioner of education;

(b) If a school district is offering in-person instruction for at least 80% of the instructional time consisting of a minimum of 40% in-person instructional time to all students from March 29, 2021, until the end of the 2020-2021 school year, the district shall be granted approval for additional student attendance days under the nontraditional instruction plan necessary to implement that schedule plus 5 additional student attendance days under the nontraditional instruction plan for when the district is operating with in-person instruction, virtual instruction, or a hybrid plan that includes in-person or virtual instruction; and

(c) If a school district is not offering in-person instruction for at least 80% of the instructional time consisting of a minimum of 40% in-person instructional time to all students from March 29, 2021, until the end of the 2020-2021 school year, the school district may not request approval for additional student attendance days under the nontraditional instruction plan due to the COVID-19 public health emergency.

(2) Notwithstanding any other statute or administrative regulation to the contrary, a school district seeking approval by the commissioner for a nontraditional instruction plan for the 2021-2022 school year must submit the plan within the district's Comprehensive District Improvement Plan by May 1, 2021. The plan and number of days shall be subject to approval by the commissioner of education.

(3) Notwithstanding any other statute or regulation to the contrary, a local school district shall offer remote instruction to students for whom the district receives a written request from the parent or guardian due to the COVID-19 public health emergency. A parent or guardian shall have the option to revoke the request and return the student to in-person instruction as provided by the district at any time.

➔Section 2. (1) For school districts operating under an approved nontraditional instruction plan due to the COVID-19 public health emergency, districts shall measure daily student participation through the interactions between teachers and students learning through nontraditional instruction. Daily participation shall be a measure of student engagement in instruction and shall not include student performance.

(2) Daily participation for students learning under a nontraditional instruction plan may occur during the school day or at times outside of normal school hours. Daily participation shall include at least 1 of the following:

(a) One-on-one communication via video or telephone between the teacher and student or between the teacher, student, and student's parent;

(b) Group communication via video or telephone between the teacher and a class or between a teacher and smaller groups of students within a class;

(c) Student time logged into a learning management software system to complete assignments; or

(d) Submission of paper-based assignments for students in a non-digital, nontraditional setting.

(3) Student participation for each school day shall be recorded in the Kentucky Student Information System.

(4) School districts shall work with students and families to engage each student and promote school participation in accordance with KRS Chapter 159, applicable administrative regulations, and local board policies, whether instruction is delivered in person or nontraditionally. Any student enrolled in a public school who fails to participate in school without valid excuse for three (3) or more days shall be considered truant pursuant to KRS 159.150.

(5) The department shall post the district participation rates to the department's website and provide a copy to the Legislative Research Commission within 15 days of the district report submission deadlines.

➔Section 3. Notwithstanding KRS 158.135 and 505 KAR 1:080, an extended school calendar shall not be required for any program serving the educational needs of state agency children. State agency children in a particular program shall receive the same minimum number of instructional hours provided to students generally by the applicable school district operating a particular state agency children program.

➔Section 4. (1) A local board of education may allow each person employed as a full-time or part-time employee in the public schools emergency days for leave related to the COVID-19 public health emergency as determined by the local school district. COVID-19 emergency leave granted under this section shall not result in a loss of salary to the employee or affect the employee's sick leave. COVID-19 emergency leave granted under this section is separate from and shall not include emergency days granted under KRS 161.152.

(2) Leave granted pursuant to this section shall be determined based on local school board action, resolution, or procedures enacted by the local school district. Such action, resolution, or procedures shall include but not be limited to:

- (a) The number of emergency days authorized for use by employees;
- (b) COVID-19-related reasons for authorization of such leave; and
- (c) How leave is credited to and used by employees determined eligible by the local school board for emergency leave under this section.

(3) Leave granted pursuant to this section shall not accumulate or carry over to a subsequent school year and shall not be transferrable to any other classification of paid leave established by KRS 161.154, KRS 161.155, or local school district policy.

➔Section 5. The Kentucky Department of Education is hereby directed to seek any waivers from any federal government agency that may be necessary to allow for school districts to be reimbursed under the federal Richard B. Russell National School Lunch Act for any meals and meal supplements that may be prepared and served by the district, including but not limited to waivers allowing service in non-congregate settings and reducing the mandatory wait times between serving meals, during any time that a district is closed to students in relation to the COVID-19 public health emergency. All school districts are encouraged to maximize opportunities that may be granted through any waivers regarding food service and the COVID-19 public health emergency to address food insecurity issues of students in the districts.

➔Section 6. Notwithstanding any other statute or regulation to the contrary, the Kentucky Board of Education may waive requirements of the statewide assessment and accountability system in accordance with any federal waiver regarding those requirements that the Kentucky Department of Education receives due to the COVID-19 public health emergency.

➔Section 7. The Kentucky Department of Education is hereby directed to seek and utilize any waivers from any federal government agency involving requirements of the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. that may be necessary to allow flexibility needed for school districts due to the COVID-19 public health emergency.

➔Section 8. Notwithstanding KRS 156.557 and 704 KAR 3:370, a local board of education may revise the district's certified evaluation plan due to the COVID-19 public health emergency.

➔Section 9. Notwithstanding KRS 159.035, a principal may award the number of educational enhancement opportunity days needed by a graduating student to meet military service or postsecondary education enrollment obligations that occur prior to the last day of school due to the COVID-19 public health emergency.

➔Section 10. Notwithstanding KRS 161.011, KRS 161.750, and KRS 161.760, or any other statute or administrative regulation to the contrary, written notices required to be provided to classified and certified school district employees regarding salary or nonrenewal of contracts may be delivered via regular mail or via email to the email address on record in the school district.

➔Section 11. (1) Notwithstanding any other statute or regulation to the contrary, for school years 2020-2021 and 2021-2022, the Kentucky Department of Education shall use the school district attendance data selected by the district pursuant to 2020 Senate Bill 177 for the purpose of determining Support Education Excellence in Kentucky funds and any other state funding based in whole or in part on average daily attendance for the district, except that a district shall receive an amount equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level for each student who graduated early under the provisions of KRS 158.142.

(2) Current year data shall be used for property assessments per KRS 160.470(5), district tax rates levied, equivalent tax rates based on tax levies, exceptional and limited English proficiency student counts, and state equalization.

(3) For school year 2021-2022, each school district shall report attendance as required by state statute and regulation.

➔Section 12. A school may count a maximum of 30 minutes as instructional time in the existing instructional day when used for COVID-19 related activities for in-person instruction including but not limited to cleaning, sanitizing, hand washing, taking of temperatures, and instructing students on the use of masks and social distancing. This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, prior to the start of the first instructional period, or after the last instructional period.

➔Section 13. Whereas the Commonwealth of Kentucky continues to face unusual circumstances and challenges due to the COVID-19 public health crisis, which is having immediate and significant impacts on public schools, 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. The provisions of this Act shall be retroactive for, and applicable to, the 2020-2021 school year only, except as described in Section 1(2) and Section 11 of this Act.

**Signed by Governor March 4, 2021.**

## CHAPTER 10

( HB 108 )

AN ACT relating to the codification of existing Medicaid cancer coverage.

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

➔Section 1. KRS 205.522 is amended to read as follows:

The Department for Medicaid Services and any managed care organization contracted to provide Medicaid benefits pursuant to this chapter shall comply with the provisions of KRS 304.17A-167, 304.17A-235, ~~304.17A-257, 304.17A-259~~, 304.17A-515, 304.17A-580, 304.17A-600, 304.17A-603, 304.17A-607, and 304.17A-740 to 304.17A-743, as applicable.

**Signed by Governor March 5, 2021.**

## CHAPTER 11

( HB 53 )

AN ACT relating to the Advisory Council for Medical Assistance.

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

➔Section 1. KRS 205.540 is amended to read as follows:

- (1) An Advisory Council for Medical Assistance shall be established in the state government. The council shall consist of ~~twenty-two (22)~~~~nineteen (19)~~ members. The secretary for health and family services shall be an ex officio member. The other ~~twenty-one (21)~~~~eighteen (18)~~ members of the council shall be appointed by the Governor and shall hold office for a term of four (4) years and until their successors are appointed and qualify, except that the members appointed to fill the first vacancy occurring for a term beginning on July 1, 1960, shall be as follows: Two (2) members shall be appointed for one (1) year, two (2) for two (2) years, two (2) for three (3) years, and three (3) for four (4) years, and the respective terms of the first members shall be designated by the Governor at the time of their appointments. Upon the expiration of the respective terms of the members first appointed, the term of each successor shall be for four (4) years and until his successor is appointed and qualified. ~~Thirteen (13)~~~~Ten (10)~~ of the appointments shall be made one (1) from each list of three (3) nominees submitted by the following organizations: the Kentucky State Medical Association; the Kentucky Dental Association; the Kentucky Hospital Association; the Kentucky Medical Equipment Suppliers Association; the Kentucky Pharmacists Association; the Kentucky Association of Health Care Facilities; the Kentucky Nurses' Association; the State Board of Podiatry; the Kentucky Home ~~Care~~~~Health~~ Association; the Kentucky Optometric Association; ~~the Kentucky Primary Care Association; the Kentucky Association of~~



**Hospice and Palliative Care;** and the Kentucky Association of ~~Nonprofit~~ Homes and Services for the Aging, Inc. The other **eight (8)** ~~seven (7)~~ appointive members shall be health ~~care~~ advocates knowledgeable about health care and the health ~~care~~ industry, and shall include three (3) medical assistance recipients; ~~one (1)~~ **one (1) representative of a recognized consumer advocacy group representing the elderly; one (1) representative of a recognized consumer advocacy group representing persons reentering society following incarceration;** and three (3) representatives of recognized consumer advocacy groups whose membership includes low-income persons, children and youth, women, minorities, and disabled persons.

- (2) Each appointive member of the council shall serve without compensation but each council member not otherwise compensated for ~~their~~ ~~his~~ time or expenses shall be entitled to reimbursement for ~~their~~ ~~his~~ actual and necessary expenses in carrying out ~~their~~ ~~his~~ duties with reimbursement for expenses being made in accordance with state regulations relating to travel reimbursement.
- (3) Vacancies shall be filled for the unexpired term in the same manner as original appointments, maintaining representations as set out in subsection (1) of this section.
- (4) The council shall elect a chairman, vice chairman, and secretary from among its members at its first regular meeting in each fiscal year and shall adopt rules governing its proceedings. The council shall hold a meeting at least once every three (3) months and such other special or regular meetings as may be desired.
- (5) **The eight (8) appointive members who are healthcare advocates** ~~No consumer member of the council~~ shall **not** have a fiduciary relationship or interest in any health-care facility or service.

➔Section 2. 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 **Advisory Council for Medical Assistance** ~~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 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.;
  - (f) A Technical Advisory Committee on Optometric Care consisting of five (5) members appointed by the Kentucky Optometric Association;
  - (g) A Technical Advisory Committee on Podiatric Care consisting of five (5) podiatrists appointed by the Kentucky Podiatry Association;
  - (h) 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;
  - (i) 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;
  - (j) A Technical Advisory Committee on Consumer Rights and Client Needs consisting of ~~seven (7)~~ ~~five (5)~~ members, with one (1) member to be appointed by each of the following organizations: **the American Association of Retired Persons Kentucky, the Family Resource Youth Services Coalition of Kentucky, the Kentucky Association of Community Health Workers,** ~~the Kentucky Combined Committee on Aging,~~ the Kentucky Legal Services Corporation, the Arc of Kentucky, the Department of Public Advocacy, and the National Association of Social Workers -Kentucky Chapter;

- (k) A Technical Advisory Committee on Behavioral Health consisting of **seven (7)**~~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 Programs, the National Alliance on Mental Illness (NAMI) Kentucky, a statewide mental health consumer organization, the People Advocating Recovery (PAR), *the Brain Injury Association of America-Kentucky Chapter*, and the Kentucky Brain Injury Alliance;
- (l) 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;
- (m) 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, and one (1) of whom shall be a consumer representative of a family member who resides in an ICF/ID 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 Commonwealth 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;
- (n) 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;~~and~~
- (o) A Technical Advisory Committee on Pharmacy consisting of seven (7) members, two (2) of whom shall be Kentucky licensed pharmacists who own fewer than ten (10) pharmacies in the Commonwealth and shall be appointed by the Kentucky Independent Pharmacy Alliance, two (2) of whom shall be Kentucky licensed pharmacists and shall be appointed by the Kentucky Pharmacy Association, and one (1) member to be appointed by each of the following organizations: the Kentucky Hospital Association, the Kentucky Primary Care Association, and the National Association of Chain Drug Stores; **and**
- (p) ***A Technical Advisory Committee on Persons Returning to Society from Incarceration consisting of twelve (12) members of whom:***
- 1. One (1) shall be appointed by each of the following organizations: the Kentucky Jailers Association, the Kentucky Medical Association, the Kentucky Association of Nurse Practitioners and Nurse-Midwives, Community Action of Kentucky, the Homeless and Housing Coalition of Kentucky, the Kentucky Office of Drug Control Policy, a Kentucky civil legal aid program, the Kentucky Department of Corrections, the Kentucky Department of Public Advocacy, the Kentucky Association of Regional Programs, and the Kentucky Administrative Office of the Courts; and***
  - 2. One (1) formerly incarcerated individual who is a current or former Medicaid recipient shall be appointed by Mental Health America of Kentucky.***
- (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 ~~their~~<sup>his</sup> duties with reimbursement for expenses being made in accordance with state regulations relating to travel reimbursement.

**Signed by Governor March 8, 2021.**

**CHAPTER 12****( SB 3 )**

AN ACT relating to reorganization and declaring an emergency.

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

➔Section 1. KRS 11.400 is amended to read as follows:

- (1) In addition to the duties prescribed for the office by the Constitution of the Commonwealth of Kentucky, the duties of the Lieutenant Governor shall be as follows:
- (a) To serve as vice chairman of the State Property and Buildings Commission as prescribed by KRS 56.450;
  - (b) To serve as vice chairman of the Kentucky Turnpike Authority as prescribed in KRS 175.430;
  - (c) ~~To serve as a member of the Kentucky Council on Agriculture in accordance with KRS 247.417;~~
  - ~~(d)~~ To serve as a member of the Board of the Kentucky Housing Corporation in accordance with KRS 198A.030; and
  - ~~(d)(e)~~ To serve as a member of Kentucky delegations on the following interstate compact commissions or boards:
    - 1. The Breaks Interstate Park Commission as provided in KRS 148.225;
    - 2. The Falls of the Ohio Interstate Park Commission pursuant to KRS 148.242;
    - 3. The Tennessee-Tombigbee Waterway Development Authority pursuant to KRS 182.305;
    - 4. The Interstate Water Sanitation Control Commissions as prescribed by KRS 224.18-710; and
    - 5. The Kentucky Mining Advisory Council for the Interstate Mining Compact as provided by KRS 350.310.
- (2) Nothing in this section shall prohibit the Governor and Lieutenant Governor from agreeing upon additional duties within the executive branch of the state government to be performed by the Lieutenant Governor.

➔Section 2. KRS 12.023 is amended to read as follows:

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

- (1) Council on Postsecondary Education;
- (2) Department of Military Affairs;
- (3) Department for Local Government;
- (4) Kentucky Commission on Human Rights;
- (5) Kentucky Commission on Women;
- (6) Kentucky Commission on Military Affairs;
- (7) ~~Agricultural Development Board;~~
- ~~(8) Kentucky Agricultural Finance Corporation;~~
- ~~(9)~~ Office of Minority Empowerment;
  - (a) The Martin Luther King Commission;
- ~~(8)(10)~~ Office of Homeland Security; and
- ~~(9)(11)~~ Kentucky Communications Network Authority.

➔Section 3. KRS 12.020 is amended to read as follows:

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

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

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

II. Program cabinets headed by appointed officers:

- (1) Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Department of Public Advocacy.
- (2) Education and Workforce Development Cabinet:
  - (a) Office of the Secretary.

1. Governor's Scholars Program.
2. Governor's School for Entrepreneurs Program.
3. Office of the Kentucky Workforce Innovation Board.
4. Foundation for Adult Education.
5. Early Childhood Advisory Council.
- (b) Office of Legal and Legislative Services.
  1. Client Assistance Program.
- (c) Office of Communication.
- (d) Office of Administrative Services.
  1. Division of Human Resources.
  2. Division of Operations and Support Services.
  3. Division of Fiscal Management.
- (e) Office of Technology Services.
- (f) Office of Educational Programs.
- (g) Office of the Kentucky Center for Statistics.
- (h) Board of the Kentucky Center for Statistics.
- (i) Board of Directors for the Center for School Safety.
- (j) Department of Education.
  1. Kentucky Board of Education.
  2. Kentucky Technical Education Personnel Board.
- (k) Department for Libraries and Archives.
- (l) Department of Workforce Investment.
  1. Office of Vocational Rehabilitation.
    - a. Division of Kentucky Business Enterprise.
    - b. Division of the Carl D. Perkins Vocational Training Center.
    - c. Division of Blind Services.
    - d. Division of Field Services.
    - e. Statewide Council for Vocational Rehabilitation.
  2. Office of Unemployment Insurance.
  3. Office of Employer and Apprenticeship Services.
    - a. Division of Apprenticeship.
  4. Office of Career Development.
  5. Office of Adult Education.
  6. Unemployment Insurance Commission.
  7. Kentucky Apprenticeship Council.
- (m) Foundation for Workforce Development.
- (n) Kentucky Workforce Investment Board.
- (o) Education Professional Standards Board.
  1. Division of Educator Preparation.

2. Division of Certification.
3. Division of Professional Learning and Assessment.
4. Division of Legal Services.
- (p) Kentucky Commission on the Deaf and Hard of Hearing.
- (q) Kentucky Educational Television.
- (r) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
  - (a) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of Legal Services.
      - a. Legal Division I.
      - b. Legal Division II.
    3. Office of Administrative Hearings.
    4. Office of Communication.
    5. Mine Safety Review Commission.
    6. Office of Kentucky Nature Preserves.
    7. Kentucky Public Service Commission.
  - (b) Department for Environmental Protection.
    1. Office of the Commissioner.
    2. Division for Air Quality.
    3. Division of Water.
    4. Division of Environmental Program Support.
    5. Division of Waste Management.
    6. Division of Enforcement.
    7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.
    1. Office of the Commissioner.
    2. Division of Mine Permits.
    3. Division of Mine Reclamation and Enforcement.
    4. Division of Abandoned Mine Lands.
    5. Division of Oil and Gas.
    6. Division of Mine Safety.
    7. Division of Forestry.
    8. Division of Conservation.
    9. Office of the Reclamation Guaranty Fund.
  - (d) Office of Energy Policy.
    1. Division of Energy Assistance.
  - (e) Office of Administrative Services.
    1. Division of Human Resources Management.

2. Division of Financial Management.
  3. Division of Information Services.
- (4) Public Protection Cabinet.
- (a) Office of the Secretary.
    1. Office of Communications and Public Outreach.
    2. Office of Legal Services.
      - a. Insurance Legal Division.
      - b. Charitable Gaming Legal Division.
      - c. Alcoholic Beverage Control Legal Division.
      - d. Housing, Buildings and Construction Legal Division.
      - e. Financial Institutions Legal Division.
      - f. Professional Licensing Legal Division.
    3. Office of Administrative Hearings.
    4. Office of Administrative Services.
      - a. Division of Human Resources.
      - b. Division of Fiscal Responsibility.
  - (b) Kentucky Claims Commission.
  - (c) Kentucky Boxing and Wrestling Commission.
  - (d) Kentucky Horse Racing Commission.
    1. Office of Executive Director.
      - a. Division of Pari-mutuel Wagering and Compliance.
      - b. Division of Stewards.
      - c. Division of Licensing.
      - d. Division of Enforcement.
      - e. Division of Incentives and Development.
      - f. Division of Veterinary Services.
  - (e) Department of Alcoholic Beverage Control.
    1. Division of Distilled Spirits.
    2. Division of Malt Beverages.
    3. Division of Enforcement.
  - (f) Department of Charitable Gaming.
    1. Division of Licensing and Compliance.
    2. Division of Enforcement.
  - (g) Department of Financial Institutions.
    1. Division of Depository Institutions.
    2. Division of Non-Depository Institutions.
    3. Division of Securities.
  - (h) Department of Housing, Buildings and Construction.
    1. Division of Fire Prevention.

2. Division of Plumbing.
3. Division of Heating, Ventilation, and Air Conditioning.
4. Division of Building Code Enforcement.
- (i) Department of Insurance.
  1. Division of Insurance Product Regulation.
  2. Division of Administrative Services.
  3. Division of Financial Standards and Examination.
  4. Division of Agent Licensing.
  5. Division of Insurance Fraud Investigation.
  6. Division of Consumer Protection.
- (j) Department of Professional Licensing.
  1. Real Estate Authority.
- (5) Labor Cabinet.
  - (a) Office of the Secretary.
    1. Office of General Counsel.
      - a. Workplace Standards Legal Division.
      - b. Workers' Claims Legal Division.
    2. Office of Administrative Services.
      - a. Division of Human Resources Management.
      - b. Division of Fiscal Management.
      - c. Division of Professional Development and Organizational Management.
      - d. Division of Information Technology and Support Services.
    3. Office of Inspector General.
  - (b) Department of Workplace Standards.
    1. Division of Occupational Safety and Health Compliance.
    2. Division of Occupational Safety and Health Education and Training.
    3. Division of Wages and Hours.
  - (c) Department of Workers' Claims.
    1. Division of Workers' Compensation Funds.
    2. Office of Administrative Law Judges.
    3. Division of Claims Processing.
    4. Division of Security and Compliance.
    5. Division of Information Services.
    6. Division of Specialist and Medical Services.
    7. Workers' Compensation Board.
  - (d) Workers' Compensation Funding Commission.
  - (e) Occupational Safety and Health Standards Board.
  - (f) State Labor Relations Board.
  - (g) Employers' Mutual Insurance Authority.



- (h) Kentucky Occupational Safety and Health Review Commission.
- (i) Workers' Compensation Nominating Committee.
- (6) Transportation Cabinet:
  - (a) Department of Highways.
    - 1. Office of Project Development.
    - 2. Office of Project Delivery and Preservation.
    - 3. Office of Highway Safety.
    - 4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    - 1. Office of Local Programs.
    - 2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    - 1. Office of Public Affairs.
    - 2. Office for Civil Rights and Small Business Development.
    - 3. Office of Budget and Fiscal Management.
    - 4. Office of Inspector General.
  - (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.
  - (i) Office of Human Resource Management.
  - (j) Office of Information Technology.
  - (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
  - (a) Office of the Secretary.
    - 1. Office of Legal Services.
    - 2. Department for Business Development.
    - 3. Department for Financial Services.
      - a. Kentucky Economic Development Finance Authority.
      - b. Finance and Personnel Division.
      - c. IT and Resource Management Division.
      - d. Compliance Division.
      - e. Incentive Administration Division.
      - f. Bluegrass State Skills Corporation.
    - 4. Office of Marketing and Public Affairs.
      - a. Communications Division.
      - b. Graphics Design Division.
    - 5. Office of Workforce, Community Development, and Research.

6. Office of Entrepreneurship.
    - a. Commission on Small Business Advocacy.
- (8) Cabinet for Health and Family Services:
- (a) Office of the Secretary.
    1. Office of the Ombudsman and Administrative Review.
    2. Office of Public Affairs.
    3. Office of Legal Services.
    4. Office of Inspector General.
    5. Office of Human Resource Management.
    6. Office of Finance and Budget.
    7. Office of Legislative and Regulatory Affairs.
    8. Office of Administrative Services.
    9. Office of Application Technology Services.
  - (b) Department for Public Health.
  - (c) Department for Medicaid Services.
  - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (e) Department for Aging and Independent Living.
  - (f) Department for Community Based Services.
  - (g) Department for Income Support.
  - (h) Department for Family Resource Centers and Volunteer Services.
  - (i) Office for Children with Special Health Care Needs.
  - (j) Office of Health Data and Analytics.
- (9) Finance and Administration Cabinet:
- (a) Office of the Secretary.
  - (b) Office of the Inspector General.
  - (c) Office of Legislative and Intergovernmental Affairs.
  - (d) Office of General Counsel.
  - (e) Office of the Controller.
  - (f) Office of Administrative Services.
  - (g) Office of Policy and Audit.
  - (h) Department for Facilities and Support Services.
  - (i) Department of Revenue.
  - (j) Commonwealth Office of Technology.
  - (k) State Property and Buildings Commission.
  - (l) Office of Equal Employment Opportunity and Contract Compliance.
  - (m) Kentucky Employees Retirement Systems.
  - (n) Commonwealth Credit Union.
  - (o) State Investment Commission.
  - (p) Kentucky Housing Corporation.

- (q) Kentucky Local Correctional Facilities Construction Authority.
  - (r) Kentucky Turnpike Authority.
  - (s) Historic Properties Advisory Commission.
  - (t) ~~Kentucky Tobacco Settlement Trust Corporation.~~
  - ~~(u)~~ Kentucky Higher Education Assistance Authority.
  - ~~(u)~~~~(v)~~ Kentucky River Authority.
  - ~~(v)~~~~(w)~~ Kentucky Teachers' Retirement System Board of Trustees.
  - ~~(w)~~~~(x)~~ Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Tourism.
    1. Division of Tourism Services.
    2. Division of Marketing and Administration.
    3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    1. Division of Information Technology.
    2. Division of Human Resources.
    3. Division of Financial Operations.
    4. Division of Facilities Management.
    5. Division of Facilities Maintenance.
    6. Division of Customer Services.
    7. Division of Recreation.
    8. Division of Golf Courses.
    9. Division of Food Services.
    10. Division of Rangers.
    11. Division of Resort Parks.
    12. Division of Recreational Parks and Historic Sites.
  - (c) Department of Fish and Wildlife Resources.
    1. Division of Law Enforcement.
    2. Division of Administrative Services.
    3. Division of Engineering, Infrastructure, and Technology.
    4. Division of Fisheries.
    5. Division of Information and Education.
    6. Division of Wildlife.
    7. Division of Marketing.
  - (d) Kentucky Horse Park.
    1. Division of Support Services.
    2. Division of Buildings and Grounds.
    3. Division of Operational Services.
  - (e) Kentucky State Fair Board.

## ACTS OF THE GENERAL ASSEMBLY

1. Office of Administrative and Information Technology Services.
  2. Office of Human Resources and Access Control.
  3. Division of Expositions.
  4. Division of Kentucky Exposition Center Operations.
  5. Division of Kentucky International Convention Center.
  6. Division of Public Relations and Media.
  7. Division of Venue Services.
  8. Division of Personnel Management and Staff Development.
  9. Division of Sales.
  10. Division of Security and Traffic Control.
  11. Division of Information Technology.
  12. Division of the Louisville Arena.
  13. Division of Fiscal and Contract Management.
  14. Division of Access Control.
- (f) Office of the Secretary.
1. Office of Finance.
  2. Office of Government Relations and Administration.
  3. Office of Film and Tourism Development.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Arts and Cultural Heritage.
- (k) Kentucky African-American Heritage Commission.
- (l) Kentucky Foundation for the Arts.
- (m) Kentucky Humanities Council.
- (n) Kentucky Heritage Council.
- (o) Kentucky Arts Council.
- (p) Kentucky Historical Society.
1. Division of Museums.
  2. Division of Oral History and Educational Outreach.
  3. Division of Research and Publications.
  4. Division of Administration.
- (q) Kentucky Center for the Arts.
1. Division of Governor's School for the Arts.
- (r) Kentucky Artisans Center at Berea.
- (s) Northern Kentucky Convention Center.
- (t) Eastern Kentucky Exposition Center.
- (11) Personnel Cabinet:
- (a) Office of the Secretary.

- (b) Department of Human Resources Administration.
- (c) Office of Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Office of Administrative Services.
- (f) Office of Legal Services.
- (g) Governmental Services Center.
- (h) Department of Employee Insurance.
- (i) Office of Diversity, Equality, and Training.
- (j) Office of Public Affairs.

III. Other departments headed by appointed officers:

- (1) Council on Postsecondary Education.
- (2) Department of Military Affairs.
- (3) Department for Local Government.
- (4) Kentucky Commission on Human Rights.
- (5) Kentucky Commission on Women.
- (6) Department of Veterans' Affairs.
- (7) Kentucky Commission on Military Affairs.
- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.
- (10) Kentucky Communications Network Authority.

➔Section 4. KRS 18A.115 is amended to read as follows:

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

addition or additions on petition of the department head approved by the secretary. Effective August 1, 2010:

1. All positions approved under this paragraph prior to August 1, 2010, shall be abolished effective December 31, 2010, unless reapproved under subparagraph 2. of this paragraph; and
  2. A position approved under this paragraph on or after August 1, 2010, shall be approved for a period of five (5) years, after which time the position shall be abolished unless reapproved under this subparagraph for an additional five (5) year period;
    - (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
    - (j) Physicians employed as such;
    - (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
    - (l) The judicial department, referees, receivers, jurors, and notaries public;
    - (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
    - (n) Patients or inmates employed in state institutions;
    - (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
    - (p) Interim employees;
    - (q) Officers and members of the state militia;
    - (r) Department of Kentucky State Police troopers;
    - (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
    - (t) Superintendents of state mental institutions, including heads of centers for individuals with an intellectual disability, and penal and correctional institutions as referred to in KRS 196.180(2);
    - (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
    - (v) County and Commonwealth's attorneys and their respective appointees;
    - (w) Chief district engineers and the state highway engineer;
    - (x) Veterinarians employed as such by the Kentucky Horse Racing Commission;
    - (y) Employees of the Kentucky Peace Corps;
    - (z) Employees of the Council on Postsecondary Education;
    - (aa) Executive director of the Commonwealth Office of Technology;
    - (ab) Employees of Serve Kentucky;
    - (ac) Persons employed in certified teaching positions at the Kentucky School for the Blind and the Kentucky School for the Deaf; ~~and~~
    - (ad) Federally funded time-limited employees as defined in KRS 18A.005; *and*
    - (ae) *Employees of the Department of Agriculture who are employed to support the Agricultural Development Board and the Kentucky Agricultural Finance Corporation.*
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.

- (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
- (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
- (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
- (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.
- (7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.
- (8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.
- (9) On May 1, 2017, all contract employees of Eastern Kentucky University who are engaged in providing instructional and support services to the Department of Criminal Justice Training shall be transferred to the personnel system under KRS Chapter 18A. All records shall be transferred, including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems for Eastern Kentucky University and under KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No employee shall suffer any penalty in the transfer.

➔Section 5. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

- (1) State Property and Buildings Commission;
- (2) Kentucky Turnpike Authority;
- (3) State Investment Commission;
- (4) Kentucky Housing Corporation;
- (5) ~~Kentucky Tobacco Settlement Trust Corporation;~~
- (6) ~~Kentucky River Authority;~~ and

~~(6)(7)~~ Executive Branch Ethics Commission.

➔Section 6. KRS 246.030 is amended to read as follows:

The department shall consist of:

- (1) The Office of the Commissioner;
- (2) The Office of Agricultural Marketing, which shall include the following:
  - (a) The Promotion and Development Division;
  - (b) The Shows and Fairs Division;
  - (c) The Livestock Division;
  - (d) The Plant Division;
  - (e) The Education and Outreach Division; and
  - (f) The Direct Farm Marketing Division;
- (3) The Office for Consumer and Environmental Protection, which shall include the following:
  - (a) The Division of Regulation and Inspection;
  - (b) The Division of Food Distribution; and
  - (c) The Division of Environmental Services;
- (4) The Office of State Veterinarian, which shall include the following:
  - (a) The Division of Animal Health; and
  - (b) The Division of Producer Services;
- (5) The Office of Administrative Services, which shall include the following:
  - (a) The Division of Human Resources;
  - (b) The Division of Administrative Services; and
  - (c) The Division of Information Technology;
- (6) The Office of Communications;
- (7) The Office of Legal Services;~~and~~
- (8) The State Board of Agriculture; *and*
- (9) ***The Kentucky Office of Agricultural Policy, which shall include the following:***
  - (a) ***Agricultural Development Board; and***
  - (b) ***Kentucky Agricultural Finance Corporation.***

➔Section 7. KRS 247.944 is amended to read as follows:

- (1) There is hereby created and established the Kentucky Agricultural Finance Corporation which shall be attached to the ***Department of Agriculture***~~[Office of the Governor for administrative purposes only].~~
- (2) The corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions and purposes in improving and otherwise promoting the health and general welfare of the people through the promotion of agriculture through the Commonwealth.
- (3) The corporation shall be governed by a board of directors consisting of twelve (12) members, ten (10) of whom shall be appointed by the ***Commissioner***~~[Governor]~~. The other two (2) members shall be the ***Commissioner***~~[of the Department of Agriculture]~~, who shall serve as chairperson, and the secretary of the Finance and Administration Cabinet. The ***Commissioner*** may designate a representative to serve as chairperson in the ***Commissioner's*** absence.
- (4) The ***Commissioner***~~[Governor]~~ shall appoint ten (10) private members of the board to take office and to exercise all powers of the board immediately. The ten (10) directors of the corporation shall be appointed



using staggered terms *and shall be subject to confirmation as provided in KRS 11.160(2)*. Of the ten (10) private members of the board appointed by the ~~Commissioner~~[Governor], two (2) may be officers from a commercial lending institution, one (1) may be an officer from a farm credit association, one (1) may be an agricultural economist, one (1) shall be a tobacco farmer, one (1) shall be a cash grain farmer, one (1) shall be a livestock farmer, one (1) shall be a dairy *or poultry* farmer, one (1) shall be a horticultural farmer, and one (1) shall be from the equine industry. To promote efficient use of agricultural resources and coordination among agricultural leaders, the ~~Commissioner~~[Governor] shall appoint a member from the Agricultural Development Board, who meets the qualifications for one (1) of the positions set out in this subsection, to one (1) of the ten (10) board positions governing the Kentucky Agricultural Finance Corporation.

- (5) Upon the expiration of the initial terms of the private members of the board, the ~~Commissioner~~[Governor] shall appoint successors representing the same constituencies as the members succeeded for a term of four (4) years in each case. In the case of a vacancy, the ~~Commissioner~~[Governor] may appoint a successor to hold office during the remainder of the term.
- (6) Staff services for the board shall be provided by the ~~Department of Agriculture~~[Office of the Governor]. The executive director of the Agricultural Development Board shall serve as executive director for the **Kentucky Agricultural Finance Corporation** board.
- (7) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board. The executive director shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The executive director shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that the copies are true copies, and all persons dealing with the corporation may rely on such certifications.
- (8) A majority of the board shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any vacancies; provided, however, that a majority of the board may elect from among its members an executive committee to act in its stead in the day to day conduct of the business of the corporation. Notwithstanding the foregoing, the full board shall hold at least one (1) meeting each calendar quarter in accordance with a schedule to be established by the board.
- (9) Action may be taken by the corporation upon a vote of a majority of the directors present at a meeting at which a quorum exists called upon three (3) days written notice or upon the concurrence of at least seven (7) directors or by the board's executive committee.
- (10) All members of the board shall be entitled to their reasonable and necessary expenses actually incurred in discharging their duties.
- (11) **The Kentucky Agricultural Finance Corporation shall not be subject to reorganization under KRS Chapter 12.**

➔Section 8. KRS 248.707 is amended to read as follows:

- (1) The Agricultural Development Board is created as a political subdivision of the Commonwealth to perform essential governmental and public functions by administering funds to provide economic assistance to the agriculture community of the Commonwealth. The board shall be a public agency within the meaning of KRS 61.805, 61.870, and other applicable statutes.
- (2) The board shall consist of sixteen (16) members as follows:
  - (a) Five (5) voting members or their designees, as follows:
    1. The ~~Commissioner of Agriculture~~[Governor of the Commonwealth of Kentucky], who shall serve as ~~chair~~chairperson. **The Commissioner of Agriculture may designate a representative to serve as chairperson in the Commissioner's absence;**
    2. The ~~Governor of the Commonwealth of Kentucky~~[Commissioner of the Kentucky Department of Agriculture, who shall serve as vice chair and shall serve as chair in the absence of the Governor];
    3. The secretary of the Cabinet for Economic Development;
    4. The director of the University of Kentucky Cooperative Extension Service; and
    5. The president of Kentucky State University; and

- (b) Eleven (11) voting members appointed by the **Commissioner**~~[Governor]~~, who shall be geographically distributed throughout the state and subject to confirmation ~~[by the House of Representatives and Senate]~~ as provided in KRS 11.160(2). The members shall be as follows:
1. Seven (7) active farmers, at least four (4) of whom shall be from counties that are substantially tobacco-impacted, as determined by a formula that includes tobacco income as a percentage of total personal income in the county, and at least two (2) of whom shall have experience in agricultural diversification;
  2. One (1) representative of the Kentucky Farm Bureau;
  3. One (1) representative of the Kentucky Chamber of Commerce, who shall be an agribusiness person;
  4. One (1) attorney with farm experience and familiarity with agricultural policy; and
  5. One (1) agricultural lender.
- (3) The members appointed under subsection (2)(b)2. and 3. of this section shall be chosen from a list of three (3) nominees submitted to the **Commissioner**~~[Governor]~~ by each of the respective organizations.
- (4) Consideration shall be given to racial and gender equity in the appointment of board members.
- (5) The majority of the voting members shall be active farmers.
- (6) Members of the board shall be reimbursed for expenses incurred in the performance of their duties.
- (7) Except as provided in paragraphs (a) to (d) of this subsection, The terms of the members appointed by the **Commissioner**~~[Governor]~~ shall be for four (4) years and until their successors are appointed and confirmed. A vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as the original appointment. Members may be reappointed. The initial appointments shall be for staggered terms, as follows:
- (a) Two (2) members shall be appointed for one (1) year;
  - (b) Three (3) members shall be appointed for two (2) years;
  - (c) Three (3) members shall be appointed for three (3) years; and
  - (d) Three (3) members shall be appointed for four (4) years.
- (8) ~~[The Governor shall convene the first meeting of the board by August 1, 2000.~~
- ~~(9) ]~~The board shall meet monthly, or at the call of the chair or a majority of the voting members.
- ~~(9)~~~~(10)~~ A quorum of the board shall consist of nine (9) voting members. A majority of the voting members present may act upon matters before the board.
- ~~(10)~~~~(11)~~ The board shall be attached to the **Department of Agriculture**~~[Office of the Governor for administrative purposes]~~.
- (11) Staff services for the board shall be provided by the Department of Agriculture.**
- (12) The Agricultural Development Board shall not be subject to reorganization under KRS Chapter 12.**

➔Section 9. KRS 248.709 is amended to read as follows:

The board's duties shall include but not be limited to:

- (1) Administering the agricultural development fund, except as provided in KRS 248.717(2);
- (2) Receiving requests and applications for funds and authorizing the distribution of funds. The board may receive applications from institutions of public postsecondary education for financial and technical assistance in conducting alternative crop development research. The board shall assist the applicants in obtaining any necessary federal permits that may be required to conduct alternative crop research. A recipient institution shall report the status and progress of the alternative crop development research to the board, the Interim Joint Committee on Agriculture, and the Tobacco Settlement Agreement Fund Oversight Committee. The board shall promulgate administrative regulations relating to growing and researching alternative crops at the selected postsecondary institution, and shall adopt any applicable federal regulations;

- (3) Developing guidelines and criteria for eligibility for and disbursement of funds, the types of direct and indirect economic assistance to be awarded, and procedures for applying for funds and reviewing applications for assistance;
- (4) Ensuring that each county agricultural development council's plans and county recommendations and applications receive major consideration in decisions on use of a county's funds;
- (5) Completing a comprehensive plan *and updating the plan no less than every ten (10) years.* ~~;~~
  - (a) The comprehensive plan shall propose short-term and long-term goals, strategies, and investments in Kentucky agriculture that will assist farmers in remaining competitive in existing and new enterprises. The comprehensive plan shall identify a diversified mix of enterprises that are profitable to farmers and shall determine the investments necessary to support the viability of those enterprises. The plan shall be reviewed by the General Assembly and the subcommittee created in KRS 248.723. The subcommittee may issue comment on the plan. However, the board may act without General Assembly approval. ~~;~~
  - ~~(b) As soon as possible following enactment of KRS 248.701 to 248.727, a plan of action shall be devised to meet the immediate needs of the Commonwealth's farmers and tobacco impacted communities most adversely affected by tobacco losses. A set of priorities shall be established in the plan of action to implement and fund programs to meet those needs as soon as practical; and~~
  - ~~(b)(c)~~ Notwithstanding the provisions of 2000 Ky. Acts ch. 546, immediate funding needs may be addressed and funded before a comprehensive or strategic plan is completed. Proposals from an applicant may be approved by the board if they meet the criteria established in KRS 248.713;
- (6) Preparing a biennial budget request in accordance with KRS Chapter 48;
- (7) Working with other governmental agencies to maximize the financial and economic impact that the programs implemented by the board will have and to maximize receipt of federal and other funds to the agriculture community in the Commonwealth;
- (8) Promulgating administrative regulations relating to carrying out the purposes of KRS 248.701 to 248.727;
- (9) Hiring ~~an~~ *executive* director to carry out the will of the board *and who shall report solely to the Commissioner*;
- (10) Ensuring the necessary mechanisms are in place for the committees created by KRS 248.715 to function effectively;
- (11) Contracting with other persons or entities if necessary to effectuate the board's purposes and functions;
- (12) Enacting bylaws concerning the conduct of the board's business and other administrative procedures as the board deems necessary;
- (13) Developing criteria to evaluate the success of the board's programs and expenditures to applicants. The criteria shall be simple, easily measured, and easily understood. Criteria should include number of families farming, increases in farm income attributable to state programs, the number of diversified operations, and the number of different types of diversified efforts within a county, including the efforts that have failed;
- (14) Providing reports of each meeting, along with expenditures approved or denied, within thirty (30) days of the meeting, to the Tobacco Settlement Agreement Fund Oversight Committee created by KRS 248.723. These reports shall contain detailed information relating to each expenditure by the board and detailed information on each application for funding a project or initiative by the board and decision by the board regarding each proposal, except information that may violate confidentiality. This information shall be provided by electronic format as prescribed by the Legislative Research Commission;
- (15) Submitting an annual written report to the Governor, the Commissioner of Agriculture, the Tobacco Settlement Agreement Fund Oversight Committee, and the Legislative Research Commission regarding the administrative, financial, and programmatic activities of the board; and
- (16) Making recommendations to the General Assembly through the Legislative Research Commission on possible adjustments to the funding formula for county allocations and the percent allocated to counties as provided in KRS 248.703.

➔Section 10. KRS 248.713 is amended to read as follows:

Notwithstanding the provisions of KRS 248.655, county allocations may be used for projects before the completion of a comprehensive plan or strategic plan as determined by the board or if they fall under the conditions described in KRS 248.709(5)(a) ~~or (b) or (c)~~ or meet the criteria in KRS 248.711(2).

➔Section 11. KRS 260.860 is amended to read as follows:

- (1) The Hemp Advisory Board is created for the purpose of providing advice and expertise as may be needed by the department with respect to plans, policies, and procedures applicable to the administration of its respective hemp program.
- (2) The Hemp Advisory Board shall be attached to the department for administrative purposes.
- (3) The Hemp Advisory Board shall be composed of the following members:
  - (a) The Commissioner of the department or the Commissioner's designee;
  - (b) ~~The executive director of the Governor's Office of Agricultural Policy or the executive director's designee;~~
  - ~~(c)~~ The dean of the University of Kentucky's College of Agriculture, Food and Environment or the dean's designee;
  - ~~(c)~~~~(d)~~ The commissioner of the Department of Kentucky State Police or the commissioner's designee;
  - ~~(d)~~~~(e)~~ The president of the Kentucky Sheriff's Association or the president's designee;
  - ~~(e)~~~~(f)~~ The president of the Kentucky Association of Chiefs of Police or the president's designee; and
  - ~~(f)~~~~(g)~~ Ten (10) at-large members designated by the Commissioner.
- (4) The Commissioner or the Commissioner's designee shall serve as chair.
- (5) A majority of the members of the board shall constitute a quorum.
- (6) The board shall meet at least one (1) time annually at the call of the chair.
- (7) In making the initial appointments of the board, the Commissioner shall stagger the terms of the board members. Thereafter, members shall be appointed to a term of four (4) years and shall serve until their successors are duly appointed and qualified.
- (8) Board members shall receive no compensation but shall be reimbursed, payable from the hemp program fund, for any actual travel expense incurred while attending meetings of the board.

➔Section 12. The following KRS sections are repealed:

247.410 Definitions.

247.413 Creation of council -- Purposes.

247.417 Members of council -- Officers -- Compensation -- Meetings -- Quorum.

247.420 Duties and powers of council.

247.421 Agricultural Export Authority.

247.423 Steering committee.

247.430 Funds -- Construction.

248.480 Kentucky Tobacco Settlement Trust Corporation -- Board of directors -- Duties -- Amnesty compensation program -- Liability.

➔Section 13. Upon the effective date of this Act, the affairs of the Governor's Office of Agricultural Policy shall be concluded, and the Kentucky Department of Agriculture shall organize itself to manage the administrative affairs of the Agricultural Development Board and the Kentucky Agricultural Finance Corporation. Any records, files, and documents associated with the activities of the Kentucky Tobacco Settlement Trust Corporation shall be transferred to the Department of Agriculture. Any records, files, documents, equipment, staff, supporting budgets, and any and all unexpended funds associated with the activities of the Governor's Office of Agricultural Policy shall be transferred to the Department of Agriculture. All administrative regulations, decisions, and actions promulgated, made, or taken by the Agricultural Development Board or the Kentucky Agricultural Finance Corporation that have not been repealed or rescinded shall continue in effect after the effective date of this Act.

➔Section 14. Notwithstanding KRS 248.655 and 248.701 to 248.727, applications for projects or programs to be funded by the Agricultural Development Fund shall be subject to approval by both the Agricultural Development Board and the Commissioner of Agriculture, and all actions of the Agricultural Development Board shall be subject to approval by the board and the Commissioner of Agriculture. This provision shall be in effect from the effective date of an act of the General Assembly reorganizing the Agricultural Development Board and Department of Agriculture through the date when the reorganization process is complete, or through June 30, 2021, whichever comes first.

➔Section 15. Notwithstanding 247.940 to 247.978, all actions of the Kentucky Agricultural Finance Corporation shall be subject to approval by the board of directors and the Commissioner of Agriculture. This provision shall be in effect from the effective date of an act of the General Assembly reorganizing the Kentucky Agricultural Finance Corporation and Department of Agriculture through the date when the reorganization process is complete, or through June 30, 2021, whichever comes first.

➔Section 16. Whereas the world has witnessed unprecedented times during the onset of the COVID-19 pandemic, the nation has experienced a compromised food supply, and Kentucky's farmers continue to see depressed commodity prices, it is imperative that the continuity of the Agricultural Development Board and the Kentucky Agricultural Finance Corporation remain as established upon the effective date of this Act. Therefore, it is the intent of the General Assembly that each member of the Agricultural Development Board and the Kentucky Agricultural Finance Corporation shall serve his or her term as appointed and shall not be replaced unless by resignation and duly recognized.

➔Section 17. Whereas in order to ensure that Kentucky's farmers receive the assistance they so desperately need, 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.

**Became law without Governor's signature March 12, 2021.**

## CHAPTER 13

### ( HB 415 )

AN ACT relating to alcoholic beverages and declaring an emergency.

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

➔Section 1. KRS 243.027 is amended to read as follows:

- (1) KRS 243.027 to 243.029 shall supersede any conflicting statute in KRS Chapters 241 to 244.
- (2) A direct shipper license shall authorize the holder to ship alcoholic beverages to consumers. The department shall issue a direct shipper license to a successful applicant that:
  - (a) ***Pays an annual license fee of one hundred dollars (\$100);***
  - (b) Is a manufacturer located in this state or any other state or an alcoholic beverage supplier licensed under KRS 243.212 or 243.215; ***and***
  - (c) ***Holds a current license, permit, or other authorization to manufacture or supply alcoholic beverages in the state where the applicant is located. If an applicant is located outside of Kentucky, proof of its current license, permit, or other authorization as issued by its home state shall be sufficient proof of its eligibility to hold a direct shipper license in Kentucky.*** ~~A manufacturer applicant shall:~~
    1. ~~Hold a current license, permit, or other authorization to manufacture alcoholic beverages in the state where the manufacturer is located; and~~
    2. ~~Only ship alcoholic beverages that are sold under a brand name owned or exclusively licensed to the manufacturer and the alcoholic beverages were:~~
      - a. ~~Produced by the manufacturer;~~
      - b. ~~Produced for or by the manufacturer under an existing written contract with another manufacturer; or~~
      - c. ~~Produced and bottled for the manufacturer;~~

- (b) ~~Pays an annual license fee of one hundred dollars (\$100); and~~
- (c) ~~If a manufacturer applicant is located outside this state, proves that it has completed the same registration necessary for a manufacturer located in this state with respect to payment of any applicable excise tax, state or local sales or use tax, or other tax owed under the law of this state in connection with the direct shipment of alcoholic beverages to consumers in this state.]~~
- (3) (a) *A manufacturer applicant shall only be authorized to ship alcoholic beverages that are sold under a brand name owned or exclusively licensed to the manufacturer, provided the alcoholic beverages were:*
1. *Produced by the manufacturer;*
  2. *Produced for the manufacturer under a written contract with another manufacturer; or*
  3. *Bottled for or by the manufacturer.*
- (b) *An applicant licensed under KRS 243.212 or 243.215 shall only be authorized to ship alcoholic beverages for which it is the primary source of supply.*
- (4) The department shall ~~establish~~~~[set the requirements and]~~ the form for a direct shipper license application through the promulgation of an administrative regulation. These requirements shall include ***only the following***:
- (a) The address ~~of~~~~[and a description of the premises from which]~~ the manufacturer or supplier~~[will ship alcoholic beverages to consumers]; and~~
- (b) If the applicant is located outside this state, a copy of the applicant's current license, permit, or other authorization to manufacture, *store*, or supply alcoholic beverages in the state where the applicant is located~~]; and~~
- (c) ~~Any other information the department determines to be necessary to implement and administer the direct shipper licensing program].~~
- (5)~~(4)~~ *For purposes of this section, the holder of a direct shipper license may utilize the services of a third party to fulfill shipments, subject to the following:*
- (a) *The third party shall not be required to hold any alcoholic beverage license, but no licensed entity shall serve as a third party to fulfill shipments other than the holder of a storage license or transporter's license;*
- (b) *The third party may operate from the premises of the direct shipper licensee or from another business location; and*
- (c) *The direct shipper licensee shall be liable for any violation of KRS 242.250, 242.260, 242.270, or 244.080 that may occur by the third party*~~[In considering an application from an out-of-state applicant, the department shall use the same standards relating to causes for license denial, suspension, or revocation under KRS 243.100 and 243.500 as those it uses for similarly situated in-state applications].~~
- (6)~~(5)~~ A direct shipper licensee shall:
- (a) *Agree that the Secretary of State shall serve as its registered agent for service of process*~~[Appoint and continuously maintain an agent for service of process that need not be a resident of this state, and agree that the Secretary of State shall serve as its agent if it fails to maintain a current agent for service of process].~~ The licensee shall agree that legal service on the agent constitutes legal service on the direct shipper licensee;
- (b) Maintain the records required under KRS 243.027 to 243.029 and provide the department and the Department of Revenue access to or copies of these records;
- (c) Allow the department or the Department of Revenue to perform an audit of the direct shipper licensee's records or an inspection of the direct shipper licensee's licensed premises upon request. If an audit or inspection reveals a violation, the department or the Department of Revenue may recover reasonable expenses from the licensee for the cost of the audit or inspection;
- (d) *Register with the Department of Revenue, and* file all reports and pay all taxes required under KRS 243.027 to 243.029; *and*
- (e) Submit to the jurisdiction of the *Commonwealth of Kentucky for any violation of KRS 242.250, 242.260, 242.270, or 244.080 or for nonpayment of any taxes owed*~~[department and the Department of~~

~~Revenue, the courts, and all other enforcement authority of this state, including any related laws or administrative regulations, with respect to enforcement against the applicant;~~

- ~~(f) Hold the license contingent on obeying all laws and administrative regulations of both the origin state and the destination state, including those relating to the times, days, or other circumstances when alcoholic beverages may be sold or shipped;~~
  - ~~(g) Be subject to potential fines, penalties, license suspension, or license revocation for a violation of the duties or obligations to hold a direct shipper license;~~
  - ~~(h) Meet any reciprocal license requirements, if applicable; and~~
  - ~~(i) Comply with all applicable federal and state labeling, licensing, and brand registration requirements].~~
- (7)(6) (a) ~~[The department shall promulgate administrative regulations designed to reduce unlicensed deliveries and shipments of alcoholic beverages in the Commonwealth.]~~ Each direct shipper licensee shall submit to the department and the Department of Revenue a quarterly report for that direct shipper license showing:
1. The total amount of alcoholic beverages shipped into the state per consumer;
  2. The name and address of each consumer;
  3. The purchase price of the alcoholic beverages shipped and the amount of taxes charged to the consumer for the alcoholic beverages shipped; and
  4. The name and address of each common carrier.
- (b) The Department of Revenue shall create a form through the promulgation of an administrative regulation for reporting under paragraph (a) of this subsection.
- (c) The department shall provide a list of all active direct shipper licensees to licensed common carriers on a quarterly basis to reduce the number of unlicensed shipments in the Commonwealth.
- (8) *A direct shipper licensee shall submit a current copy of its alcoholic beverage license from its home state along with the one hundred dollar (\$100) license fee every year upon renewal of its direct shipper license.*
- (9) *Notwithstanding any provision of this section to the contrary, a manufacturer located and licensed in Kentucky may ship by a common carrier holding a Kentucky transporter's license samples of alcoholic beverages produced by the manufacturer in quantities not to exceed one (1) liter of any particular product in one (1) calendar year of distilled spirits or wine, or ninety-six (96) ounces of any particular product in one (1) calendar year of malt beverages, to the following:*
- (a) *Marketing or media representatives twenty-one (21) years of age or older;*
  - (b) *Distilled spirits, wine, or malt beverage competitions or contests;*
  - (c) *Wholesalers or distributors located outside of Kentucky;*
  - (d) *Federal, state, or other regulatory testing labs; and*
  - (e) *Third-party product formulation and development partners.*

*Such samples shall be marked by affixing across the product label, a not readily removed disclaimer with the words "Sample-Not for Sale" and the name of the manufacturer.*

➔Section 2. KRS 243.028 is amended to read as follows:

- (1) A direct shipper licensee may sell or ship to a consumer all types of alcoholic beverages that the licensee is authorized to sell, with the following aggregate limits:
  - (a) Distilled spirits, in quantities not to exceed ten (10) liters per consumer per month;
  - (b) Wine, in quantities not to exceed ten (10) cases per consumer per month; and
  - (c) Malt beverages, in quantities not to exceed ten (10) cases per consumer per month.
- (2) The direct shipper licensee shall notify the consumer placing the order that the shipment shall not be left unless the recipient of the shipment provides a valid identification document at the time verifying that the recipient is at least twenty-one (21) years of age. All alcoholic beverage containers shipped to the consumer shall be

conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".

- (3) At the time of delivery, the recipient of the shipment shall present to the individual delivering the package a valid identification document. Prior to transferring possession of the package, the individual delivering the package shall visually inspect the document and verify the identity of the recipient and, by visual examination or by using age verification technology, that the recipient is at least twenty-one (21) years of age.
- (4) Before transferring possession of the package, the individual delivering the package shall obtain the signature of the recipient of the shipment. The individual who receives and signs for the alcoholic beverages is not required to be the consumer who purchased the alcoholic beverages.
- (5) A consumer who intentionally causes shipment to an address deemed unlawful shall, for the first offense, be guilty of a violation punishable by a fine of two hundred fifty dollars (\$250), and for each subsequent offense, be guilty of a violation punishable by a fine of five hundred dollars (\$500). In this instance, the direct shipper licensee and the common carrier shall be held harmless.
- (6) A direct shipper licensee may not sell or ship alcoholic beverages to a consumer from its licensed premises if the consumer's address is located in an area in which alcoholic beverages may not be sold or received.
- (7) **Shipments made pursuant to this section shall be made** ~~[A direct shipper licensee shall only conduct the shipment of alcoholic beverages to a consumer]~~ through a common carrier.
- (8) ~~[A direct shipper licensee may ship alcoholic beverages to a consumer only from the licensed premises described in its direct shipper license application.]~~
- ~~(9) If a common carrier is unable to complete delivery, then the alcoholic beverages shall be returned to the consignor.~~

➔Section 3. KRS 241.060 is amended to read as follows:

The board shall have the following functions, powers, and duties:

- (1) To promulgate reasonable administrative regulations governing procedures relative to the applications for and revocations of licenses, the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction. ***The only administrative regulation that shall be promulgated in relation to the direct shipper license is to establish the license application, as set forth in subsection (4) of Section 1 of this Act. To the extent any administrative regulation previously promulgated is contrary to the provisions of KRS 13A.120(2), the board shall repeal or amend the administrative regulation as necessary by January 1, 2022.*** Administrative regulations need not be uniform in their application but may vary in accordance with reasonable classifications;
- (2) To limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end, the board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the approval, denial, and revocation of licenses may be different within the several divisions or subdivisions;
- (3) To hold hearings in accordance with the provisions of KRS Chapter 13B. The department may pay witnesses the per diem and mileage provided in KRS 421.015;
- (4) To conduct hearings and appeals under KRS 241.150, 241.200, 241.260, 243.470, and 243.520 and render final orders upon the subjects of the hearings and appeals;
- (5) To order the destruction of evidence in the department's possession after all administrative and judicial proceedings are conducted;
- (6) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS Chapter 13B, any license; and
- (7) To prohibit the issuance of a license for the premises until the expiration of two (2) years from the time the offense was committed if a violation of KRS Chapters 241 to 244 has taken place on the premises which the owner knew of or should have known of, or was committed or permitted in or on the premises owned by the licensee.

➔Section 4. KRS 243.020 is amended to read as follows:



- (1) A person shall not do any act authorized by any kind of license with respect to the manufacture, storage, sale, purchase, transporting, or other traffic in alcoholic beverages unless the person holds or is an independent contractor, agent, servant, or employee of a person who holds the kind of license that authorizes the act, *or is a third party utilized by a direct shipper licensee as set forth in Section 1 of this Act*.
- (2) The holding of any permit from the United States government to traffic in alcoholic beverages without the corresponding requisite state and local licenses shall in all cases raise a rebuttable presumption that the holder of the United States permit is unlawfully trafficking in alcoholic beverages.
- (3) Except as permitted by KRS 243.033, 243.036, 243.155, 243.157, and 243.260, a person, conducting a place of business patronized by the public, who is not a licensee authorized to sell alcoholic beverages, shall not permit any person to sell, barter, loan, give away, or drink alcoholic beverages on the premises of the place of business.
- (4) A licensee shall not permit any consumer to possess, give away, or drink alcoholic beverages on the licensed premises that are not purchased from the licensee.
- (5) ~~Any distilled spirits or wine in excess of three (3) gallons (twelve (12) liters) shall not be stored or kept except upon the licensed premises of a licensee.~~
- ~~(6) In a moist territory, the only types of licenses that may be issued are those that directly correspond with the types of sales approved by the voters through moist elections within the territory, unless otherwise specifically authorized by statute.~~

➔Section 5. KRS 243.029 is amended to read as follows:

- (1) For purposes of this section, "taxes" associated with the purchase of alcoholic beverages includes any applicable:
  - (a) Sales tax;
  - (b) Use tax;
  - (c) Excise tax;
  - (d) Wholesale tax *as established* ~~[equivalent at the rate set out]~~ in KRS 243.884 ~~[. If a wholesale price is not readily available, the direct shipper licensee shall calculate the wholesale cost to be seventy percent (70%) of the retail price of the alcoholic beverages];~~
  - (e) Regulatory license fees; and
  - (f) Other assessments.
- (2) For purposes of this section and for other tax purposes, each sale and delivery of alcoholic beverages under a direct shipper license is a sale occurring at the address of the consumer. For each tax remittance or collected group of tax remittances, the direct shipper licensee shall include its federal tax identification number.
- (3) A direct shipper licensee that sells alcoholic beverages under its direct shipper license for shipment to a consumer shall charge the consumer all applicable taxes and shall sell the alcoholic beverages with all applicable taxes included in the selling price. The applicable taxes shall be separately identified on the consumer's invoice. The taxes shall be collected by the direct shipper licensee from the consumer.
- (4) The amount of the taxes to be paid by the direct shipper licensee under this section shall be calculated based on the sale of the alcoholic beverages occurring at the location identified as the consumer's address on the shipping label.
- (5) For taxes owed by a direct shipper licensee under this section, the direct shipper licensee shall meet the standards of the destination state, including filing a return that contains its license number and federal tax identification number.

➔Section 6. KRS 243.110 is amended to read as follows:

- (1) Except as provided in subsection (3) of this section, each kind of license listed in KRS 243.030 shall be incompatible with every other kind listed in that section and no person or entity holding a license of any of those kinds shall apply for or hold a license of another kind listed in KRS 243.030.
- (2) (a) Each kind of license listed in KRS 243.040(1), (3), or (4) shall be incompatible with every other kind listed in KRS 243.040(1), (3), or (4), and no person holding a license of any of those kinds shall apply for or hold a license of any other kind listed in KRS 243.040(1), (3), or (4).

- (b) A brewery holding a license listed in KRS 243.040(5) or (8) shall not apply for or hold a license listed in KRS 243.040(3) or (4).
- (3) (a) The holder of a quota retail package license may also hold a quota retail drink license, an NQ1 retail drink license, an NQ2 retail drink license, an NQ3 retail drink license, or a special nonbeverage alcohol license.
- (b) The holder of a transporter's license may also hold a distilled spirits and wine storage license.
- (c) The holder of a distiller's license may also hold a rectifier's license, a special nonbeverage alcohol license, a winery license, or a small farm winery license.
- (d) A commercial airline system or charter flight system retail license, a commercial airline system or charter flight system transporter's license, and a retail drink license if held by a commercial airline or charter flight system may be held by the same licensee.
- (e) A Sunday retail drink license and supplemental license may be held by the holder of a primary license.
- (f) The holder of a distiller's, winery, ~~for~~ small farm winery, **brewer, microbrewery, distilled spirits and wine supplier's, or malt beverage supplier's** license may also hold a direct shipper license.
- (4) Any person may hold two (2) or more licenses of the same kind.
- (5) A person or entity shall not evade the prohibition against applying for or holding licenses of two (2) kinds by applying for a second license through or under the name of a different person or entity. The state administrator shall examine the ownership, membership, and management of applicants, and shall deny the application for a license if the applicant is substantially interested in a person or entity that holds an incompatible license.

➔Section 7. KRS 243.220 is amended to read as follows:

No license shall be issued for any premises unless the applicant for the license is the owner of the premises or is in possession of the premises under a written agreement or a permit for a term of not less than the license period. ***A direct shipper license applicant shall be exempt from the requirements of this section, and shall instead follow the requirements as set forth in Section 1 of this Act.***

➔Section 8. KRS 243.380 is amended to read as follows:

- (1) Applications for distilled spirit and wine licenses shall be made to the distilled spirits administrator. Applications for malt beverage licenses shall be made to the malt beverages administrator. Applications for distilled spirits, wine, and malt beverage licenses shall be made to the distilled spirits administrator and to the malt beverages administrator.
- (2) All applications shall be on forms furnished by the department. They shall be verified and shall set forth in detail all information concerning the applicant and the premises submitted for licensing as the board requires through the promulgation of an administrative regulation. Each application shall be accompanied by payment. Payment of the license fee may be by certified check, a postal or express money order, or any other method of payment approved in writing by both the Finance and Administration Cabinet and the Office of the State Treasurer. Promptly upon receipt of the payment the board shall pay it into the State Treasury, giving the Department of Revenue copies of the pay-in vouchers and any other supporting data as the Department of Revenue requires for revenue control purposes.
- (3) (a) A business entity that owns more than two (2) licensed premises may initially submit common information about ownership, officers, directors, managerial employees, and shall provide current criminal background checks once for all separately licensed premises in one (1) master file.
- (b) Any business qualifying under this subsection shall only be required to amend its master file information for material changes under KRS 243.390(2) or ownership transfers under KRS 243.630.
- (c) ***A direct shipper license applicant shall be exempt from the requirements of this subsection and shall instead meet the requirements for its license type as set forth in Section 1 of this Act.***

➔Section 9. KRS 243.390 is amended to read as follows:

- (1) The board may require through the promulgation of an administrative regulation that license applications contain the following information, given under oath:
  - (a) The name, age, Social Security number, address, residence, and citizenship of each applicant;

- (b) If the applicant is a partner, the name, age, Social Security number, address, residence, and citizenship of each partner and the name and address of the partnership;
  - (c) The name, age, Social Security number, address, residence, and citizenship of each individual or partner interested in the business for which the license is sought, together with the nature of that interest, and, if the applicant is a corporation, limited partnership company, limited liability company, or other business entity recognized by law, the name, age, Social Security number, and address of each principal owner, member, officer, and director of the applicant. The department may require the names of all owners and the ownership percentage held by each;
  - (d) The premises to be licensed, stating the street and number, if the premises has a street number, and a description that will reasonably indicate the location of the premises;
  - (e)
    1. A statement that neither the applicant nor any other person referred to in this section has been convicted of:
      - a. Any misdemeanor directly or indirectly attributable to alcoholic beverages;
      - b. Any violation involving a controlled substance that is described in or classified pursuant to KRS Chapter 218A within the two (2) years immediately preceding the application;
      - c. Any felony, within five (5) years from the later of the date of parole or the date of conviction; or
      - d. Providing false information to the department preceding the application; and
    2. A statement that the applicant or any other person referred to in this section has not had any license that has been issued under any alcoholic beverage statute revoked for cause within two (2) years prior to the date of the application;
  - (f) A statement that the applicant will in good faith abide by every state and local statute, regulation, and ordinance relating to the manufacture, sale, use of, and trafficking in alcoholic beverages; and
  - (g) Any other information necessary for the department to administer KRS Chapters 241 to 244.
- (2) If, after a license has been issued, there is a change in any of the facts required to be set forth in the application, a verified supplemental statement in writing giving notice of the change shall be filed with the department within ten (10) days after the change.
- (3) In giving any notice or taking any action in reference to a license, the department may rely upon the information furnished in the application or in the supplemental statement connected with the application. This information, as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application or supplemental statement shall be deemed material in any prosecution for perjury.
- (4) ***A direct shipper license applicant shall be exempt from the requirements of this section and shall instead meet the requirements for its license type as set forth in Section 1 of this Act.***

➔Section 10. KRS 243.450 is amended to read as follows:

- (1) A license shall be denied:
- (a) If the applicant or the premises for which the license is sought does not comply fully with all alcoholic beverage control statutes and the administrative regulations of the board;
  - (b) If the applicant has not obtained approval from the local ABC administrator for a county or city license required at the proposed premises;
  - (c) If the applicant has done any act for which a revocation of license would be authorized; or
  - (d) If the applicant has made any false material statement in its application.
- (2) A license may be denied by a state administrator for any reason that the administrator, in the exercise of the administrator's sound discretion, deems sufficient. Among those factors that the administrator shall consider in the exercise of this discretion are:
- (a) Public sentiment in the area;
  - (b) Number of licensed outlets in the area;

- (c) Potential for future growth;
  - (d) Type of area involved;
  - (e) Type of transportation available;
  - (f) Financial potential of the area; and
  - (g) Applicant's status as a delinquent taxpayer as defined in KRS 131.1815.
- (3) ***A direct shipper license applicant shall be exempt from the requirements of this section and shall instead meet the requirements for its license type as set forth in Section 1 of this Act.***

➔Section 11. KRS 243.790 is amended to read as follows:

The sale or distribution of alcoholic beverages manufactured in or imported into this state for shipment permanently out of the state to be sold ~~through retail outlets~~ without the state and consumed without the state shall not be subject to the tax imposed by KRS 243.720. Provided, however, the Department of Revenue may, when necessary for the purpose of control enforcement or protection of revenue, prescribe the conditions under which containers of such alcoholic beverages for shipment permanently out of the state to be sold ~~through retail outlets~~ without the state and consumed without the state may be kept and trafficked in without payment of the tax.

➔Section 12. KRS 243.0305 is amended to read as follows:

- (1) Any licensed Kentucky distiller that is located in wet territory or in any precinct that has authorized the limited sale of alcoholic beverages at distilleries under KRS 242.1243 and that has a gift shop or other retail outlet on its premises may conduct the activities permitted under this section as a part of its distiller's license.
  - (2) (a) For purposes of all retail drink and package sales ***that occur pursuant to subsection (3), (8), or (9) of this section, the distillery shall:***
    - 1. ***Be permitted to transfer its products from the distillery proper to the location where those sales occur without having to transfer physical possession of those distilled spirits to a licensed wholesaler; and***
    - 2. ***Effective January 1, 2022, without otherwise reporting those distilled spirits to a licensed wholesaler, report and pay all taxes required to the Department of Revenue at the time and in the manner required by the Department of Revenue in accordance with its powers under KRS 131.130(3).***
  - (b) 1. ***Effective January 1, 2022, a distiller selling distilled spirits in accordance with this subsection shall pay all wholesale sales taxes due under Section 13 of this Act. For the purposes of this subsection, "wholesale sales" means a sale of distilled spirits made by a distiller under subsection (3)(b), (8), and (9) of this section, if required by Section 13 of this Act.***
  - 2. ***Effective January 1, 2022, a distiller shall pay the excise tax on distilled spirits in accordance with KRS 243.720 and 243.730.***
  - (c) ***All other distilled spirits that are produced by the distillery shall be sold and physically transferred in compliance with all other relevant provisions of KRS Chapters 241 to 244*** ~~*under this section, a wholesaler registered to distribute the brands of any distiller shall permit the distiller to transfer its products directly from the distillery proper to any portion of the distillery premises. However, for purposes of all retail drink and package sales by distillers under subsections (3), (8), and (9) of this section, all of these transfers shall be invoiced from the distiller to the wholesaler and from the wholesaler to the distiller, and all of these transferred products shall be included in the wholesaler's inventory and depletions for purposes of tax collections imposed pursuant to KRS 243.710 to 243.895 and 243.990.*~~
- (3) A distiller may sell souvenir packages at retail:
- (a) To consumers in accordance with KRS 243.027 to 243.029 if it holds a direct shipper license; and
  - (b) To distillery visitors of legal drinking age, in quantities not to exceed an aggregate of four and one-half (4-1/2) liters per purchaser per day for sales prior to January 1, 2021, and in quantities not to exceed an aggregate of nine (9) liters per purchaser per day on and after January 1, 2021.
- (4) Hours of sale for souvenir packages sold to distillery visitors at retail shall be in conformity with KRS 244.290(3).

- (5) Except as provided in this section, souvenir package sales to distillery visitors shall be governed by all the statutes and administrative regulations governing the retail sale of distilled spirits by the package.
- (6) ***Souvenir packages sold to distillery visitors under subsection (3)(b) of this section shall be registered with the department pursuant to KRS 244.440 and made available to a Kentucky licensed wholesaler.*** ~~[-No wholesaler may restrict the sale of souvenir packages to the distiller of origin exclusively, but shall make souvenir packages available to any Kentucky retail licensee licensed for the sale of distilled spirits by the package.]~~
- (7) Notwithstanding any provision of KRS 244.050 to the contrary, a distillery holding a sampling license may allow visitors to sample distilled spirits under the following conditions:
- (a) Sampling shall be permitted only on the licensed premises during regular business hours;
  - (b) A distillery shall not charge for the samples; and
  - (c) A distillery shall not provide more than one and three-fourths (1-3/4) ounces of samples per visitor per day.
- (8) Notwithstanding the provisions of KRS 243.110, in accordance with this section, a distillery located in wet territory or in any territory that has authorized the limited sale of alcoholic beverages under an election held pursuant to KRS 242.1243 may:
- (a) Hold an NQ2 retail drink license for the sale of alcoholic beverages on the distillery premises; and
  - (b) Employ persons to engage in the sale or service of alcohol under an NQ2 license, if each employee completes the department's Server Training in Alcohol Regulations program within thirty (30) days of beginning employment.
- (9) A distiller may sell to consumers at fairs, festivals, and other similar types of events located in wet territory alcoholic beverages by the drink, containing spirits distilled or bottled on the premises of the distillery.
- (10) A distiller may offer for sale in its gift shop products that were produced in collaboration with a brewer or microbrewer, except that:
- (a) These packages shall not be exclusive to the distiller's gift shop; and
  - (b) The distiller shall purchase the jointly branded souvenir package only from a licensed malt beverage distributor.
- (11) Except as expressly stated in this section, this section does not exempt the holder of a distiller's license from:
- (a) The provisions of KRS Chapters 241 to 244;
  - (b) The administrative regulations of the board; and
  - (c) Regulation by the board at all the distiller's licensed premises.
- (12) Nothing in this section shall be construed to vitiate the policy of this Commonwealth supporting an orderly three (3) tier system for the production and sale of alcoholic beverages.

➔Section 13. KRS 243.884 is amended to read as follows:

- (1) (a) For the privilege of making "wholesale sales" or "sales at wholesale" of beer, wine, or distilled spirits, a tax is hereby imposed upon all wholesalers of wine and distilled spirits, all distributors of beer, ***all direct shipper licensees shipping alcohol to a consumer at a Kentucky address, all distillers making sales pursuant to subsections (3)(b), (8), and (9) of Section 12 of this Act***, and all microbreweries selling malt beverages under KRS 243.157.
- (b) Prior to July 1, 2015, the tax shall be imposed at the rate of eleven percent (11%) of the gross receipts of any such wholesaler or distributor derived from "sales at wholesale" or "wholesale sales" made within the Commonwealth, except as provided in subsection (3) of this section. For the purposes of this section, the gross receipts of a microbrewery making "wholesale sales" shall be calculated by determining the dollar value amount that the microbrewer would have collected had it conveyed to a distributor the same volume sold to a consumer as allowed under KRS 243.157 (3)(b) and (c).
- (c) On and after July 1, 2015, the following rates shall apply:
  1. For distilled spirits, eleven percent (11%) of wholesale sales or sales at wholesale; and

2. For wine and beer:
  - a. Ten and three-quarters of one percent (10.75%) for wholesale sales or sales at wholesale made on or after July 1, 2015, and before June 1, 2016;
  - b. Ten and one-half of one percent (10.5%) for wholesale sales or sales at wholesale made on or after June 1, 2016, and before June 1, 2017;
  - c. Ten and one-quarter of one percent (10.25%) for wholesale sales or sales at wholesale made on or after June 1, 2017, and before June 1, 2018; and
  - d. Ten percent (10%) for wholesale sales or sales at wholesale made on or after June 1, 2018.
- (d) ***On and after the effective date of this Act, the following rates shall apply for direct shipper sales:***
  1. ***For distilled spirits shipments, eleven percent (11%) for wholesale sales or sales at wholesale; and***
  2. ***For wine and beer shipments, ten percent (10%) for wholesale sales or sales at wholesale.***
- (e) ***For direct shipper sales, if a wholesale price is not readily available, the direct shipper licensee shall calculate the wholesale price to be seventy percent (70%) of the retail price of the alcoholic beverages.***
- (2) Wholesalers of distilled spirits and wine, distributors of malt beverages, ~~and~~ microbreweries, ***distillers, and direct shipper licensees*** shall pay and report the tax levied by this section on or before the twentieth day of the calendar month next succeeding the month in which possession or title of the distilled spirits, wine, or malt beverages is transferred from the wholesaler or distributor to retailers, or by microbreweries, ***distillers, or direct shipper licensees*** to consumers in this state, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
- (3) Gross receipts from sales at wholesale or wholesale sales shall not include the following sales:
  - (a) Sales made between wholesalers or between distributors; ~~and~~
  - (b) Sales from the first fifty thousand (50,000) gallons of wine produced by a small farm winery in a calendar year made by:
    1. The small farm winery; or
    2. A wholesaler of that wine produced by the small farm winery; ***and***
  - (c) ***Sales made between a direct shipper licensee and a consumer located outside of Kentucky.***

➔Section 14. KRS 244.220 is amended to read as follows:

The prohibitions, restrictions and regulations relating to special licenses shall be those which the board may by its regulations and in the exercise of its sound discretion prescribe. ***For purposes of this section, a special license shall be one that is not set forth in KRS Chapters 241 to 244.***

➔Section 15. KRS 241.010 is amended to read as follows:

As used in KRS Chapters 241 to 244, unless the context requires otherwise:

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced;
- (2) "Alcoholic beverage" means every liquid, solid, powder, or crystal, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
  - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
  - (b) Patented, patent, and proprietary medicines;
  - (c) Toilet, medicinal, and antiseptic preparations and solutions;
  - (d) Flavoring extracts and syrups;
  - (e) Denatured alcohol or denatured rum;

- (f) Vinegar and preserved sweet cider;
  - (g) Wine for sacramental purposes; and
  - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use;
- (3) (a) "Alcohol vaporizing device" or "AWOL device" means any device, machine, or process that mixes liquor, spirits, or any other alcohol product with pure oxygen or by any other means produces a vaporized alcoholic product used for human consumption;
- (b) "Alcohol vaporizing device" or "AWOL device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication or a device installed and used by a licensee under this chapter to demonstrate the aroma of an alcoholic beverage;
- (4) "Automobile race track" means a facility primarily used for vehicle racing that has a seating capacity of at least thirty thousand (30,000) people;
- (5) "Bed and breakfast" means a one (1) family dwelling unit that:
- (a) Has guest rooms or suites used, rented, or hired out for occupancy or that are occupied for sleeping purposes by persons not members of the single-family unit;
  - (b) Holds a permit under KRS Chapter 219; and
  - (c) Has an innkeeper who resides on the premises or property adjacent to the premises during periods of occupancy;
- (6) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030;
- (7) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail;
- (8) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either alone or through an agent;
- (9) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept;
- (10) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership;
- (11) "Caterer" means a person operating a food service business that prepares food in a licensed and inspected commissary, transports the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to an agreed location, and serves the food and alcoholic beverages pursuant to an agreement with another person;
- (12) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes;
- (13) "Cider" means any fermented fruit-based beverage containing seven percent (7%) or more alcohol by volume and includes hard cider and perry cider;
- (14) "City administrator" means city alcoholic beverage control administrator;
- (15) "Commercial airport" means an airport through which more than five hundred thousand (500,000) passengers arrive or depart annually;
- (16) "Commercial quadricycle" means a vehicle equipped with a minimum of ten (10) pairs of fully operative pedals for propulsion by means of human muscular power exclusively and which:

- (a) Has four (4) wheels;
  - (b) Is operated in a manner similar to that of a bicycle;
  - (c) Is equipped with a minimum of thirteen (13) seats for passengers;
  - (d) Has a unibody design;
  - (e) Is equipped with a minimum of four (4) hydraulically operated brakes;
  - (f) Is used for commercial tour purposes; and
  - (g) Is operated by the vehicle owner or an employee of the owner;
- (17) "Commissioner" means the commissioner of the Department of Alcoholic Beverage Control;
- (18) "Consumer" means a person who purchases alcoholic beverages and who:
- (a) Does not hold a license or permit issued by the department;
  - (b) Purchases the alcoholic beverages for personal consumption only and not for resale;
  - (c) Is of lawful drinking age;
  - (d) Receives the alcoholic beverages at a location other than a licensed premises; and
  - (e) Receives the alcoholic beverages in territory where the alcoholic beverages may be lawfully sold or received;
- (19) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions;
- (20) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment;
- (21) "County administrator" means county alcoholic beverage control administrator;
- (22) "Department" means the Department of Alcoholic Beverage Control;
- (23) "Dining car" means a railroad passenger car that serves meals to consumers on any railroad or Pullman car company;
- (24) "Discount in the usual course of business" means price reductions, rebates, refunds, and discounts given by wholesalers to distilled spirits and wine retailers pursuant to an agreement made at the time of the sale of the merchandise involved and are considered a part of the sales transaction, constituting reductions in price pursuant to the terms of the sale, irrespective of whether the quantity discount was:
- (a) Prorated and allowed on each delivery;
  - (b) Given in a lump sum after the entire quantity of merchandise purchased had been delivered; or
  - (c) Based on dollar volume or on the quantity of merchandise purchased;
- (25) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages;
- (26) "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky;
- (27) "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse;
- (28) "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail;
- (29) "Dry" means a territory in which a majority of the electorate voted to prohibit all forms of retail alcohol sales through a local option election held under KRS Chapter 242;
- (30) "Election" means:



- (a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or
  - (b) Any other election not pertaining to alcohol;
- (31) "Horse racetrack" means a facility licensed to conduct a horse race meeting under KRS Chapter 230;
- (32) "Hotel" means a hotel, motel, or inn for accommodation of the traveling public, designed primarily to serve transient patrons;
- (33) "Investigator" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting licensees, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes;
- (34) "License" means any license issued pursuant to KRS Chapters 241 to 244;
- (35) "Licensee" means any person to whom a license has been issued, pursuant to KRS Chapters 241 to 244;
- (36) "Limited restaurant" means:
- (a) A facility where the usual and customary business is the preparation and serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its food and alcoholic beverage receipts from the sale of food, which maintains a minimum seating capacity of fifty (50) persons for dining, which has no open bar, which requires that alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a wet or moist territory under KRS 242.1244; or
  - (b) A facility where the usual and customary business is the preparation and serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its food and alcoholic beverage receipts from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons of dining, and which is located in a wet or moist territory under KRS 242.1244;
- (37) "Local administrator" means a city alcoholic beverage administrator, county alcoholic beverage administrator, or urban-county alcoholic beverage control administrator;
- (38) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and includes weak cider;
- (39) "Manufacture" means distill, rectify, brew, bottle, and operate a winery;
- (40) "Manufacturer" means a winery, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages;
- (41) "Minor" means any person who is not twenty-one (21) years of age or older;
- (42) "Moist" means a territory in which a majority of the electorate voted to permit limited alcohol sales by any one (1) or a combination of special limited local option elections authorized by KRS Chapter 242;
- (43) "Population" means the population figures established by the federal decennial census for a census year or the current yearly population estimates prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, for all other years;
- (44) "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998, shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license;
- (45) "Primary source of supply" or "supplier" means the distiller, winery, brewer, producer, owner of the commodity at the time it becomes a marketable product, bottler, or authorized agent of the brand owner. In the case of imported products, the primary source of supply means either the foreign producer, owner, bottler, or agent of the prime importer from, or the exclusive agent in, the United States of the foreign distiller, producer, bottler, or owner;

- (46) "Private club" means a nonprofit social, fraternal, military, or political organization, club, or nonprofit or for-profit entity maintaining or operating a club room, club rooms, or premises from which the general public is excluded;
- (47) "Public nuisance" means a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by a community or neighborhood or by any considerable number of persons;
- (48) "Qualified historic site" means:
- (a) A contributing property with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served within a commercial district listed in the National Register of Historic Places;
  - (b) A site that is listed as a National Historic Landmark or in the National Register of Historic Places with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served;
  - (c) A distillery which is listed as a National Historic Landmark and which conducts souvenir retail package sales under KRS 243.0305; or
  - (d) A not-for-profit or nonprofit facility listed on the National Register of Historic Places;
- (49) "Rectifier" means any person who rectifies, purifies, or refines distilled spirits, *malt*, or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name;
- (50) "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made;
- (51) "Restaurant" means a facility where the usual and customary business is the preparation and serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its food and alcoholic beverage receipts from the sale of food at the premises;
- (52) "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery or shipment to the consumer or not;
- (53) "Retail sale" means any sale of alcoholic beverages to a consumer, including those transactions taking place in person, electronically, online, by mail, or by telephone;
- (54) "Retailer" means any licensee who sells and delivers any alcoholic beverage to consumers, except for manufacturers with limited retail sale privileges and direct shipper licensees;
- (55) "Riverboat" means any boat or vessel with a regular place of mooring in this state that is licensed by the United States Coast Guard to carry one hundred (100) or more passengers for hire on navigable waters in or adjacent to this state;
- (56) "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage;
- (57) "Service bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar;
- (58) "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage;
- (59) "Small farm winery" means a winery whose wine production is not less than two hundred fifty (250) gallons and not greater than five hundred thousand (500,000) gallons in a calendar year;
- (60) "Souvenir package" means a special package of distilled spirits available from a licensed retailer that is:
- (a) Available for retail sale at a licensed Kentucky distillery where the distilled spirits were produced or bottled; or
  - (b) Available for retail sale at a licensed Kentucky distillery but produced or bottled at another of that distiller's licensed distilleries in Kentucky;

- (61) "State administrator" or "administrator" means the distilled spirits administrator or the malt beverages administrator, or both, as the context requires;
- (62) "State park" means a state park that has a:
- (a) Nine (9) or eighteen (18) hole golf course; or
  - (b) Full-service lodge and dining room;
- (63) "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar;
- (64) "Territory" means a county, city, district, or precinct;
- (65) "Urban-county administrator" means an urban-county alcoholic beverage control administrator;
- (66) "Valid identification document" means an unexpired, government-issued form of identification that contains the photograph and date of birth of the individual to whom it is issued;
- (67) "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages;
- (68) "Vintage distilled spirit" means a package or packages of distilled spirits that:
- (a) Are in their original manufacturer's unopened container;
  - (b) Are not owned by a distillery; and
  - (c) Are not otherwise available for purchase from a licensed wholesaler within the Commonwealth;
- (69) "Warehouse" means any place in which alcoholic beverages are housed or stored;
- (70) "Weak cider" means any fermented fruit-based beverage containing more than one percent (1%) but less than seven percent (7%) alcohol by volume;
- (71) "Wet" means a territory in which a majority of the electorate voted to permit all forms of retail alcohol sales by a local option election under KRS 242.050 or 242.125 on the following question: "Are you in favor of the sale of alcoholic beverages in (name of territory)?";
- (72) "Wholesale sale" means a sale to any person for the purpose of resale;
- (73) "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet;
- (74) "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. It includes sake, cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It does not include weak cider; and
- (75) "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded, except a place or premises that manufactures wine for sacramental purposes exclusively.

➔Section 16. KRS 243.120 is amended to read as follows:

- (1) A distiller's, rectifier's, or winery license shall authorize the licensee to engage in the business of distiller, rectifier, or winery at the premises specifically designated in the license, to maintain aging warehouses, and to transport for himself or herself only any alcoholic beverage which he or she is authorized under the license to manufacture or sell. The licensee shall transport alcoholic beverages only by a vehicle operated by himself or herself, which has affixed to its sides at all times a sign of form and size prescribed by the state board, containing among other things the name and license number of the licensee. ~~[No distilled spirits or wine shall be transported on the same truck or vehicle with malt beverages, except by a common carrier, unless the owner of the truck or vehicle holds a distributor's license.]~~
- (2) (a) The manufacture of distilled spirits at the distillery shall not be less than six hundred (600) gallons in one (1) year.

- (b) Distillers that produce more than fifty thousand (50,000) gallons of distilled spirits per calendar year at the premises shall obtain a distiller's license, Class A.
- (c) Distillers that produce fifty thousand (50,000) gallons or less of distilled spirits per calendar year at the premises shall obtain a distiller's license, Class B (craft distillery).
- (3) (a) Rectifiers that rectify more than fifty thousand (50,000) gallons of distilled spirits per calendar year at the premises shall obtain a rectifier's license, Class A.
- (b) Rectifiers that rectify fifty thousand (50,000) gallons or less of distilled spirits per calendar year at the premises shall obtain a rectifier's license, Class B (craft rectifier).
- (4) (a) A distiller that is located in wet territory, or in any precinct that has authorized the limited sale of alcoholic beverages at distilleries under KRS 242.1243, may sell distilled spirits by the drink or by the package at retail to consumers in accordance with KRS 243.0305.
- (b) Any distilled spirits sold under this subsection shall be taxed and distributed in the same manner as sales under KRS 243.0305(2).
- (c) Except as provided in this subsection, sales under this subsection shall be governed by all of the statutes and administrative regulations governing the retail sale of distilled spirits by the drink.
- (5) Nothing in this section shall be construed to:
  - (a) Vitate the policy of this Commonwealth supporting an orderly three (3) tier system for the production and sale of alcoholic beverages; or
  - (b) Allow delivery or shipment of alcohol into dry or moist territory.

➔Section 17. KRS 243.130 is amended to read as follows:

- (1) Sales and deliveries of distilled spirits and wine may be made at wholesale, and from the licensed premises only:
  - (a) By distillers to rectifiers, wineries, holders of special nonbeverage alcohol licenses so far as they may make the purchases, or other distillers;
  - (b) By rectifiers to wineries or to distillers if distilled spirits sold to distillers are packaged in retail containers;
  - (c) By wineries to rectifiers or other wineries, or to the holders of special nonbeverage alcohol licenses;
  - (d) By distillers, rectifiers, or wineries to wholesalers; or
  - (e) By distillers, rectifiers, or wineries for export out of the state.
- (2) No distiller, rectifier, or winery shall sell or contract to sell, give away, or deliver any alcoholic beverages to any person who is not authorized by the law of the state of the person's residence, and of the United States government if located in the United States, to receive and possess those alcoholic beverages. Except as provided in KRS 243.027 to 243.029 and KRS 243.0305, no distiller, rectifier, or winery shall sell or contract to sell, give away, or deliver any of its products to any retailer or consumer in Kentucky.
- (3) Employees of distillers, rectifiers, and wineries may sample the products produced by that manufacturer for purposes of education, quality control, and product development.
- (4) Distillers may purchase distilled spirits only from other licensed distillers in this state or in another state or province, but distillers may purchase from rectifiers licensed in Kentucky, distilled spirits which are packaged in retail containers.
- (5) Rectifiers may purchase *malt*, distilled spirits, and wine only from licensed *brewers*, distillers, or wineries in Kentucky, or from nonresident *brewers*, distillers, or wineries authorized by the law of the state of their residence and by the United States government, if the *brewers*, distillers, or wineries are located in *or outside* the United States, to make the sales.
- (6) Wineries may purchase distilled spirits or wine only from licensed distillers or wineries in Kentucky, or from nonresident distillers or wineries authorized by law of the state of their residence, and by the United States government if located in the United States, to make the sales.

- (7) Nothing shall prohibit the purchase or sale of warehouse receipts by any person, but this subsection does not authorize the owner of a warehouse receipt to accept delivery of any distilled spirits unless the owner is a person who is permitted by law to receive the distilled spirits.
- (8) Nothing in this section shall be construed to:
- (a) Vitate the policy of this Commonwealth supporting an orderly three (3) tier system for the production and sale of alcoholic beverages; or
  - (b) Allow delivery or shipment of alcohol into dry or moist territory.

➔Section 18. KRS 243.886 is amended to read as follows:

To reimburse himself for the cost of collecting and reporting the tax, each person required to pay and report the tax levied by KRS 243.884, other than a microbrewery *or a distiller*, shall deduct on each report one percent (1%) of the tax due, provided the amount due is not delinquent at the time of payment. A microbrewery *or distiller* that reports and pays the wholesale sales tax levied by KRS 243.884, in accordance with KRS 243.157 *or Section 12 of this Act as applicable*, shall not be entitled to deduct one percent (1%) of the tax due.

➔Section 19. KRS 243.100 is amended to read as follows:

An individual shall not become a licensee if the individual:

- (1)
  - (a) Has been convicted of any felony until five (5) years have passed from the date of conviction, release from custody or incarceration, parole, or termination of probation, whichever is later;
  - (b) Has been convicted of any misdemeanor involving a controlled substance that is described in or classified pursuant to KRS Chapter 218A in the two (2) years immediately preceding the application;
  - (c) Has been convicted of any misdemeanor directly or indirectly attributable to the use of alcoholic beverages in the two (2) years immediately preceding the application;
  - (d) Is under the age of twenty-one (21) years; or
  - (e) Has had any license relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any statute within KRS Chapters 241 to 244, until the expiration of two (2) years from the date of the revocation or conviction.
- (2) A partnership, limited partnership, limited liability company, corporation, governmental agency, or other business entity recognized by law shall not be licensed if:
  - (a) Each principal owner, partner, member, officer, and director does not qualify under subsection (1)(a), (b), (c), (d), and (e) of this section;
  - (b) It has had any license relating to the regulation of the manufacture, sale, and transportation of alcoholic beverages revoked for cause or has been convicted of a violation of any statute within KRS Chapters 241 to 244, until the expiration of two (2) years from the date of the revocation or conviction; or
  - (c) Any principal owner, partner, member, officer, or director, or any business entity in which they were directly or indirectly interested, has had any license revoked for cause or has been convicted of a violation of any statute within KRS Chapters 241 to 244, until the expiration of the later of two (2) years from the date of the revocation or two (2) years from the date of conviction.
- (3) The provisions of subsection (1)(a) and (b) shall apply to anyone applying for a new license under this chapter after July 15, 1998, but shall not apply to those who renew a license that was originally issued prior to July 15, 1998, or an application for a supplemental license where the original license was issued prior to July 15, 1998.
- (4) A person shall not evade license disqualification by applying for a license through or under the name of a different person. The state administrators shall examine the ownership, membership, and management of all license applicants, and shall deny the application if a disqualified person has a direct or indirect interest in the applicant's business. The department may issue administrative subpoenas and summonses to determine ownership of an applicant or to investigate alleged violations by a licensee.
- (5) *A direct shipper license applicant shall be exempt from the requirements of this section, and shall instead follow the requirements set forth in Section 1 of this Act.*

➔Section 20. KRS 243.240 is amended to read as follows:

- (1) A quota retail package license shall authorize the licensee to:

- (a) Purchase, receive, possess, and sell distilled spirits and wine at retail in unbroken packages only, and only for consumption off the licensed premises; and
  - (b) Deliver to the consumer, at the consumer's request, alcoholic beverages that are purchased from the licensed premises, in quantities not to exceed four and one-half (4 1/2) liters of distilled spirits and four (4) cases of wine per consumer per day for sales prior to January 1, 2021, and in quantities not to exceed an aggregate of nine (9) liters of distilled spirits and four (4) cases of wine per consumer per day on and after January 1, 2021.
- (2) The licensee shall purchase distilled spirits and wine in retail packages only and only from:
- (a) Licensed wholesalers;~~[-or]~~
  - (b) Those licensees authorized to sell distilled spirits and wine by the package at retail, but only if the distilled spirits and wine have first gone through the three (3) tier system; **or**
  - (c) ***From a distillery souvenir gift shop.***

→Section 21. Whereas the need for adequate and appropriate licensing, taxation, and regulation of direct shipments of alcohol into the state is of the utmost importance, and whereas licensees may find themselves subject to discipline if these issues are not addressed immediately, an emergency is declared to exist and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor March 12, 2021.**

## CHAPTER 14

### ( HB 6 )

AN ACT relating to legislative oversight and declaring an emergency.

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

→Section 1. KRS 6.900 is amended to read as follows:

As used in KRS ~~6.900~~~~[6.905]~~ to 6.935:

- (1) "Committee" means the Legislative ***Oversight***~~[Program Review]~~ and Investigations Committee;
- (2) "Investigation" means an inquiry into possible acts of impropriety in the use of public funds or performance of public duty by~~[-an elected or appointed state official or a state employee or contractor]~~ ***a person***;
- (3) ***"Person" means:***
  - (a) ***A current or former elected or appointed state official;***
  - (b) ***A state agency;***
  - (c) ***A current or former state employee;***
  - (d) ***A contractor who has responded to a request for proposal by a state agency, including those offered under KRS Chapter 45A;***
  - (e) ***An individual or entity responding to a request for contract by a state agency, including a personal service contract; or***
  - (f) ***Any private individual or entity doing business with anyone listed in paragraphs (a) to (e) of this subsection;***
- (4) "Review" means a noninvestigative study of the operation, accomplishments, management, or activities of an agency or program and includes procedures such as fiscal audit, program/performance evaluation, program audit, management audit, policy analysis, or other related terms;
- ~~(5)(4)~~ "Study" means any investigation or review initiated or undertaken by the committee; and
- ~~(6)(5)~~ "State agency" means:

- (a) Any entity, including multijurisdictional organization or interagency entities, created by the Constitution of Kentucky, by an act of the General Assembly, or by any of the branches of state government or any of its subdivisions, instrumentalities, or affiliated organizations, or by any employee or official acting in his official capacity;
- (b) Any entity which receives any part of its funding or resources from state tax dollars, from funds or resources entrusted to the Commonwealth from other sources, or from fines, fees, licensing, or penalties authorized by state statute or administrative regulation;
- (c) Any entity which is federally funded and for which the Commonwealth of Kentucky is responsible for the oversight or expenditures of the federal resources;
- (d) That portion of a public or private entity which receives or has received resources, such as funds, equipment, property, supplies, or services, directly or indirectly from the Commonwealth of Kentucky; and
- (e) That portion of a public or private entity related to the delivery of services to or for the Commonwealth of Kentucky or an entity of the Commonwealth as defined in paragraph (a), (b), (c), or (d) of this subsection.

➔Section 2. KRS 6.905 is amended to read as follows:

- (1) There is created a Legislative ***Oversight*** ~~[Program Review]~~ and Investigations Committee which shall be a permanent standing committee of the General Assembly, consisting of eight (8) members of the Senate, six (6) of whom shall be appointed by the President and two (2) of whom shall be appointed by the Minority Leader of the Senate, and eight (8) members of the House of Representatives, six (6) of whom shall be appointed by the Speaker and two (2) of whom shall be appointed by the Minority Leader of the House of Representatives. At least one (1) appointee by each appointive authority shall be a member of the Senate or House Standing Committee on Appropriations and Revenue. ~~[The appointments shall be made within seven (7) legislative days of the end of each regular session of the General Assembly held in even numbered years, and the members so appointed shall serve for a term of two (2) years coextensive with the biennium in which the appointment is made. Vacancies shall be filled within sixty (60) days of occurrence in the same manner as the original appointments, and for the balance of the term of the vacated member.]~~
- (2) ~~The President and the Speaker shall each appoint a~~ ~~[members appointed from each chamber shall elect one (1) member from their chamber to serve as]~~ ***co-chair and vice chair from their respective bodies.*** ~~[Co-chairs shall be elected at the first meeting of the committee following the end of the regular session in even numbered years.]~~ The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. A majority of the entire membership of the Legislative ***Oversight*** ~~[Program Review]~~ and Investigations Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership.
- (3) ~~[When a study is instituted, the committee shall request that the Legislative Research Commission appoint the co-chairs and two (2) minority members from the interim joint committee of relevant jurisdiction to serve as nonvoting ex officio members of the committee in activities related to the relevant study. One (1) of the minority members shall be a member of the House of Representatives designated by the House Minority Floor Leader and the other minority member shall be a member of the Senate designated by the Senate Minority Floor Leader.]~~
- (4) ~~Each~~ ~~[regular and nonvoting ex officio]~~ member of the committee shall receive the same travel allowances and compensation for attending interim meetings of the committee as are received by members of subcommittees of the Legislative Research Commission under KRS 7.090(3).

➔Section 3. KRS 6.910 is amended to read as follows:

~~[The committee shall have the power and duty to:]~~

- (1) ***The purpose of the Legislative Oversight and Investigations Committee shall be to serve as the main investigative committee in the General Assembly. The committee shall have the authority to investigate the subjects within the committee's legislative jurisdiction and within the jurisdiction of other standing or statutory committees of the General Assembly.***
- (2) ***The committee shall have the discretionary power to:***

- (a) Make studies of the operations of state agencies to ascertain that sums appropriated have been, or are being, expended for the purposes for which such appropriations were made and to evaluate the effectiveness of programs in accomplishing legislative intent;
- (b)~~(2)~~ Study on a continuing basis the operations, practices, and duties of state agencies, as they relate to efficiency in the utilization of space, personnel, equipment, and facilities;
- (c)~~(3)~~ Make such special studies and reports of the operations and functions of state agencies as it deems appropriate and as may be requested by the General Assembly;
- (d)~~(4)~~ Make such reports on its findings and recommendations at such time and in such manner as the committee deems proper, submitting such reports to the agencies concerned, to the Governor and to the General Assembly. Such reports shall relate to the following matters:
- 1.~~(a)~~ Whether any state agency is carrying out only those activities or programs authorized by legal or administrative action; or
  - 2.~~(b)~~ Whether the programs and activities of a state agency, or a particular program or activity is being operated efficiently, effectively, or in accordance with legislative or administrative intent; or
  - 3.~~(c)~~ Whether there is a need for change in any authorized activity or program of a state agency; or
  - 4.~~(d)~~ Whether any reorganization of a state agency, or group of state agencies, is needed or justified to accomplish the results of programs or activities; or
  - 5.~~(e)~~ Any combination of the purposes specified in this or any other section of KRS ~~6.900~~~~6.905~~ to 6.935;~~;~~
- (e)~~(5)~~ **Treat** information obtained or prepared by the committee or its staff ~~shall be treated~~ as confidential working papers subject to release according to the operating rules and procedures adopted by the committee, **and such information shall be exempt from the open records requirements contained in KRS 61.870 to 61.884.** The committee may close certain ~~planning~~ meetings and project briefings to protect research **pursuant to KRS 61.805 to 61.850,** ~~and~~ to allow the exchange of confidential materials, **and information, to protect the identity of witnesses, when necessary, and to protect the integrity of the study.** Any information protected by ~~confidentiality agreements or~~ federal, ~~state, or local~~ laws shall not be subject to public release;~~;~~
- (f)~~(6)~~ Consider and act on requests for studies submitted by legislators, legislative committees, elected officials of state government, state cabinet secretaries, and department and agency heads. Requests shall be submitted in writing and shall state reasons to support the request. The decision of the committee to grant or deny such a request shall be final;
- (g) **Review any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction or the jurisdiction of any standing or statutory committee;**
- (h) **Evaluate the effect of laws enacted to reorganize any branch of state government;**
- (i)~~(7)~~ Conduct studies directed by joint resolution of the General Assembly;
- (j)~~(8)~~ When the General Assembly is not in session, conduct studies:
- 1.~~(a)~~ Initiated by **joint agreement** ~~a majority vote~~ of the **co-chairs** ~~committee~~~~;~~ ~~or~~
  - 2.~~(b)~~ **Initiated by a majority vote of the committee; or**
  3. Requested by the Legislative Research Commission or an interim joint committee thereof. In the event two (2) or more studies are requested, the priority among them shall be determined by the committee;~~;~~
- (k)~~(9)~~ **After** ~~Before~~ voting to undertake a review under ~~subsection~~ **paragraph (j)(1.)**~~(8)(a)~~ of this ~~subsection~~~~section~~, the committee shall notify the **chair** ~~chairman~~ of the committee of relevant jurisdiction ~~for his comment~~~~;~~
- (l)~~(10)~~ **To determine if a witness should be prosecuted for perjury by testifying falsely before the committee, and to institute appropriate penal proceedings as provided by law. Any finding under this paragraph shall require a majority vote of the committee; and** ~~The committee shall notify the Legislative Research Commission periodically of the committee's activities, and at any time a new~~



~~study is to commence. Any study conducted by the committee shall be deemed within its lawful duties and jurisdiction unless notified to the contrary by the Legislative Research Commission.]~~

- (m) **Conduct a study of any matter without regard to jurisdiction of the matter being conferred to another statutory or standing committee.**
- (3) **Each witness who appears before the committee by its subpoena or order, other than an officer or employee of the state, shall be entitled to the fees and mileage provided for witnesses in civil cases in Circuit Court, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witnesses and approved by the chair of the committee.**
- (4) **The committee may issue subpoenas to compel the attendance and testimony of witnesses or the production of documents, books, papers, or other records. Subpoenas may be issued by agreement of the co-chairs or by a vote of the majority of the members of the committee and shall be served in the same manner as subpoenas for witnesses in civil cases. All provisions of law relative to subpoenas issued in such cases, including compensation of witnesses, shall apply to subpoenas issued by the committee.**

→Section 4. KRS 6.922 is amended to read as follows:

Beginning in 2014 the Legislative ~~Program Review~~ **Oversight** and Investigations Committee of the Kentucky General Assembly shall conduct an annual evaluation of the external child fatality and near fatality review panel established pursuant to KRS 620.055 to monitor the operations, procedures, and recommendations of the panel and shall report its findings to the General Assembly.

→Section 5. KRS 6.925 is amended to read as follows:

When making a study, the committee may require that testimony be given under oath, which may be administered by the chairman or by any person authorized by law to administer oaths. The committee may require that such testimony or any proceedings of the committee be recorded by an official court reporter or other competent person, under oath. The transcript, when written, certified and approved by the recorder and transcriber as being the direct transcript of the testimony, or proceedings, shall be prima facie a correct statement of said testimony or proceedings provided that the recorder and transcriber's signature to such certificate is duly acknowledged by him before a notary public or a judicial official of the Commonwealth.

→Section 6. KRS 6.930 is amended to read as follows:

- (1) ~~[In any instance in which a study conducted by or for ]~~The committee ~~may [cite inadequate operating or administrative systems controls or procedures, inaccuracies, waste, extravagance, unauthorized or unintended activities or programs, or other deficiencies, the committee shall]~~ report **its findings** ~~[such deficiencies]~~ and ~~its]~~ recommendations ~~[for their correction]~~ to the head of the state agency or program and the secretary of the cabinet to which the report pertains.
- (2) The secretary of the cabinet ~~or and]~~ the head of the state agency or program to which the report pertains shall give affirmative consideration to the report within sixty (60) days of the adoption of the report by:
- (a) Adopting the committee's recommendations and reporting their actions to the committee; or
- (b) Otherwise correcting the deficiency and reporting their actions, and the reasons for not adopting the committee's recommendations, to the committee.
- (3) If no corrective action is taken by the secretary of the cabinet or by the head of the state agency or program in response to a committee report under subsections (1) and (2) of this section, or if the committee deems the corrective action taken to be unsuitable, the committee ~~may [shall]~~ report the matter to the General Assembly, together with its recommendations.
- (4) The committee ~~may [shall]~~ report the results of each of its studies, including the committee's recommendations for any further action, to the General Assembly.
- (5) **The committee may report any matter under its study to any law enforcement agency, the Auditor of Public Accounts, or any other state official having jurisdiction over the matter for investigation. If a matter is referred under this subsection, the law enforcement agency, Auditor of Public Accounts, or other state official with jurisdiction over the matter shall make a report to the committee with its findings within thirty (30) days of completion of the investigation.**

→Section 7. KRS 6.935 is amended to read as follows:

- (1) The Attorney General, or an assistant attorney general designated by him, the Auditor of Public Accounts, cabinet secretaries, and the heads of other state agencies shall assist the Legislative ~~Program Review~~ **Oversight** and Investigations Committee in whatever manner the ~~co-chairs deem~~ **committee deems** that these officials can be helpful.
- (2) Staffing and support services shall be provided *to* the Legislative ~~Program Review~~ **Oversight** and Investigations Committee pursuant to KRS 7.090.

➔SECTION 8. A NEW SECTION OF KRS 6.900 TO 6.935 IS CREATED TO READ AS FOLLOWS:

- (1) *Any witness who fails to comply with a subpoena issued pursuant to Section 3 of this Act may be fined by the committee an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000). The committee shall have the authority to enforce compliance with subpoenas, including holding the noncompliant witness in contempt of the General Assembly which includes any action that could be taken by a Circuit Court to enforce compliance with a subpoena issued pursuant to the authority of a Kentucky Court of Justice. Upon petition by the committee, any Circuit Court within the jurisdiction of which any inquiry is being carried on or having jurisdiction over the witness may, in case of refusal to obey a subpoena or order of the committee, issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as contempt thereof in addition to any other duly authorized punishment.*
- (2) *The Circuit Court shall render a final judgement within forty-five (45) days from the date:*
  - (a) *When the petition was filed by the committee; or*
  - (b) *Of the commencement of any action or motion by any witness seeking to quash or otherwise resist compliance with a subpoena issued by the committee.*

➔Section 9. KRS 12.028 is amended to read as follows:

- (1) Recognizing the necessity for grouping related functions of organizational units and administrative bodies in order to promote greater economy, efficiency and improved administration, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers may propose to the General Assembly, for its approval, changes in the state government organizational structure which may include the creation, alteration or abolition of any organizational unit or administrative body and the transfer of functions, personnel, funds, equipment, facilities, and records from one (1) organizational unit or administrative body to another.
- (2) Recognizing that changes in the state government organizational structure may need to be made as rapidly as possible to achieve greater economy, efficiency, and improved administration as the needs of government dictate, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers may, between sessions of the General Assembly, temporarily effect a change in the state government organizational structure as described in subsection (1) of this section if such temporary reorganization plan is first reviewed by the interim joint legislative committee with appropriate jurisdiction. The Governor may not effect a temporary reorganization plan under this subsection that would change the organizational structure of an organizational unit or administrative body headed by the Kentucky Economic Development Partnership as created in KRS 154.10-010, or another elected state executive officer unless requested in writing by that officer. An elected state executive officer other than the Governor may only change the organizational structure of an organizational unit or administrative body that he heads.
- (3) Any reorganization proposed under subsection (1) or (2) of this section shall be set forth in a reorganization plan which shall be filed with the Legislative Research Commission. The plan shall include:
  - (a) An explanation of each proposed change, including the need for the change;
  - (b) An estimate of any reduction or increase in expenditures, itemized as far as practicable, which the promulgating officer expects will result from the reorganization;
  - (c) A description of any improvements in the management, delivery of state services, and efficiency of state government operations which the promulgating officer expects will be realized as a result of the reorganization; and
  - (d) Specification of the effects of the reorganization on the budget and personnel of each affected organizational unit or administrative body, including but not limited to the amount of funds and the number of employees that will be transferred from one (1) organizational unit or administrative body to

another, any reductions in the state workforce resulting from the reorganization, and the methods to be utilized to achieve such reductions.

- (4) When a proposed reorganization plan is submitted for review under subsection (2) of this section the presiding co-chairman of the Legislative Research Commission shall determine which interim joint legislative committee has appropriate jurisdiction and shall refer the plan to such committee within ten (10) days after the director of the Legislative Research Commission receives the proposal. The interim joint legislative committee to which it is referred shall review the plan to determine whether the plan can reasonably be expected to achieve greater economy, efficiency or improved administration in state government. The committee shall report its findings to the Legislative Research Commission. The committee shall review and report on the plan within sixty (60) days after it is filed with the Legislative Research Commission. If the committee does not report on a proposed plan within the time specified in this subsection, the plan shall be considered reviewed by the interim joint legislative committee with appropriate jurisdiction.
- (5) A temporary reorganization effected under subsections (2) to (4) of this section shall be terminated ninety (90) days after sine die adjournment of the next regular session of the General Assembly unless otherwise specified by the General Assembly. The Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, or other officer who promulgated a temporary reorganization plan under this section shall recommend legislation to the General Assembly to confirm the temporary reorganization plan. The subject matter of each executive order relating to reorganization shall be presented to the General Assembly in a separate bill. If the General Assembly fails to enact the temporary reorganization plan or an alternative to such plan, the organizational structure that existed immediately prior to the implementation of the temporary plan shall be reinstated upon the termination of the temporary plan. If the General Assembly fails to enact a temporary reorganization plan, the Governor, the Kentucky Economic Development Partnership as created in KRS 154.10-010, and other elected state executive officers shall not effect the plan prior to the next succeeding session of the General Assembly.
- (6) The Legislative Research Commission or the **Legislative Oversight**~~legislative program review~~ and **Investigations Committee**~~investigations committee~~ may monitor the implementation of any reorganization plan to determine the extent to which the anticipated improvements in economy, efficiency, or administration have been realized as a result of the reorganization and shall report its findings to the General Assembly.
- (7) Funds transferred due to reorganization shall be maintained in separately designated accounts. Any excess funds resulting from a reorganization shall lapse to the general fund surplus account.

➔Section 10. KRS 620.055 is amended to read as follows:

- (1) An external child fatality and near fatality review panel is hereby created and established for the purpose of conducting comprehensive reviews of child fatalities and near fatalities, reported to the Cabinet for Health and Family Services, suspected to be a result of abuse or neglect. The panel shall be attached to the Justice and Public Safety Cabinet for staff and administrative purposes.
- (2) The external child fatality and near fatality review panel shall be composed of the following five (5) ex officio nonvoting members and fifteen (15) voting members:
  - (a) The chairperson of the House Health and Welfare Committee of the Kentucky General Assembly, who shall be an ex officio nonvoting member;
  - (b) The chairperson of the Senate Health and Welfare Committee of the Kentucky General Assembly, who shall be an ex officio nonvoting member;
  - (c) The commissioner of the Department for Community Based Services, who shall be an ex officio nonvoting member;
  - (d) The commissioner of the Department for Public Health, who shall be an ex officio nonvoting member;
  - (e) A family court judge selected by the Chief Justice of the Kentucky Supreme Court, who shall be an ex officio nonvoting member;
  - (f) A pediatrician from the University of Kentucky's Department of Pediatrics who is licensed and experienced in forensic medicine relating to child abuse and neglect to be selected by the Attorney General from a list of three (3) names provided by the dean of the University of Kentucky School of Medicine;
  - (g) A pediatrician from the University of Louisville's Department of Pediatrics who is licensed and experienced in forensic medicine relating to child abuse and neglect to be selected by the Attorney

- General from a list of three (3) names provided by the dean of the University of Louisville School of Medicine;
- (h) The state medical examiner or designee;
  - (i) A court-appointed special advocate (CASA) program director to be selected by the Attorney General from a list of three (3) names provided by the Kentucky CASA Association;
  - (j) A peace officer with experience investigating child abuse and neglect fatalities and near fatalities to be selected by the Attorney General from a list of three (3) names provided by the commissioner of the Kentucky State Police;
  - (k) A representative from Prevent Child Abuse Kentucky, Inc. to be selected by the Attorney General from a list of three (3) names provided by the president of the Prevent Child Abuse Kentucky, Inc. board of directors;
  - (l) A practicing local prosecutor to be selected by the Attorney General;
  - (m) The executive director of the Kentucky Domestic Violence Association or the executive director's designee;
  - (n) The chairperson of the State Child Fatality Review Team established in accordance with KRS 211.684 or the chairperson's designee;
  - (o) A practicing social work clinician to be selected by the Attorney General from a list of three (3) names provided by the Board of Social Work;
  - (p) A practicing addiction counselor to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Association of Addiction Professionals;
  - (q) A representative from the family resource and youth service centers to be selected by the Attorney General from a list of three (3) names submitted by the Cabinet for Health and Family Services;
  - (r) A representative of a community mental health center to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Association of Regional Mental Health and Mental Retardation Programs, Inc.;
  - (s) A member of a citizen foster care review board selected by the Chief Justice of the Kentucky Supreme Court; and
  - (t) An at-large representative who shall serve as chairperson to be selected by the Secretary of State.
- (3) (a) By August 1, 2013, the appointing authority or the appointing authorities, as the case may be, shall have appointed panel members. Initial terms of members, other than those serving ex officio, shall be staggered to provide continuity. Initial appointments shall be: five (5) members for terms of one (1) year, five (5) members for terms of two (2) years, and five (5) members for terms of three (3) years, these terms to expire, in each instance, on June 30 and thereafter until a successor is appointed and accepts appointment.
  - (b) Upon the expiration of these initial staggered terms, successors shall be appointed by the respective appointing authorities, for terms of two (2) years, and until successors are appointed and accept their appointments. Members shall be eligible for reappointment. Vacancies in the membership of the panel shall be filled in the same manner as the original appointments.
  - (c) At any time, a panel member shall recuse himself or herself from the review of a case if the panel member believes he or she has a personal or private conflict of interest.
  - (d) If a voting panel member is absent from two (2) or more consecutive, regularly scheduled meetings, the member shall be considered to have resigned and shall be replaced with a new member in the same manner as the original appointment.
  - (e) If a voting panel member is proven to have violated subsection (13) of this section, the member shall be removed from the panel, and the member shall be replaced with a new member in the same manner as the original appointment.
- (4) The panel shall meet at least quarterly and may meet upon the call of the chairperson of the panel.
  - (5) Members of the panel shall receive no compensation for their duties related to the panel, but may be reimbursed for expenses incurred in accordance with state guidelines and administrative regulations.

- (6) Each panel member shall be provided copies of all information set out in this subsection, including but not limited to records and information, upon request, to be gathered, unredacted, and submitted to the panel within thirty (30) days by the Cabinet for Health and Family Services from the Department for Community Based Services or any agency, organization, or entity involved with a child subject to a fatality or near fatality:
- (a) Cabinet for Health and Family Services records and documentation regarding the deceased or injured child and his or her caregivers, residents of the home, and persons supervising the child at the time of the incident that include all records and documentation set out in this paragraph:
    - 1. All prior and ongoing investigations, services, or contacts;
    - 2. Any and all records of services to the family provided by agencies or individuals contracted by the Cabinet for Health and Family Services; and
    - 3. All documentation of actions taken as a result of child fatality internal reviews conducted pursuant to KRS 620.050(12)(b);
  - (b) Licensing reports from the Cabinet for Health and Family Services, Office of Inspector General, if an incident occurred in a licensed facility;
  - (c) All available records regarding protective services provided out of state;
  - (d) All records of services provided by the Department for Juvenile Justice regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident;
  - (e) Autopsy reports;
  - (f) Emergency medical service, fire department, law enforcement, coroner, and other first responder reports, including but not limited to photos and interviews with family members and witnesses;
  - (g) Medical records regarding the deceased or injured child, including but not limited to all records and documentation set out in this paragraph:
    - 1. Primary care records, including progress notes; developmental milestones; growth charts that include head circumference; all laboratory and X-ray requests and results; and birth record that includes record of delivery type, complications, and initial physical exam of baby;
    - 2. In-home provider care notes about observations of the family, bonding, others in home, and concerns;
    - 3. Hospitalization and emergency department records;
    - 4. Dental records;
    - 5. Specialist records; and
    - 6. All photographs of injuries of the child that are available;
  - (h) Educational records of the deceased or injured child, or other children residing in the home where the incident occurred, including but not limited to the records and documents set out in this paragraph:
    - 1. Attendance records;
    - 2. Special education services;
    - 3. School-based health records; and
    - 4. Documentation of any interaction and services provided to the children and family.

The release of educational records shall be in compliance with the Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g and its implementing regulations;
  - (i) Head Start records or records from any other child care or early child care provider;
  - (j) Records of any Family, Circuit, or District Court involvement with the deceased or injured child and his or her caregivers, residents of the home and persons involved with the child at the time of the incident that include but are not limited to the juvenile and family court records and orders set out in this paragraph, pursuant to KRS Chapters 199, 403, 405, 406, and 600 to 645:
    - 1. Petitions;

2. Court reports by the Department for Community Based Services, guardian ad litem, court-appointed special advocate, and the Citizen Foster Care Review Board;
  3. All orders of the court, including temporary, dispositional, or adjudicatory; and
  4. Documentation of annual or any other review by the court;
- (k) Home visit records from the Department for Public Health or other services;
  - (l) All information on prior allegations of abuse or neglect and deaths of children of adults residing in the household;
  - (m) All law enforcement records and documentation regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident; and
  - (n) Mental health records regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident.
- (7) The panel may seek the advice of experts, such as persons specializing in the fields of psychiatric and forensic medicine, nursing, psychology, social work, education, law enforcement, family law, or other related fields, if the facts of a case warrant additional expertise.
  - (8) The panel shall post updates after each meeting to the Web site of the Justice and Public Safety Cabinet regarding case reviews, findings, and recommendations.
  - (9) The panel chairperson, or other requested persons, shall report a summary of the panel's discussions and proposed or actual recommendations to the Interim Joint Committee on Health and Welfare of the Kentucky General Assembly monthly or at the request of a committee co-chair. The goal of the committee shall be to ensure impartiality regarding the operations of the panel during its review process.
  - (10) The panel shall publish an annual report by December 1 of each year consisting of case reviews, findings, and recommendations for system and process improvements to help prevent child fatalities and near fatalities that are due to abuse and neglect. The report shall be submitted to the Governor, the secretary of the Cabinet for Health and Family Services, the Chief Justice of the Supreme Court, the Attorney General, and the director of the Legislative Research Commission for distribution to the Child Welfare Oversight and Advisory Committee established in KRS 6.943 and the Judiciary Committee.
  - (11) Information and record copies that are confidential under state or federal law and are provided to the external child fatality and near fatality review panel by the Cabinet for Health and Family Services, the Department for Community Based Services, or any agency, organization, or entity for review shall not become the information and records of the panel and shall not lose their confidentiality by virtue of the panel's access to the information and records. The original information and records used to generate information and record copies provided to the panel in accordance with subsection (6) of this section shall be maintained by the appropriate agency in accordance with state and federal law and shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. All open records requests shall be made to the appropriate agency, not to the external child fatality and near fatality review panel or any of the panel members. Information and record copies provided to the panel for review shall be exempt from the Kentucky Open Records Act, KRS 61.870 to 61.884. At the conclusion of the panel's examination, all copies of information and records provided to the panel involving an individual case shall be destroyed by the Justice and Public Safety Cabinet.
  - (12) Notwithstanding any provision of law to the contrary, the portions of the external child fatality and near fatality review panel meetings during which an individual child fatality or near fatality case is reviewed or discussed by panel members may be a closed session and subject to the provisions of KRS 61.815(1) and shall only occur following the conclusion of an open session. At the conclusion of the closed session, the panel shall immediately convene an open session and give a summary of what occurred during the closed session.
  - (13) Each member of the external child fatality and near fatality review panel, any person attending a closed panel session, and any person presenting information or records on an individual child fatality or near fatality shall not release information or records not available under the Kentucky Open Records Act, KRS 61.870 to 61.884 to the public.
  - (14) A member of the external child fatality and near fatality review panel shall not be prohibited from making a good faith report to any state or federal agency of any information or issue that the panel member believes should be reported or disclosed in an effort to facilitate effectiveness and transparency in Kentucky's child protective services.

- (15) A member of the external child fatality and near fatality review panel shall not be held liable for any civil damages or criminal penalties pursuant to KRS 620.990 as a result of any action taken or omitted in the performance of the member's duties pursuant to this section and KRS 620.050, except for violations of subsection (11), (12), or (13) of this section.
- (16) Beginning in 2014 the Legislative ~~Oversight Program Review~~ and Investigations Committee of the Kentucky General Assembly shall conduct an annual evaluation of the external child fatality and near fatality review panel established pursuant to this section to monitor the operations, procedures, and recommendations of the panel and shall report its findings to the General Assembly.

→Section 11. Whereas the General Assembly's role in financial oversight is vital to the efficient operation of state government, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Became law without Govenor's signature March 12, 2021.**

## CHAPTER 15

### ( HB 50 )

AN ACT relating to mental health parity.

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

→Section 1. KRS 304.17A-660 is amended to read as follows:

As used in KRS 304.17A-660 to 304.17A-669, unless the context requires otherwise:

- (1) **"Classification of benefits" means the classification of benefits set forth in 45 C.F.R. sec. 146.136(c)(2)(ii)(A);**
- (2) "Mental health condition" means any condition or disorder that involves mental illness or substance use disorder as defined in KRS 222.005 and that falls under any of the diagnostic categories listed in the **most recent version of the** Diagnostic and Statistical Manual of Mental Disorders ~~[(Fourth Edition)]~~ or that is listed in the mental disorders section of the **most recent version of the** International Classification of Disease ~~[or the most recent subsequent editions];~~
- ~~(3)(2)~~ **"Nonquantitative treatment limitation" means any limitation that is not expressed numerically but otherwise limits the scope or duration of benefits for treatment;**
- (4) "Terms or conditions" includes day or visit limits, episodes of care, any lifetime or annual payment limits, deductibles, copayments, prescription coverage, coinsurance, out-of-pocket limits, and any other cost-sharing requirements; and
- ~~(5)(3)~~ "Treatment of a mental health condition" includes but is not limited to any necessary outpatient, inpatient, residential, partial hospitalization, day treatment, emergency detoxification, or crisis stabilization services.

→Section 2. KRS 304.17A-661 is amended to read as follows:

- (1) Notwithstanding any other provision of law:~~;~~
  - (a) **1.** A health benefit plan issued or renewed **on or after the effective date of this Act** ~~[July 14, 2000]~~, that provides coverage for treatment of a mental health condition shall provide coverage of any treatment ~~of for~~ a mental health condition under ~~[the same]~~ terms or conditions **that are no more restrictive than the terms or conditions** ~~[as]~~ provided for treatment of a physical health condition.
    - ~~2.(2)~~ Expenses for mental health and physical health conditions shall be combined for purposes of meeting deductible and out-of-pocket limits required under a health benefit plan.
    - ~~3.(3)~~ A health benefit plan that does not otherwise provide for management of care under the plan or that does not provide for the same degree of management of care for all health or mental health

conditions may provide coverage for treatment of mental health conditions through a managed care organization;†

~~(4) For the purposes of a health benefit plan issued or renewed on or after July 14, 2000, any mental health condition that is excluded from the standard health benefit plan authorized by KRS 304.17A-250 and in effect on January 1, 2000, may continue as an exclusion under this section.]~~

*(b) With respect to mental health condition benefits in any classification of benefits, a health benefit plan required to comply with paragraph (a) of this subsection shall not impose:*

- 1. A nonquantitative treatment limitation that does not apply to medical and surgical benefits in the same classification; and*
- 2. Medical necessity criteria or a nonquantitative treatment limitation unless, under the terms of the plan, as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the criteria or limitation to mental health condition benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the criteria or limitation to medical and surgical benefits in the same classification; and*

*(c) Paragraph (b) of this subsection shall be construed to require, at a minimum, compliance with the requirements for nonquantitative treatment limitations set forth in the Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. sec. 300gg-26, as amended, and any related federal regulations, as amended, including but not limited to 45 C.F.R. sec. 146.136, 45 C.F.R. sec. 147.160, and 45 C.F.R. sec. 156.115(a)(3).*

*(2) (a) An insurer that issues or renews a health benefit plan that is subject to the provisions of this section shall submit an annual report to the commissioner on or before April 1 of each year following the effective date of this Act that contains the following:*

- 1. A description of the process used to develop or select the medical necessity criteria for both mental health condition benefits and medical and surgical benefits;*
- 2. Identification of all nonquantitative treatment limitations applicable to benefits and services covered under the plan that are applied to both mental health condition benefits and medical and surgical benefits within each classification of benefits;*
- 3. The results of an analysis that demonstrates compliance with subsection (1)(b) and (c) of this section for the medical necessity criteria described in subparagraph 1. of this paragraph and for each nonquantitative treatment limitation identified in subparagraph 2. of this paragraph, as written and in operation. At a minimum, the results of the analysis shall:*
  - a. Identify the factors used to determine that a nonquantitative treatment limitation will apply to a benefit, including factors that were considered but rejected;*
  - b. Identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each nonquantitative treatment limitation;*
  - c. Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies:*
    - i. Used to design each nonquantitative treatment limitation, as written, and the as-written processes and strategies used to apply the nonquantitative treatment limitation to mental health condition benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each nonquantitative treatment limitation, as written, and the as-written processes and strategies used to apply the nonquantitative treatment limitation to medical and surgical benefits; and*
    - ii. Used to apply each nonquantitative treatment limitation, in operation, for mental health condition benefits are comparable to, and are applied no more stringently than, the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for medical and surgical benefits; and*



- d. Disclose the specific findings and conclusions reached by the insurer that the results of the analyses performed under this subparagraph indicate that the insurer is in compliance with subsection (1)(b) and (c) of this section; and*
- 4. Any additional information that may be prescribed by the commissioner for use in determining compliance with the requirements of this section.*
- (b) The annual report shall be submitted in a manner and format prescribed by the commissioner through administrative regulation.*
- ~~(3)(5)~~ A *willful* violation of this section shall constitute an act of discrimination and shall be an unfair trade practice under this chapter. The remedies provided under Subtitle 12 of this chapter shall apply to conduct in violation of this section.
- ➔Section 3. KRS 304.17A-669 is amended to read as follows:
- (1) Nothing in KRS 304.17A-660 to 304.17A-669 shall be construed as mandating coverage for mental health conditions.
- (2) *A group health benefit plan covering fewer than fifty-one (51) employees that is not otherwise required to provide parity in mental health condition benefits under federal law* ~~[The following]~~ shall be exempt from the provisions of KRS 304.17A-660 to 304.17A-669:
- ~~(a) A group health benefit plan covering fewer than fifty-one (51) employees;~~
- ~~(b) An individual health benefit plan; and~~
- ~~(c) An employer organized association as defined in KRS 304.17A-005].~~
- ➔Section 4. This Act takes effect on January 1, 2022.

**Signed by Governor March 12, 2021.**

## CHAPTER 16

( SB 7 )

AN ACT relating to unemployment insurance benefits, making an appropriation therefore, and declaring an emergency.

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:

*For the purposes of Sections 1 to 3 of this Act:*

- (1) *"National Directory of New Hires" means the database that stores personal and financial data on employed individuals across the country and contains information and data on individuals receiving unemployment compensation;*
- (2) *"New hire records" means the directory of newly hired and rehired employees reported under state and federal law and managed by the federal Office of Child Support Enforcement, Administration for Children and Families, United States Department of Health and Human Services, and the Cabinet for Health and Family Services;*
- (3) *"Office" means the Kentucky Office of Unemployment Insurance;*
- (4) *"Secretary" means the secretary of the Kentucky Labor Cabinet;*
- (5) *"Two-factor authentication" means authentication that requires entry of a username and password followed by entry of another method of identification; and*
- (6) *"Unemployment insurance rolls" means unemployed workers receiving unemployment insurance in Kentucky.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any state law to the contrary, for unemployment insurance claims filed between January 27, 2020, and December 31, 2020:*

- (1) *Upon request of the alleged overpayment recipient, the secretary may waive an overpayment of benefits if he or she finds the overpayment:*
  - (a) *Was made without fault on the part of the recipient; and*
  - (b) *Recovery would be contrary to equity and good conscience;*
- (2) *(a) Requests for waiver of overpayment of benefits under subsection (1) of this section shall be made within thirty (30) days after the date the secretary mails to the alleged overpayment recipient the notification of the overpayment determination via first-class United States Mail. The secretary shall resend any notices of overpayment sent prior to the effective date of this Act. The new notices shall restart the thirty (30) day period for the alleged overpayment recipient to request repayment waiver.*
  - (b) *Notice of the secretary's determination shall include information explaining how the alleged overpayment recipient may request a waiver of overpayment and explain how the alleged overpayment recipient may appeal the secretary's final determination by requesting an appeal of the determination pursuant to KRS 341.420.*
  - (c) *The secretary shall not initiate overpayment recovery until lapse of the thirty (30) day period provided in this subsection.*
  - (d) *Overpayments collected shall be returned to the federal government if the overpayments were paid from Coronavirus Aid, Relief, and Economic Security (CARES) Act dollars and a waiver was not granted pursuant to subsection (1) of this section.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO READ AS FOLLOWS:

- (1) *To ensure the integrity of the unemployment insurance program, to verify eligibility, to prevent fraudulent filing, and to prevent overpayment of claims, for all claims made after July 1, 2023, the office shall:*
  - (a) *Use state or commercially available databases to check new hire records against the state's unemployment insurance rolls on a weekly basis;*
  - (b) *Check state data, federal data, or a commercially available database on a weekly basis;*
  - (c) *Check new hire records against the National Directory of New Hires on a weekly basis;*
  - (d) *Check the unemployment insurance rolls against the Kentucky Department of Corrections list of incarcerated individuals on a weekly basis;*
  - (e) *Enter into a cooperative agreement with the United States Department of Labor's Office of Inspector General to proactively detect and investigate cases of unemployment fraud;*
  - (f) *Review the individual's case and make a final determination of his or her eligibility when the office receives information that an individual who is participating in the unemployment compensation insurance program has had a change in circumstances that may affect his or her eligibility;*
  - (g) *Provide employers with electronic notice of new unemployment claims, access to information about pending unemployment insurance claims, and status of appealed claims via the Kentucky One Stop Business Portal;*
  - (h) *Promulgate, adopt, and implement internal administrative regulations and policies to recover improper overpayments of unemployment benefits;*
  - (i) *Require at least two-factor authentication from every benefit applicant prior to payment of any benefit; and*
  - (j) *Maintain records of any and all applications for waiver of overpayment.*
- (2) *The office shall provide the Office of the Attorney General with all records it requests for the purposes of investigating and prosecuting fraudulent unemployment insurance activity.*
- (3) *The office shall complete an annual report for the Legislative Research Commission which details efforts to recover improper benefit payments, causes of improper unemployment benefit payments, measures implemented to avoid improper benefit payments, summarizes all cases where repayment was not attempted*

*due to a statutory exception, and analyzes any cost savings to the Commonwealth. The office shall provide this report to the Legislative Research Commission annually, no later than October 1 of each year.*

➔Section 4. KRS 341.420 is amended to read as follows:

- (1) The secretary shall appoint one (1) or more impartial referees according to KRS 341.125 to hear and decide appealed claims.
- (2) A party to a determination may file an appeal to a referee as to any matter therein within **thirty (30)**~~fifteen (15)~~ days after the date such determination was mailed to his last known address.
- (3) If benefits are allowed by a determination of the secretary, or a decision of a referee, the commission, the secretary, or a reviewing-court, such benefits shall be paid promptly without regard to the pendency of an appeal or period for filing an appeal therefrom. If a determination or decision allowing benefits is modified or reversed by a subsequent determination or decision, benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modification or denial. No injunction, supersedeas, stay or other writ or process suspending payment of such benefits shall be issued.
- (4) Unless such appeal is withdrawn, a referee, after affording the parties reasonable opportunity for a fair hearing, shall affirm or modify the determination. The parties shall be duly notified of his decision, together with the reasons therefor, which shall be deemed to be the final decision unless within **thirty (30)**~~fifteen (15)~~ days after the date of mailing of such decision, further appeal is initiated under KRS 341.430.
- (5) No finding of fact or law, judgment, conclusion, or final order made with respect to a claim for unemployment compensation under this chapter may be conclusive or binding in any separate or subsequent action or proceeding in another forum, except proceedings under this chapter, regardless of whether the prior action was between the same or related parties or involved the same facts.

➔Section 5. KRS 341.440 is amended to read as follows:

- (1) The manner in which appeals are presented and hearings and appeals conducted shall be in accordance with regulations prescribed by the secretary for determining the rights of the parties, and such hearings to be conducted in a summary manner. A complete record shall be kept of all proceedings in connection with any appeal. All testimony at any hearing upon an appeal shall be recorded either stenographically or mechanically, but need not be transcribed unless further appealed. No examiner, referee, or member of the commission shall participate in any hearing in which he is an interested party.
- (2) Witnesses subpoenaed pursuant to proceedings under KRS 341.420 and 341.430 shall be allowed fees in accordance with rates allowed by law. Such fees and all expenses of proceedings before the Office of Unemployment Insurance, Department of Workforce Investment, or commission involving disputed claims shall be deemed a part of the expense of administering this chapter.
- (3) In the absence of an appeal therefrom, decisions of the commission shall become final **thirty-five (35)**~~twenty (20)~~ days after the date they are made.

➔Section 6. Whereas the COVID-19 pandemic has caused significant hardship for unemployment insurance recipients who have previously been overpaid benefits which they are now required to repay, 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 12, 2021.**

## CHAPTER 17

( HB 196 )

AN ACT relating to the prohibition of patriot penalties in insurance.

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

➔Section 1. A NEW SECTION OF SUBTITLE 20 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section, "military service" has the same meaning as in 50 U.S.C. sec. 3911.*
- (2) *An insurer shall not refuse to issue a policy of motor vehicle liability insurance, nor impose an additional premium, solely because the person is uninsured at the time of application if, during the period the person was without insurance, the person was:*
  - (a) *On military service as a member of the United States Armed Forces, including the National Guard and the United States Armed Forces Reserve; and*
  - (b) *Absent from the Commonwealth.*
- (3) *Upon application, an insurer shall request whether the person was on military service during the period the person was uninsured. An insurer may require the person to provide reasonable documentation to verify the person's military service.*
- (4) *An insurer who demonstrates a willful pattern of noncompliance with subsection (2) of this section commits an unfair trade practice under Subtitle 12 of this chapter and shall be subject to administrative penalties under Subtitle 99 of this chapter.*

**Signed by Governor March 15, 2021.**

## CHAPTER 18

( HB 73 )

AN ACT relating to life insurance for members of the Kentucky National Guard.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 38 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
  - (a) *"Member" means a member of the Kentucky National Guard; and*
  - (b) *"Program" means the state-sponsored group term life insurance program exclusively offered to all members of the Kentucky National Guard through the National Guard Association of Kentucky, as provided in 37 U.S.C. sec. 707.*
- (2) *The adjutant general shall:*
  - (a) *Facilitate and coordinate all efforts to make the program available to all members, including the period of time during initial enlistment or commissioning;*
  - (b) *Provide an opportunity for members to enroll in or modify life insurance under the program, which shall include allowing members to designate or change beneficiaries;*
  - (c) *Facilitate and coordinate requested allotments for the payment of premiums:*
    1. *Using the United States Defense Finance and Accounting Service military pay allotment with the appropriate United States Property and Fiscal Office; and*
    2. *For life insurance under the program; and*
  - (d) *Allow program representatives to provide Kentucky National Guard units with program briefings during annual training, drill weekends, and other opportunities to educate members on program benefits.*

**Signed by Governor March 15, 2021.**

## CHAPTER 19

## ( HB 206 )

AN ACT relating to the Kentucky National Guard Adoption Assistance Program and declaring an emergency.

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

➔Section 1. KRS 36.477 is amended to read as follows:

- (1) There is hereby established the Kentucky National Guard Adoption Assistance Program to be administered by the Kentucky Department of Military Affairs.
- (2) Any member of the Kentucky National Guard who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after July 12, 2012, shall be eligible to receive reimbursement from the military family assistance trust fund as provided in KRS 36.474 for actual costs associated with the adoption of the child, including a child with special needs. For the purposes of this section, a child with special needs means the same as defined in KRS 199.555(1).
- (3) The eligible member of the Kentucky National Guard shall receive:
  - (a) Up to ~~seven[five]~~ thousand dollars (~~\$7,000~~~~[\$5,000]~~) in unreimbursed direct costs related to the adoption of a child with special needs; or
  - (b) Up to ~~five[three]~~ thousand dollars (~~\$5,000~~~~[\$3,000]~~) in unreimbursed direct costs related to the adoption of any other child.
- (4) Unreimbursed direct costs related to the adoption of a child with special needs or other child shall include:
  - (a) Licensed adoption agency fees;
  - (b) Legal fees;
  - (c) Medical costs;
  - (d) Court costs; and
  - (e) Other fees or costs associated with the child adoption in accordance with state and federal law and after review and approval by the court at the finalization of the adoption.
- (5) Application for financial assistance shall be made by submitting a completed Kentucky National Guard adoption assistance application to the adjutant general along with documentary evidence of:
  - (a) Finalization of the adoption; and
  - (b) Certification by the secretary of the Cabinet for Health and Family Services that the adopted child is a child with special needs, if reimbursement for special needs adoption is sought.
- (6) If both adoptive parents are members of the Kentucky National Guard, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (2) of this section.
- (7) Upon approval of the application for financial assistance, the adjutant general shall dispense funds from the military family assistance trust fund to the eligible applicant.
- (8) The Department of Military Affairs shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of this section.

➔Section 2. Whereas the men and women of the Kentucky National Guard consistently distinguish themselves with their courage and service that goes beyond the call of duty, and Executive Order 2019-787 raised the benefits of the Adoption Assistance Program for state employees but not for the members of the National Guard, 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, 2021.**

## ( SB 67 )

AN ACT relating to alcoholic beverage sales, and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 243 IS CREATED TO READ AS FOLLOWS:

- (1) *If authorized under its licensing statute, a license holder with the privilege of selling alcoholic beverages by the drink at retail shall be permitted to sell alcoholic beverages by the drink in a sealed container, and by the package in sealed original containers, on a delivery, to-go, or take-out basis, as follows:*
- (a) *The sale of alcoholic beverages pursuant to this section must be in conjunction with the purchase of a prepared meal and only in quantities that a reasonable person would purchase with a meal;*
  - (b) *Deliveries, if applicable, shall be made in a vehicle operated and owned by the licensee, the licensee's employee, or an independent contractor or agent; and*
  - (c) *Any person delivering alcoholic beverages must be at least twenty-one (21) years of age.*
- (2) *All licensees and their employees and independent contractors are prohibited from:*
- (a) *Selling alcohol in bulk quantities;*
  - (b) *Completing sales in dry territories; or*
  - (c) *Delivering:*
    - 1. *Into dry territory;*
    - 2. *To a minor under twenty-one (21) years of age; or*
    - 3. *To an intoxicated person.*
- (3) (a) *For purposes of this section, alcoholic drinks to go shall be:*
- 1. *Placed in a bag or other container that is secured in a manner that makes it visibly apparent if the container has been subsequently opened or tampered with; and*
  - 2. *Transported in a locked glove compartment or the trunk or other area that is not a passenger area under KRS 189.530(5).*
- (b) *The department may, but is not required to, promulgate an administrative regulation that sets forth the:*
- 1. *Conditions under which sales may take place;*
  - 2. *Days and times that sales may take place; and*
  - 3. *The requirements for transportation of alcoholic drinks to go under this section.*
- (4) *For purposes of this section, vehicles used for deliveries shall be exempt from displaying the name and license number of the retail licensee selling the alcoholic beverages being delivered.*
- (5) *Except as provided in this section, sales of alcoholic beverages shall be subject to all of the statutes and administrative regulations relating to the retail sale of alcoholic beverages.*

➔Section 2. KRS 243.034 is amended to read as follows:

- (1) A limited restaurant license may be issued to an establishment meeting the definition criteria established in KRS 241.010(36) as long as the establishment is within:
- (a) Any wet territory; or
  - (b) Any moist precinct that has authorized the sale of alcoholic beverages under KRS 242.1244.
- (2) A limited restaurant license shall authorize the licensee to purchase, receive, possess, and sell alcoholic beverages at retail by the drink for consumption on the licensed premises *or off-premises consumption pursuant to Section 1 of this Act*. The licensee shall purchase alcoholic beverages only from licensed wholesalers or distributors. The license shall not authorize the licensee to sell alcoholic beverages by the package.

- (3) The holder of a limited restaurant license shall maintain at least seventy percent (70%) of its gross receipts from the sale of food and maintain the minimum applicable seating requirement required for the type of limited restaurant license.
- (4) A limited restaurant as defined by KRS 241.010(36)(a) shall:
  - (a) Only sell alcoholic beverages incidental to the sale of a meal; and
  - (b) Not have an open bar and shall not sell alcoholic beverages to any person who has not purchased or does not purchase a meal.

➔Section 3. KRS 243.084 is amended to read as follows:

- (1) A "Nonquota type 2" or "NQ2" retail drink license may be issued to an applicant operating as, or in:
  - (a) A hotel that:
    - 1. Contains at least fifty (50) sleeping units; and
    - 2. Receives from its total food and alcoholic beverage sales at least fifty percent (50%) of its gross receipts from the sale of food;
  - (b) A restaurant;
  - (c) An airport;
  - (d) A riverboat;
  - (e) A distiller; or
  - (f) A business located within, or adjacent to, an entertainment destination center licensed premises.
- (2) A holder of an NQ2 retail drink license may purchase, receive, possess, and sell alcoholic beverages at retail by the drink for consumption on the licensed premises *or off-premises consumption pursuant to Section 1 of this Act*. The licensee shall purchase alcoholic beverages only from licensed wholesalers or distributors. A distiller may purchase its own products for retail drink sales under KRS 243.0305. The holder of an NQ2 retail drink license shall store alcoholic beverages in the manner prescribed in KRS 244.260.
- (3)
  - (a) To qualify for an NQ2 license, a riverboat shall have a regular or alternative place of mooring in a wet county or city of this state.
  - (b) If a riverboat moors or makes landfall in a location other than its regular or alternate regular place of mooring, all alcoholic beverages shall be kept locked.
  - (c) A riverboat licensed under this subsection shall not take on or discharge passengers when mooring or making landfall in dry option territory.

➔Section 4. KRS 243.155 is amended to read as follows:

- (1) Any in-state or out-of-state small farm winery may apply for a small farm winery license. In addition to all other licensing requirements, an applicant for a small farm winery license shall submit with its application a copy of the small farm winery's federal basic permit and proof documenting its annual wine production. An out-of-state winery shall submit additional documentation evidencing its resident state. As part of the application process, an out-of-state winery shall publish its notice of intent, as required by KRS 243.360, in the Kentucky newspaper of highest circulation. The board shall promulgate administrative regulations establishing the form the documentation of proof of production shall take.
- (2) A small farm winery license shall authorize the licensee to perform the following functions without having to obtain separate licenses, except that each small farm winery off-premises retail site shall be separately licensed:
  - (a) Engage in the business of a winery under the terms and conditions of KRS 243.120 and 243.130. The manufacture of wine at the small farm winery shall not be less than two hundred fifty (250) gallons, and shall not exceed five hundred thousand (500,000) gallons, in one (1) year;
  - (b) Bottle wines produced by that small farm winery and other licensed small farm wineries;
  - (c) Enter into an agreement with another licensed small farm winery under which it crushes, processes, ferments, bottles, or any combination of these services, the grapes, fruits, or other agricultural products of the other small farm winery for a production year. The resulting wine shall be considered the product

- of the small farm winery that provides the fruit. The small farm winery providing the custom crushing services may exclude the wine produced under this paragraph from its annual production gallonage;
- (d) If the licensed small farm winery or off-premises retail site premises is located in wet territory or in a precinct that has authorized alcoholic beverage sales by the small farm winery under KRS 242.124:
1. Serve complimentary samples of wine produced by it in amounts not to exceed six (6) ounces per patron per day; and
  2. Sell by the drink for on-premises consumption *or off-premises consumption pursuant to Section 1 of this Act*, or by the package wine produced by it or by another licensed small farm winery, at retail to consumers;
- (e) Sell by the drink or by the package, at fairs, festivals, and other similar types of events, wine produced by it or by another licensed small farm winery, at retail to consumers if all sales occur in a wet territory;
- (f) Sell and transport wine produced by it to consumers, licensed small farm winery off-premises retail sites, wholesale license holders, and small farm winery license holders;
- (g) Consume on the premises wine produced by the small farm winery or a licensed small farm winery and purchased by the drink or by the package at the licensed premises, if the small farm winery is located in wet territory; and
- (h) A small farm winery may sell wine at retail to consumers in accordance with KRS 243.027 to 243.029 if it holds a direct shipper license.
- (3) If the requirements of KRS 242.1241 or 244.290(5) relating to Sunday sales on the licensed premises of a small farm winery are met, a small farm winery within that territory may sell alcoholic beverages on Sunday only in accordance with this section during the hours and times as permitted in the local ordinance for that locality.
- (4) A small farm winery license holder may also hold an NQ2 retail drink license or an NQ4 retail malt beverage drink license if:
- (a) The small farm winery is located in wet territory or in a precinct that has authorized alcoholic beverage sales by the small farm winery under KRS 242.124; and
  - (b) The issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise designed to promote viticulture, enology, and tourism.
- (5) This section shall not exempt the holder of a small farm winery license from the provisions of KRS Chapters 241 to 244, nor from the administrative regulations of the board, nor from regulation by the board at all premises licensed by the small farm winery, except as expressly stated in this section.
- (6) Nothing contained in this section shall exempt a licensed out-of-state winery from obeying the laws of its resident state.
- (7) Upon the approval of the department, a small farm winery license may be renewed after the licensee submits to the department the winery's federal basic permit and proof of its annual wine production.
- (8) An employee of a small farm winery may sample the products produced by that small farm winery for purposes of education, quality control, and product development.

➔Section 5. KRS 243.250 is amended to read as follows:

A quota retail drink license shall authorize the licensee to purchase, receive, possess, and sell distilled spirits and wine at retail by the drink for consumption on the licensed premises, *or off-premises consumption pursuant to Section 1 of this Act*. The licensee shall purchase distilled spirits and wine only from licensed wholesalers.

➔Section 6. Whereas the economic impact of the state of emergency in response to COVID-19 on Kentucky's citizens and small businesses is of the utmost importance,

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, 2021.**



**CHAPTER 21****( HB 172 )**

AN ACT relating to the Kentucky Real Estate Appraisers Board.

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

➔Section 1. KRS 324A.015 is amended to read as follows:

- (1) There is created a Real Estate Appraisers Board consisting of five (5) members, two (2) of whom shall be certified real estate appraisers, one (1) of whom shall represent the public and shall not be associated with or financially interested in the practice of real estate appraisals, and two (2) of whom shall be employed in the lending industry. The board shall administer the provisions of this chapter and may promulgate administrative regulations necessary to effectuate the provisions of KRS 324A.010 to 324A.090.
- (2)
  - (a) The board members shall be appointed by the Governor. Not more than one (1) board member shall be from any one (1) county within Kentucky. Members shall be appointed by the Governor for staggered terms of three (3) years. No person shall serve more than two (2) full consecutive terms.
  - (b) Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term.
  - (c) No more than three (3) members of the same political party shall serve on the board at the same time.
- (3) The appraiser appointees to the board shall be certified and shall have engaged in the appraisal of real estate in Kentucky on a continuing basis for at least ten (10) years.
- (4) A board member shall be automatically removed from the board and a vacancy shall occur when:
  - (a) An appraiser member of the board ceases to be certified;
  - (b) A consumer member of the board acquires a certification as an appraiser;
  - (c) A lending industry member ceases to be employed in the lending industry;
  - (d) A board member enters a plea of guilty to, or has been found guilty of, a felony and the time for appeal has passed or the judgment of conviction has been finally affirmed on appeal;
  - (e) A board member ceases to be a bona fide resident of the Commonwealth of Kentucky;
  - (f) A board member displays incompetence, neglect of duty, or unprofessional conduct;
  - (g) A board member fails to adhere to a duly adopted code of ethics of the board. Failure to adhere to this code shall be determined by official action of the board; or
  - (h) A board member misses three (3) consecutive meetings or misses more than twenty-five percent (25%) of the meetings held over the previous twelve (12) month period.
- (5) The board shall adopt a seal with the design it prescribes, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the board under the authority of this chapter shall be open to public inspection in accordance with KRS 61.820 to 61.884 and consistent with regulations prescribed by the board.
- (6) The Governor shall set the compensation of the members of the board, but voting members of the board shall be compensated no more than three hundred dollars (\$300) per day for official business, subject to an annual maximum of six thousand dollars (\$6,000). Members shall be reimbursed for all expenses paid and incurred in the discharge of official business consistent with the reimbursement policy for state employees. With the approval of the executive director of the Kentucky Real Estate Authority within the Department of Professional Licensing, board members and board staff may attend and travel to and from meetings and events relevant to the board or the industry the board represents.
- (7) ***The board shall ensure that those employed to investigate grievances filed with the board are state-certified general appraisers with a minimum of five (5) years of experience.***

➔Section 2. KRS 324A.035 is amended to read as follows:

- (1) The board shall promulgate administrative regulations pursuant to the provisions of this chapter and KRS Chapter 13A for certification or licensure of appraisers who perform appraisals of real property in federally related transactions. Requirements established by the board relating to appraisers of federally related transactions shall not exceed the minimum requirements established by federal law or regulation;
- (2) The board shall promulgate administrative regulations pursuant to KRS Chapter 13A for certification or licensure of appraisers of real property in nonfederally related transactions.
  - ~~(a) Appraisers who wish to be limited to appraisals of nonfederally related transactions, and who have engaged in the appraisal of real estate for at least ten (10) years prior to April 7, 1992, shall be certified or licensed as appraisers of nonfederally related transactions.~~
  - ~~(b) Appraisers who wish to be limited to appraisals of nonfederally related transactions, and who have not engaged in the appraisal of real estate for at least ten (10) years prior to April 7, 1992, shall be certified or licensed as appraisers of nonfederally related transactions if they meet the certification or licensure requirements established by the board.~~
- (3) The board shall establish by administrative regulations requirements for:
  - (a) Classifications of appraisers;
  - (b) Certification and licensure;
  - (c) Renewal, suspension, or revocation of certification or licensure;
  - (d) Standards of professional appraisal practice, including experience, education, and ethics;
  - (e) Examination of applicants for certification or licensure; and
  - (f) Continuing education of appraisers.

➔Section 3. KRS 324A.047 is amended to read as follows:

- (1) Upon written request, any certificate holder or licensee may request to place his or her certificate or license in inactive status for a period not to exceed three (3) years.
  - (a) The written request shall be made by completing a signed and sworn affidavit on a form approved by the board.
  - (b) The board may require a fee of fifty dollars (\$50) for each change in status of the certificate holder or licensee.
  - (c) A license issued to an individual as *an associate* ~~[a trainee]~~ real property appraiser shall not be eligible for inactive status.
- (2) No inactive status certificate holder or licensee shall:
  - (a) Assume or use any title, designation, or abbreviation likely to create the impression that he or she holds a certificate or license issued by the board;
  - (b) Describe or refer to any appraisal or evaluation of real estate by the term, "state certified," "state licensed," or words of substantially similar meaning; or
  - (c) Prepare real estate appraisals for federally related transactions which, under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, require the services of a state-certified or state-licensed appraiser.
- (3) To return to active status, a certificate holder or licensee shall:
  - (a) Petition the board for reactivation of the certificate or license;
  - (b) Pay the applicable renewal fee and roster fee required by this chapter; and
  - (c) Provide evidence of completion of the annually required continuing education hours, as established by the board and promulgated in administrative regulations, for each year of inactive status.
- (4) A certificate holder or licensee who petitions to return to active status after an inactive period exceeding three (3) years shall be required to meet all the requirements for original issuance of a license or certificate under this chapter.
- (5) Violation of this subsection (2) of this section shall be grounds for disciplinary action under this chapter.

➔Section 4. KRS 324A.050 is amended to read as follows:

- (1) The board may refuse to issue, refuse to renew, suspend, or revoke a certificate or license, reprimand, admonish, place on probation, or impose a fine up to two thousand dollars (\$2000) per each violation determined by the board, not to exceed five thousand dollars (\$5000), on a certificate holder or licensee, or any combination thereof, for any of the following reasons:
  - (a) Procuring or attempting to procure a certificate or license by knowingly making a false statement or submitting false information, or through any form of fraud or misrepresentation;
  - (b) Refusing to provide complete information in response to a question in an application to the board or failing to meet the minimum qualifications established by the board;
  - (c) Being convicted of a felony or misdemeanor, if in accordance with KRS Chapter 335B;
  - (d) Committing an act involving dishonesty, fraud, or misrepresentation;
  - (e) Violating any of the provisions of KRS 324A.010 to 324A.090, the administrative regulations of the board, or any lawful order of the board;
  - (f) Violating the confidential nature of records to which the appraiser gained access through employment or engagement as an appraiser;
  - (g) Committing any other conduct which constitutes or demonstrates bad faith, untrustworthiness, impropriety, fraud, or dishonesty;
  - (h) Failing or refusing, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;
  - (i) Being negligent or incompetent in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;
  - (j) Failing to observe one (1) or more of the Uniform Standards of Professional Appraisal Practice *in effect at the time of the appraisal report transmittal letter date*; or
  - (k) Having a license or registration certificate to practice as a licensed or certified real property appraiser denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause licensure to be denied, limited, suspended, probated, or revoked in this state.
- (2) Notwithstanding any other provision of this chapter to the contrary, the requirements of KRS Chapter 324A, the board's administrative regulations, and the *current edition of the* Uniform Standards of Professional Appraisal Practice shall constitute the minimum standard of conduct and performance for a licensee or credential holder in any work or service performed that is addressed by those standards.
- (3) In any proceeding in which a suspension of thirty (30) days or more, or revocation is imposed, the board may require the respondent to pay the actual costs of the investigation and all proceedings not to exceed ten thousand dollars (\$10,000).
- (4) Three (3) years from the date of a revocation, any certificate holder or licensee whose certificate or license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate, upon a finding that the petitioner has complied with any and all terms prescribed by the board and is able to engage in the practice of real estate appraisal within the requirements of this chapter and the administrative regulations. The board may, in its discretion, require the petitioner to successfully pass the examination required for the applicable certificate or license.

➔Section 5. KRS 324A.052 is amended to read as follows:

- (1) Any person or organization, including the board upon its own volition, may file with the board a written complaint alleging a violation of any provision of this chapter. *Complaints shall be filed with the board within:*
  - (a) *Five (5) years after the date of transmittal of the appraisal report or appraisal review assignment; or*
  - (b) *Two (2) years after the final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever expires last.*

*Paragraphs (a) and (b) of this subsection shall not apply to complaints involving the actions outlined in paragraphs (c), (d), (g), and (k) of subsection (1) of Section 4 of this Act.*

The board shall investigate each complaint.

- (2) If the investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before fining, reprimanding, suspending, revoking, refusing to renew, or any combination thereof.
- (3) If the investigation reveals that the alleged violation did occur but was not of a serious nature, the board may issue a written admonishment to the certificate holder or licensee. A copy of the admonishment shall be placed in the recipient's ~~permanent~~ file with the board. The recipient shall have the right to file a response to the admonishment within thirty (30) days of its receipt and have the response placed in the ~~permanent~~ file. The recipient may, alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing in accordance with the provisions of KRS Chapter 13B.
- (4) After denying an application for a certificate or license or issuing an admonishment, the board shall grant an administrative hearing in accordance with KRS Chapter 13B only upon written request of the applicant made within thirty (30) days of the mailing of the letter of denial or admonishment.
- (5) Pursuant to KRS 13B.120(7), the executive director of the Kentucky Real Estate Authority within the Department of Professional Licensing shall hear and issue a final order regarding a decision of the board. An aggrieved party may appeal a final order of the executive director pursuant to KRS Chapter 13B within thirty (30) days after the issuance of the order to the Circuit Court of the county where the licensee has his or her principal place of business or where the license applicant resides.

➔Section 6. KRS 324A.065 is amended to read as follows:

- (1) The board shall establish by regulation and collect the following fees for certification or licensure as an appraiser for:
  - (a) Federally related transactions:
    1. Initial application fee in an amount not to exceed two hundred ~~twelve~~ dollars **(\$200)**~~(\$212), which shall include a fee for the current edition of the Uniform Standards of Professional Practice~~;
    2. Examination fee in an amount not to exceed two hundred dollars (\$200);
    3. a. An annual certificate or licensure fee in an amount not to exceed two hundred ~~twelve~~ dollars **(\$200)**~~(\$212), which shall include a fee for the current edition of the Uniform Standards of Professional Appraisal Practice~~;
    - b. Duplicate certificate fee in an amount not to exceed ten dollars (\$10); and
    - c. Certificate correction fee in an amount not to exceed ten dollars (\$10); ~~and~~
    4. Roster fee not to exceed fifty dollars (\$50); **and**
    5. **Returned check fee not to exceed fifty dollars (\$50); and**
  - (b) Nonfederally related transactions:
    1. ~~Initial application fee in an amount not to exceed one hundred dollars (\$100);~~
    2. ~~Examination fee in an amount not to exceed one hundred dollars (\$100);~~
    3. ~~a.] An annual certificate or licensure renewal fee in an amount not to exceed one hundred dollars (\$100); and~~
    2. ~~b.] Duplicate certificate fee in an amount not to exceed five dollars (\$5); and~~
    - e.] Certificate correction fee in an amount not to exceed five dollars (\$5); ~~and~~
    4. ~~Roster fee not to exceed twenty five dollars (\$25)].~~
- (2) **The board shall, through the promulgation of an administrative regulation, establish and collect the following fees from education providers for review and approval of prelicensure and continuing education courses offered by education providers for licensure as an appraiser:**
  - (a) **For prelicensure education course review, a fee not to exceed one hundred dollars (\$100); and**
  - (b) **For continuing education course review, a fee not to exceed fifty dollars (\$50).**

- (3) (a) All fees and charges collected by the board under the provisions of this chapter shall be paid into the Real Estate Appraisers Board's trust and agency account in the State Treasury.
- (b) All expenses incurred by the board under the provisions of this chapter, including compensation to the board members and staff, shall be paid out of this account, subject to approval of the board.
- (c) The provisions of this subsection shall not apply to the fee charged pursuant to KRS 324A.155, which is required to be included in the appraisal management company recovery fund and which shall be paid into that fund.

➔Section 7. KRS 324A.150 is amended to read as follows:

As used in KRS 324A.150 to 324A.164, 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, whether directly or through the use of software products or online, including but not limited to any of 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 **network, list, or roster of licensed or certified** ~~group of independent~~ appraisers **approved** ~~who have been selected~~ by an appraisal management company to perform **appraisals as independent contractors** ~~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 KRS 324A.152; and
- (11) "USPAP" means the Uniform Standards of Professional Appraisal Practice.

➔Section 8. KRS 324A.152 is amended 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 background check as provided in subsection (3) of this section, pay a filing fee established by the board, and pay the fee required to be included in the appraisal management company recovery fund created in KRS 324A.155. 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 subparagraph 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 KRS 324A.154, 324A.156, or 324A.158;
    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*
  7. *The appraisal management company is not owned, in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked in any state for a cause other than expiration, as determined by the relevant state appraiser regulatory program; 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 filing fee;
  - (c) Payment of the fee required to be included in the appraisal management company recovery fund; 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 KRS 324A.162.
- (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 KRS 324A.150 to 324A.164.

➔Section 9. KRS 324A.154 is amended to read as follows:

The board shall promulgate administrative regulations, *with the approval of the executive director of the Kentucky Real Estate Authority*, establishing a reasonable filing fee to be paid by each appraisal management company seeking registration under KRS 324A.152. 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.

➔Section 10. KRS 324A.164 is amended to read as follows:

Unless otherwise required to be registered as an appraisal management company by state or federal law, KRS 324A.150 to 324A.164 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 listing or selling real estate;
- (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; *or*
- (9) *A federally regulated appraisal management company as defined in 12 C.F.R. sec. 34.211(k).*

**Signed by Governor March 15, 2021.**

## CHAPTER 22

( HB 278 )

AN ACT relating to Paycheck Protection Program loans and declaring an emergency.



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

➔Section 1. KRS 141.017 is amended to read as follows:

- (1) (a) All deductions allowed by this chapter shall be limited to amounts directly or indirectly allocable to income subject to taxation under the provisions of this chapter.
  - (b) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under this chapter shall not be allowed.
  - (c) *This subsection does not apply to deductions allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans and deductions attributable to those loans for taxable years ending on or after March 27, 2020, but before taxable years beginning January 1, 2022.*
- (2) Nothing in this chapter shall be construed to permit the same item to be deducted more than once.

➔Section 2. KRS 141.019 is amended to read as follows:

~~For taxable years beginning on or after January 1, 2018, ]~~In the case of taxpayers other than corporations:

- (1) Adjusted gross income shall be calculated by subtracting from the gross income of those taxpayers the deductions allowed individuals by Section 62 of the Internal Revenue Code and adjusting 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 income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Pub. L. No. 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, 61.523, 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) 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;
  - (g)
    1.
      - a. For taxable years beginning after December 31, 2005, but before January 1, 2018, 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; and
      - b. For taxable years beginning on or after January 1, 2018, exclude up to thirty-one thousand one hundred ten dollars (\$31,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
    2. As used in this paragraph:
      - a. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code;
      - b. "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; 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;

- (h) 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 an 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;
- (i) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primaries or regular or special elections;
- (j) Exclude any capital gains income attributable to property taken by eminent domain;
- (k) 1. Exclude all income from all sources for members of the Armed Forces who are on active duty and 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.
  - 2. 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;
- (l) Exclude all military pay received by members of the Armed Forces while on active duty;
- (m) 1. Include the amount deducted for depreciation under 26 U.S.C. sec. 167 or 168; and
  - 2. Exclude the amounts allowed by KRS 141.0101 for depreciation;
- (n) Include the amount deducted under 26 U.S.C. sec. 199A; ~~and~~
- (o) Ignore any change in the cost basis of the surviving spouse's share of property owned by a Kentucky community property trust occurring for federal income tax purposes as a result of the death of the predeceasing spouse; and
- (p) ***Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans, deductions attributable to those loans, and tax attributes associated with those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022; and***
- (2) Net income shall be calculated by subtracting from adjusted gross income 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 26 U.S.C. sec. 164 for taxes;
  - (b) Any deduction allowed by 26 U.S.C. sec. 165 for losses, except wagering losses allowed under Section 165(d) of the Internal Revenue Code;
  - (c) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;
  - (d) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;
  - (e) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous deduction;
  - (f) 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 the deduction has not been claimed under KRS 140.090(1)(h);
  - (g) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and any other deductions in lieu thereof;
  - (h) Any deduction allowed 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

- (i) A taxpayer may elect to claim the standard deduction allowed by KRS 141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63 and as modified by this section.

→Section 3. KRS 141.039 is amended to read as follows:

~~For taxable years beginning on or after January 1, 2018,~~ In the case of corporations:

- (1) Gross income shall be calculated by adjusting federal gross income as defined in Section 61 of the Internal Revenue Code 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;
  - (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 the amount calculated under KRS 141.205;
  - (f) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;
  - (g) Include the amount of depreciation deduction calculated under 26 U.S.C. sec. 167 or 168; and
  - (h) ***Allow the same treatment allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans, deductions attributable to those loans, and tax attributes associated with those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022; and***
- (2) Net income shall be calculated by subtracting from gross income:
  - (a) The deduction for depreciation allowed by KRS 141.0101;
  - (b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;
  - (c) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code, 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, 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, ***except for deductions allowed under Pub. L. No. 116-260, secs. 276 and 278, related to the tax treatment of forgiven covered loans and deductions attributable to those loans for taxable years ending on or after March 27, 2020, but before January 1, 2022,*** and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
    - 5. 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;

6. Any deduction prohibited by KRS 141.205; and
  7. Any dividends-paid deduction of any captive real estate investment trust; and
- (d)
1. A deferred tax deduction in an amount computed in accordance with this paragraph.
  2. For purposes of this paragraph:
    - a. "Net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the combined group, as computed in accordance with accounting principles generally accepted in the United States of America; and
    - b. "Net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of a combined group as defined in KRS 141.202, as computed in accordance with accounting principles generally accepted in the United States of America.
  3. Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with accounting principles generally accepted in the United States of America, as of January 1, 2019, shall be eligible for this deduction.
  4. If the provisions of KRS 141.202 result in an aggregate increase to the member's net deferred tax liability, an aggregate decrease to the member's net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.
  5. For ten (10) years beginning with the combined group's first taxable year beginning on or after January 1, 2024, a combined group shall be entitled to a deduction from the combined group's entire net income equal to one-tenth (1/10) of the amount necessary to offset the increase in the net deferred tax liability, decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability. The increase in the net deferred tax liability, decrease in the net deferred tax asset, or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the combined reporting requirement under KRS 141.202, but for the deduction provided under this paragraph as of June 27, 2019.
  6. The deferred tax impact determined in subparagraph 5. of this paragraph shall be converted to the annual deferred tax deduction amount, as follows:
    - a. The deferred tax impact determined in subparagraph 5. of this paragraph shall be divided by the tax rate determined under KRS 141.040;
    - b. The resulting amount shall be further divided by the apportionment factor determined by KRS 141.120 or 141.121 that was used by the combined group in the calculation of the deferred tax assets and deferred tax liabilities as described in subparagraph 5. of this paragraph; and
    - c. The resulting amount represents the total net deferred tax deduction available over the ten (10) year period as described in subparagraph 5. of this paragraph.
  7. The deduction calculated under this paragraph shall not be adjusted as a result of any events happening subsequent to the calculation, including but not limited to any disposition or abandonment of assets. The deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than the combined group's entire Kentucky net income, any excess deduction shall be carried forward and applied as a deduction to the combined group's entire net income in future taxable years until fully utilized.

8. Any combined group intending to claim a deduction under this paragraph shall file a statement with the department on or before July 1, 2019. The statement shall specify the total amount of the deduction which the combined group claims on the form, including calculations and other information supporting the total amounts of the deduction as required by the department. No deduction shall be allowed under this paragraph for any taxable year, except to the extent claimed on the timely filed statement in accordance with this paragraph.

➔Section 4. Whereas the provisions of this Act impact returns that are currently being filed by taxpayers, 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, 2021.**

## CHAPTER 23

( HB 220 )

AN ACT relating to the Board of Embalmers and Funeral Directors.

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

➔Section 1. KRS 316.030 is amended to read as follows:

- (1) No person shall engage in, or attempt to engage in, embalming or funeral directing in the Commonwealth of Kentucky unless the person is licensed under the provisions of this chapter.
- (2) All Kentucky-licensed persons who practice embalming or funeral directing in Kentucky shall practice from a funeral establishment that is licensed to operate under the provisions of this chapter.
- (3) One (1) member of every firm, and one (1) officer and one (1) stockholder of every corporation, that engages in embalming and funeral directing in Kentucky, shall be a Kentucky-licensed embalmer and a Kentucky-licensed funeral director.
- (4) The board shall issue an embalmer's license to an applicant who:
  - (a) Is at least eighteen (18) years of age;
  - (b) Is of good moral character;
  - (c) Possesses a high school diploma or a High School Equivalency Diploma;
  - (d) Has received an associate degree in funeral services from a college or university accredited by the American Board of Funeral Service Education;
  - (e) Has served an apprenticeship of one (1) year in a Kentucky funeral establishment under the supervision of a Kentucky-licensed embalmer;
  - (f) Has taken an active part during the apprenticeship in assisting with the embalming of at least twenty-five (25) dead human bodies under the direct supervision of a Kentucky-licensed embalmer;
  - (g) Has paid to the board an examination fee **as set out in administrative regulations promulgated by the board** ~~of seventy-five dollars (\$75)~~; and
  - (h) Has passed an examination prepared or approved by the board.
- (5) The board shall issue a funeral director's license to an applicant who:
  - (a) Is at least eighteen (18) years of age;
  - (b) Is of good moral character;
  - (c) Possesses a high school diploma or a High School Equivalency Diploma;
  - (d) Has served an apprenticeship of three (3) consecutive years in a Kentucky funeral establishment under the supervision of a Kentucky-licensed funeral director. An associate degree in funeral services from a college or university accredited by the American Board of Funeral Service Education shall substitute

for two (2) years of the apprenticeship. The completion of thirty (30) semester credit hours or the equivalent from an accredited college or university shall substitute for one (1) year of the apprenticeship. At no time shall more than two (2) years of the apprenticeship be substituted;

- (e) Has taken an active part during the apprenticeship in assisting with the management of at least twenty-five (25) funerals under the direct supervision of a Kentucky-licensed funeral director;
  - (f) Has paid to the board an examination fee *as set out in administrative regulations promulgated by the board* ~~of seventy-five dollars (\$75)~~; and
  - (g) Has passed an examination prepared or approved by the board.
- (6) An applicant may serve embalming and funeral directing apprenticeships concurrently.
- (7) At the beginning of an apprenticeship, an applicant for an embalmer's or a funeral director's license shall:
- (a) Appear before the board;
  - (b) Pay to the board a registration fee *as set out in administrative regulations promulgated by the board* ~~of thirty dollars (\$30)~~; and
  - (c) File with the board the sworn statement of the supervising Kentucky-licensed embalmer or the Kentucky-licensed funeral director averring that the applicant will work full-time under supervision in the funeral establishment and will receive a regular salary.
- (8) An applicant shall work full-time in the funeral establishment during the apprenticeship and shall receive a regular salary.
- (9) An applicant shall file with the board semiannually during the apprenticeship sworn statements by the applicant and the supervising Kentucky-licensed embalmer or Kentucky-licensed funeral director setting out the number of hours worked, the number of embalmings or funerals in which the applicant has assisted, and the salary received.
- (10) A Kentucky-licensed embalmer or a Kentucky-licensed funeral director shall not supervise more than five (5) applicants serving apprenticeships at any one (1) time.

➔Section 2. KRS 316.125 is amended to read as follows:

- (1) No person shall operate a full-service funeral establishment, a visitation and ceremonial funeral service establishment, or an embalming service establishment in the Commonwealth of Kentucky without first obtaining the applicable establishment license issued by the board.
- (2) The board shall issue the appropriate establishment license to an applicant who:
  - (a) Has paid to the board an establishment license fee ~~[, not to exceed two hundred dollars (\$200),]~~ as set out in administrative regulations promulgated by the board; and
  - (b) Has filed with the board a sworn statement that sets out the following:
    - 1. Name of the funeral establishment;
    - 2. Address of the funeral establishment;
    - 3. Type of funeral establishment;
    - 4. Owners of the funeral establishment, indicating which owners are licensed by the board; and
    - 5. Name and address of the Kentucky-licensed embalmer or the Kentucky-licensed funeral director who will supervise the funeral establishment pursuant to subsection (4) of this section.
- (3) Each funeral establishment shall be licensed separately from any other funeral establishment.
- (4) Each funeral establishment, when in use, shall be under the supervision of a Kentucky-licensed embalmer or a Kentucky-licensed funeral director.
- (5) A Kentucky-licensed embalmer or a Kentucky-licensed funeral director shall not supervise more than one (1) funeral establishment at the same time.
- (6) The funeral establishment shall display in a public place in the establishment its establishment license and the license of the embalmer or funeral director who supervises the establishment pursuant to subsection (4) of this section.

➔Section 3. KRS 316.131 is amended to read as follows:

- (1) The board may reinstate an embalmer's or a funeral director's license that has expired for failure to renew within three (3) years of the license's expiration if the applicant for reinstatement:
  - (a) Pays a late fee and the renewal fees, *as set out in administrative regulations promulgated by the board*, for the period during which the license was expired; and
  - (b) Provides proof that the applicant has met the cumulative continuing education requirements for the period during which the license was expired.
- (2) The board may reinstate an embalmer's or a funeral director's license that has expired for failure to renew more than three (3) years after the license's expiration if the applicant for reinstatement:
  - (a) Pays a late fee and the renewal fees, *as set out in administrative regulations promulgated by the board*, for the period during which the license was expired; ~~and~~
  - (b) Provides proof that the applicant has met all the cumulative continuing education requirements for the period during which the license was expired; ~~and~~
  - (c) Demonstrates that the applicant is able to practice embalming or funeral directing with reasonable competence. The board may require the person to pass an examination to determine competency.

➔Section 4. KRS 316.170 is amended to read as follows:

- (1) The board shall consist of five (5) members who shall be residents of the Commonwealth of Kentucky. Four (4) members shall be Kentucky-licensed embalmers and Kentucky-licensed funeral directors actively practicing embalming and funeral directing in a Kentucky funeral establishment and shall have a minimum of ten (10) years' consecutive experience in the practice of embalming and funeral directing in Kentucky immediately preceding their appointment. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated.
- (2) The Governor shall make all appointments to the board. The four (4) embalmer and funeral director members shall be appointed from a list of three (3) names submitted by the Funeral Directors Association of Kentucky and from a list of three (3) names submitted by the Kentucky Association of Morticians, Inc., for each position to be filled.
- (3) The term of each member shall be four (4) years. Each member shall serve until a successor is appointed and qualified.
- (4) Vacancies on the board shall be filled in the same manner for the unexpired terms.
- (5) ~~[(a) — Until January 1, 2015, each board member shall receive one hundred dollars (\$100); and~~  
~~(b) — On January 1, 2015, and thereafter, ]~~Each board member shall receive compensation as set forth in administrative regulation, not to exceed two hundred dollars (\$200) for each day of service actually given in carrying out the board's duties and shall be reimbursed for necessary traveling expenses and other necessary expenses incurred in attending board meetings and carrying out the board's duties.
- (6) The board shall elect annually a president from its members.
- (7) The board shall meet as often as necessary to discharge its duties, but not less than once a year.
- (8) Three (3) members shall constitute a quorum.

➔Section 5. KRS 316.210 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of this chapter and may promulgate administrative regulations pursuant to KRS Chapter 13A to carry out and enforce the provisions of this chapter.
- (2) The board shall keep records and minutes necessary to carry out the provisions of this chapter.
- (3) The board may administer oaths and may issue subpoenas to compel the attendance of witnesses and the production of documents.
- (4) The board may seek injunctive relief in Franklin Circuit Court to restrain or enjoin a violation of this chapter.
- (5) The board may employ persons as necessary to carry out the requirements of this chapter.
- (6) ***The board shall promulgate administrative regulations to establish fees authorized by this chapter.***

Signed by Governor March 15, 2021.

**CHAPTER 24**

**( HB 509 )**

AN ACT relating to reorganization.

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

➔Section 1. KRS 12.020 is amended to read as follows:

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

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

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

II. Program cabinets headed by appointed officers:

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



- (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Department of Public Advocacy.
- (2) Education and Workforce Development Cabinet:
- (a) Office of the Secretary.
    - 1. Governor's Scholars Program.
    - 2. Governor's School for Entrepreneurs Program.
    - 3. Office of the Kentucky Workforce Innovation Board.
    - 4. Foundation for Adult Education.
    - 5. Early Childhood Advisory Council.
  - (b) Office of Legal and Legislative Services.
    - 1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Administrative Services.
    - 1. Division of Human Resources.
    - 2. Division of Operations and Support Services.
    - 3. Division of Fiscal Management.
  - (e) Office of Technology Services.
  - (f) Office of Educational Programs.
  - (g) Office of the Kentucky Center for Statistics.
  - (h) Board of the Kentucky Center for Statistics.
  - (i) Board of Directors for the Center for School Safety.
  - (j) Department of Education.
    - 1. Kentucky Board of Education.
    - 2. Kentucky Technical Education Personnel Board.
  - (k) Department for Libraries and Archives.
  - (l) Department of Workforce Investment.
    - 1. Office of Vocational Rehabilitation.
      - a. Division of Kentucky Business Enterprise.
      - b. Division of the Carl D. Perkins Vocational Training Center.
      - c. Division of Blind Services.
      - d. Division of Field Services.
      - e. Statewide Council for Vocational Rehabilitation.
    - 2. Office of Unemployment Insurance.
    - 3. Office of Employer and Apprenticeship Services.
      - a. Division of Apprenticeship.

4. Office of Career Development.
5. Office of Adult Education.
6. Unemployment Insurance Commission.
7. Kentucky Apprenticeship Council.
- (m) Foundation for Workforce Development.
- (n) Kentucky Workforce Investment Board.
- (o) Education Professional Standards Board.
  1. Division of Educator Preparation.
  2. Division of Certification.
  3. Division of Professional Learning and Assessment.
  4. Division of Legal Services.
- (p) Kentucky Commission on the Deaf and Hard of Hearing.
- (q) Kentucky Educational Television.
- (r) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
  - (a) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of Legal Services.
      - a. Legal Division I.
      - b. Legal Division II.
    3. Office of Administrative Hearings.
    4. Office of Communication.
    5. Mine Safety Review Commission.
    6. Office of Kentucky Nature Preserves.
    7. Kentucky Public Service Commission.
  - (b) Department for Environmental Protection.
    1. Office of the Commissioner.
    2. Division for Air Quality.
    3. Division of Water.
    4. Division of Environmental Program Support.
    5. Division of Waste Management.
    6. Division of Enforcement.
    7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.
    1. Office of the Commissioner.
    2. Division of Mine Permits.
    3. Division of Mine Reclamation and Enforcement.
    4. Division of Abandoned Mine Lands.
    5. Division of Oil and Gas.

6. Division of Mine Safety.
  7. Division of Forestry.
  8. Division of Conservation.
  9. Office of the Reclamation Guaranty Fund.
- (d) Office of Energy Policy.
1. Division of Energy Assistance.
- (e) Office of Administrative Services.
1. Division of Human Resources Management.
  2. Division of Financial Management.
  3. Division of Information Services.
- (4) Public Protection Cabinet.
- (a) Office of the Secretary.
1. Office of Communications and Public Outreach.
  2. Office of Legal Services.
    - a. Insurance Legal Division.
    - b. Charitable Gaming Legal Division.
    - c. Alcoholic Beverage Control Legal Division.
    - d. Housing, Buildings and Construction Legal Division.
    - e. Financial Institutions Legal Division.
    - f. Professional Licensing Legal Division.
  3. Office of Administrative Hearings.
  4. Office of Administrative Services.
    - a. Division of Human Resources.
    - b. Division of Fiscal Responsibility.
- (b) Kentucky Claims Commission.
- (c) Kentucky Boxing and Wrestling Commission.
- (d) Kentucky Horse Racing Commission.
1. Office of Executive Director.
    - a. Division of Pari-mutuel Wagering and Compliance.
    - b. Division of Stewards.
    - c. Division of Licensing.
    - d. Division of Enforcement.
    - e. Division of Incentives and Development.
    - f. Division of Veterinary Services.
- (e) Department of Alcoholic Beverage Control.
1. Division of Distilled Spirits.
  2. Division of Malt Beverages.
  3. Division of Enforcement.
- (f) Department of Charitable Gaming.

1. Division of Licensing and Compliance.
2. Division of Enforcement.
- (g) Department of Financial Institutions.
  1. Division of Depository Institutions.
  2. Division of Non-Depository Institutions.
  3. Division of Securities.
- (h) Department of Housing, Buildings and Construction.
  1. Division of Fire Prevention.
  2. Division of Plumbing.
  3. Division of Heating, Ventilation, and Air Conditioning.
  4. Division of Building Code Enforcement.
- (i) Department of Insurance.
  1. Division of ***Health and Life Insurance and Managed Care*** ~~Insurance Product Regulation~~.
  2. ***Division of Property and Casualty Insurance.***
  3. Division of Administrative Services.
  - 4.~~3.~~ Division of Financial Standards and Examination.
  - 5.~~4.~~ Division of ~~Agent~~ Licensing.
  - 6.~~5.~~ Division of Insurance Fraud Investigation.
  - 7.~~6.~~ Division of Consumer Protection.
- (j) Department of Professional Licensing.
  1. Real Estate Authority.
- (5) Labor Cabinet.
  - (a) Office of the Secretary.
    1. Office of General Counsel.
      - a. Workplace Standards Legal Division.
      - b. Workers' Claims Legal Division.
    2. Office of Administrative Services.
      - a. Division of Human Resources Management.
      - b. Division of Fiscal Management.
      - c. Division of Professional Development and Organizational Management.
      - d. Division of Information Technology and Support Services.
    3. Office of Inspector General.
  - (b) Department of Workplace Standards.
    1. Division of Occupational Safety and Health Compliance.
    2. Division of Occupational Safety and Health Education and Training.
    3. Division of Wages and Hours.
  - (c) Department of Workers' Claims.
    1. Division of Workers' Compensation Funds.

2. Office of Administrative Law Judges.
  3. Division of Claims Processing.
  4. Division of Security and Compliance.
  5. Division of Information Services.
  6. Division of Specialist and Medical Services.
  7. Workers' Compensation Board.
- (d) Workers' Compensation Funding Commission.
- (e) Occupational Safety and Health Standards Board.
- (f) State Labor Relations Board.
- (g) Employers' Mutual Insurance Authority.
- (h) Kentucky Occupational Safety and Health Review Commission.
- (i) Workers' Compensation Nominating Committee.
- (6) Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Project Development.
    2. Office of Project Delivery and Preservation.
    3. Office of Highway Safety.
    4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    1. Office of Local Programs.
    2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    1. Office of Public Affairs.
    2. Office for Civil Rights and Small Business Development.
    3. Office of Budget and Fiscal Management.
    4. Office of Inspector General.
  - (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.
  - (i) Office of Human Resource Management.
  - (j) Office of Information Technology.
  - (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
- (a) Office of the Secretary.
    1. Office of Legal Services.
    2. Department for Business Development.
    3. Department for Financial Services.

## ACTS OF THE GENERAL ASSEMBLY

- a. Kentucky Economic Development Finance Authority.
- b. Finance and Personnel Division.
- c. IT and Resource Management Division.
- d. Compliance Division.
- e. Incentive Administration Division.
- f. Bluegrass State Skills Corporation.
- 4. Office of Marketing and Public Affairs.
  - a. Communications Division.
  - b. Graphics Design Division.
- 5. Office of Workforce, Community Development, and Research.
- 6. Office of Entrepreneurship.
  - a. Commission on Small Business Advocacy.
- (8) Cabinet for Health and Family Services:
  - (a) Office of the Secretary.
    - 1. Office of the Ombudsman and Administrative Review.
    - 2. Office of Public Affairs.
    - 3. Office of Legal Services.
    - 4. Office of Inspector General.
    - 5. Office of Human Resource Management.
    - 6. Office of Finance and Budget.
    - 7. Office of Legislative and Regulatory Affairs.
    - 8. Office of Administrative Services.
    - 9. Office of Application Technology Services.
  - (b) Department for Public Health.
  - (c) Department for Medicaid Services.
  - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (e) Department for Aging and Independent Living.
  - (f) Department for Community Based Services.
  - (g) Department for Income Support.
  - (h) Department for Family Resource Centers and Volunteer Services.
  - (i) Office for Children with Special Health Care Needs.
  - (j) Office of Health Data and Analytics.
- (9) Finance and Administration Cabinet:
  - (a) Office of the Secretary.
  - (b) Office of the Inspector General.
  - (c) Office of Legislative and Intergovernmental Affairs.
  - (d) Office of General Counsel.
  - (e) Office of the Controller.
  - (f) Office of Administrative Services.

- (g) Office of Policy and Audit.
  - (h) Department for Facilities and Support Services.
  - (i) Department of Revenue.
  - (j) Commonwealth Office of Technology.
  - (k) State Property and Buildings Commission.
  - (l) Office of Equal Employment Opportunity and Contract Compliance.
  - (m) Kentucky Employees Retirement Systems.
  - (n) Commonwealth Credit Union.
  - (o) State Investment Commission.
  - (p) Kentucky Housing Corporation.
  - (q) Kentucky Local Correctional Facilities Construction Authority.
  - (r) Kentucky Turnpike Authority.
  - (s) Historic Properties Advisory Commission.
  - (t) Kentucky Tobacco Settlement Trust Corporation.
  - (u) Kentucky Higher Education Assistance Authority.
  - (v) Kentucky River Authority.
  - (w) Kentucky Teachers' Retirement System Board of Trustees.
  - (x) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Tourism.
    - 1. Division of Tourism Services.
    - 2. Division of Marketing and Administration.
    - 3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - 1. Division of Information Technology.
    - 2. Division of Human Resources.
    - 3. Division of Financial Operations.
    - 4. Division of Facilities Management.
    - 5. Division of Facilities Maintenance.
    - 6. Division of Customer Services.
    - 7. Division of Recreation.
    - 8. Division of Golf Courses.
    - 9. Division of Food Services.
    - 10. Division of Rangers.
    - 11. Division of Resort Parks.
    - 12. Division of Recreational Parks and Historic Sites.
  - (c) Department of Fish and Wildlife Resources.
    - 1. Division of Law Enforcement.
    - 2. Division of Administrative Services.

3. Division of Engineering, Infrastructure, and Technology.
  4. Division of Fisheries.
  5. Division of Information and Education.
  6. Division of Wildlife.
  7. Division of Marketing.
- (d) Kentucky Horse Park.
1. Division of Support Services.
  2. Division of Buildings and Grounds.
  3. Division of Operational Services.
- (e) Kentucky State Fair Board.
1. Office of Administrative and Information Technology Services.
  2. Office of Human Resources and Access Control.
  3. Division of Expositions.
  4. Division of Kentucky Exposition Center Operations.
  5. Division of Kentucky International Convention Center.
  6. Division of Public Relations and Media.
  7. Division of Venue Services.
  8. Division of Personnel Management and Staff Development.
  9. Division of Sales.
  10. Division of Security and Traffic Control.
  11. Division of Information Technology.
  12. Division of the Louisville Arena.
  13. Division of Fiscal and Contract Management.
  14. Division of Access Control.
- (f) Office of the Secretary.
1. Office of Finance.
  2. Office of Government Relations and Administration.
  3. Office of Film and Tourism Development.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Arts and Cultural Heritage.
- (k) Kentucky African-American Heritage Commission.
- (l) Kentucky Foundation for the Arts.
- (m) Kentucky Humanities Council.
- (n) Kentucky Heritage Council.
- (o) Kentucky Arts Council.
- (p) Kentucky Historical Society.
1. Division of Museums.



2. Division of Oral History and Educational Outreach.
  3. Division of Research and Publications.
  4. Division of Administration.
- (q) Kentucky Center for the Arts.
1. Division of Governor's School for the Arts.
- (r) Kentucky Artisans Center at Berea.
- (s) Northern Kentucky Convention Center.
- (t) Eastern Kentucky Exposition Center.
- (11) Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department of Human Resources Administration.
  - (c) Office of Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Office of Administrative Services.
  - (f) Office of Legal Services.
  - (g) Governmental Services Center.
  - (h) Department of Employee Insurance.
  - (i) Office of Diversity, Equality, and Training.
  - (j) Office of Public Affairs.
- III. Other departments headed by appointed officers:
- (1) Council on Postsecondary Education.
  - (2) Department of Military Affairs.
  - (3) Department for Local Government.
  - (4) Kentucky Commission on Human Rights.
  - (5) Kentucky Commission on Women.
  - (6) Department of Veterans' Affairs.
  - (7) Kentucky Commission on Military Affairs.
  - (8) Office of Minority Empowerment.
  - (9) Governor's Council on Wellness and Physical Activity.
  - (10) Kentucky Communications Network Authority.
- ➔Section 2. KRS 304.2-020 is amended to read as follows:
- (1) The commissioner is the head of the Department of Insurance.
  - (2) The commissioner shall be appointed by the Governor with the consent of the Senate, for a term not to exceed four (4) years on the basis of his or her merit and fitness to perform the duties of the office as provided in KRS 12.040. If the Senate is not in session when a term expires or a vacancy occurs, the Governor shall make the appointment to take effect at once, subject to the approval of the Senate when convened. Nothing contained in this subsection shall prohibit the commissioner of the Department of Insurance from being reappointed.
  - (3) The following divisions are established within the Department of Insurance and shall be headed by directors appointed by the secretary of the Public Protection Cabinet with the approval of the Governor in accordance with KRS 12.050:
    - (a) Division of *Health and Life Insurance and Managed Care* [~~Insurance Product Regulation~~];

- (b) *Division of Property and Casualty Insurance;*
- (c) Division of Administrative Services;
- ~~(d)(c)~~ Division of Financial Standards and Examination;
- ~~(e)(d)~~ Division of ~~Agent~~ Licensing;
- ~~(f)(e)~~ Division of Insurance Fraud Investigation; and
- ~~(g)(f)~~ Division of Consumer Protection.

➔Section 3. The General Assembly confirms Executive Order 2020-1028, dated December 11, 2020, to the extent it is not otherwise confirmed or superseded by this Act.

**Signed by Governor March 15, 2021.**

## CHAPTER 25

### ( SB 141 )

AN ACT relating to the coal workers' pneumoconiosis fund.

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

➔Section 1. KRS 342.1242 is amended to read as follows:

- (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after December 12, 1996, which are filed on or before June 30, 2017. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement for any claims filed after June 30, 2017.
- (2) For claims brought under KRS 342.732 for last exposure incurred on or after December 12, 1996 which are filed on or before June 30, 2017, the employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the commissioner of the Department of Workers' Claims.
- (3)
  - (a) For the purpose of funding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
  - (b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents (\$0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.
  - (c) As of June 30, 2018, and each year thereafter until the liabilities of the fund are fully funded, the Funding Commission and the Kentucky Employers' Mutual Insurance Authority shall determine the assets of the fund and the claim liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fund claim liabilities through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so

as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than October 1 of the year preceding the rate change.

- (4) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be transferred to the Kentucky Employers' Mutual Insurance Authority, which is administering the coal workers' pneumoconiosis fund. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1221, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.
- (5) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.
- (6) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers' pneumoconiosis fund shall be liable for payment of a part of the liability only for employees of employers engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a) and (b).
- (8)
  - (a) Assessments issued pursuant to this section shall cease to be imposed once the liabilities of the fund are fully funded. After the liabilities are fully funded, any excess assessments shall be refunded to the employers on a pro rata basis as determined from the cumulative amounts of assessments received from workers' compensation premiums paid by employers, whether insured, self-insured, or carrying their own risk, on or after January 1, 2017.
  - (b) The Kentucky Employers' Mutual Insurance Authority shall disburse, on a pro rata basis, the excess assessments to each employer which is engaged in the severance or processing of coal and which is in good standing with the Secretary of State and authorized to do business in the Commonwealth as evidenced by a certificate of existence, certificate of authorization, or other such certificate issued by the Secretary of State their pro rata shares of excess assessments.
  - (c) Upon a determination by the Kentucky Workers' Compensation Funding Commission and the Kentucky Employers' Mutual Insurance Authority that final audits **and any resulting litigation** are closed ~~or~~ ~~and~~ the liabilities of the fund are fully funded, the Kentucky Employers' Mutual Insurance Authority shall send a notice to each employer via first-class United States mail advising each employer that in order to assert a claim to the employer's pro rata share of any excess assessments the employer must submit a certification under oath to the Kentucky Employers' Mutual Insurance Authority stating that the employer is engaged in the severance or processing of coal in the Commonwealth and that the employer is in good standing with the Secretary of State and authorized to do business in the Commonwealth. The employer shall also certify whether or not it has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code.
  - (d) The employer shall submit to the Kentucky Employers' Mutual Insurance Authority the employer's certificate obtained from the Secretary of State along with the certification under oath specified in this subsection.
  - (e) The Kentucky Employers' Mutual Insurance Authority shall specify in the notice the date of mailing of the notice to the employer and shall send the notice to the employer at the address of the statutory agent designated by the employer with the Secretary of State or, if the employer has not designated a statutory agent with the Secretary of State, at the address of the employer on file with the Kentucky Employers' Mutual Insurance Authority or, if the address of the employer is not on file with the Kentucky

Employers' Mutual Insurance Authority, at the address of the employer on file with the Kentucky Workers' Compensation Funding Commission.

- (f) The employer's certification must be received by the Kentucky Employers' Mutual Insurance Authority within thirty (30) days of mailing of the notice from the Kentucky Employers' Mutual Insurance Authority to the employer.
  - (g) Within thirty (30) days of receipt of a timely submitted certification from an employer, the Kentucky Employers' Mutual Insurance Authority shall distribute to the employer the employer's pro rata share of the excess funds. If the employer is in bankruptcy at the time the certification is provided to the Kentucky Employers' Mutual Insurance Authority, any funds that would be distributed to the employer shall ~~only~~ be distributed to former employees to whom past due wages are owed, subject to the approval of the bankruptcy judge. ***If there are remaining funds in the employer-in-bankruptcy's pro rata share after payment to the former employees to whom past due wages are owed, the employer-in-bankruptcy's pro rata share shall be distributed as directed by the bankruptcy court, and if not directed by the bankruptcy court, to the Kentucky coal employers self-insurance guaranty fund.*** If an employer has an outstanding balance due for taxes or other obligations to the Commonwealth, for a bond payment, or to a county, city, school system or school district, fire district, or any special taxing authority, no funds shall be distributed to the employer unless those outstanding balances have been paid in full at the time of the distribution of the funds by Kentucky Employers' Mutual Insurance Authority. ***Any funds that would be distributed to the employer shall first be distributed to the Commonwealth, for a bond payment, or to a county, city, school system or school district, fire district, or any special taxing authority, and then any remaining funds may be distributed as otherwise prescribed in this section.***
  - (h) If, at any time after the Kentucky Employers' Mutual Insurance Authority's distribution of funds to an employer, it is determined that the certification submitted by the employer to the Kentucky Employers' Mutual Insurance Authority was materially false at the time of the certification, the Attorney General is authorized to file an action against the employer to recover the funds distributed to the employer by the Kentucky Employers' Mutual Insurance Authority along with interest at the rate of twelve percent (12%) from the date of distribution of the funds to the employer and a penalty of ten percent (10%) of the amount of the funds distributed to the employer, plus reasonable attorney's fees, litigation expenses, and court costs.
  - (i) For those employers who do not timely submit a certification to the Kentucky Employers' Mutual Insurance Authority as specified in this subsection, their pro rata shares shall be transferred to the Kentucky coal employers self-insurance guaranty fund for the purpose of paying workers' compensation benefits to employees of insolvent self-insured employers engaged in the severance and processing of coal, and those employers' claims to a distribution of funds pursuant to this subsection shall be forever barred.
  - (j) The Kentucky Workers' Compensation Funding Commission shall provide all available information regarding the employers to the Kentucky Employers' Mutual Insurance Authority upon the request of the Kentucky Employers' Mutual Insurance Authority.
- (9) The Kentucky Employers' Mutual Insurance Authority shall reimburse the funding commission for any expenses incurred with regard to the collection of assessments for the coal workers' pneumoconiosis fund and other incurred expenses related to the coal workers' pneumoconiosis fund.

➔Section 2. KRS 342.1243 is amended to read as follows:

- (1) Notwithstanding any provisions of this chapter or any other provisions to the contrary, the Kentucky coal workers' pneumoconiosis fund shall have no liability for income benefits for coal workers' pneumoconiosis claims filed or reopened on or after July 1, 2017.
- (2) Notwithstanding any provisions of this chapter or any other provisions to the contrary, as soon as practically possible after July 1, 2017, all of the assets and liabilities of the Kentucky coal workers' pneumoconiosis fund shall be transferred from the Kentucky Workers' Compensation Funding Commission and Division of Workers' Compensation Funds to the Kentucky Employers' Mutual Insurance Authority through a loss portfolio transfer agreement. The Kentucky Employers' Mutual Insurance Authority shall have full authority and responsibility over the Kentucky coal workers' pneumoconiosis fund's claims and shall administer the claims as permitted pursuant to KRS Chapter 342.

- (3) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation Funding Commission shall impose an assessment at an annual rate of fourteen percent (14%) upon the amount of workers' compensation premiums received on or after January 1, 2017, through December 31, 2017, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and KRS Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on or after January 1, 2017, through December 31, 2017, an assessment at the rate of fourteen percent (14%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
- (4) Notwithstanding the provisions of KRS 342.1242, the Workers' Compensation Funding Commission shall impose an assessment at an annual rate of fourteen percent (14%) upon the amount of workers' compensation premiums received on or after January 1, 2018, through December 31, 2018, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on or after January 1, 2018, through December 31, 2018, an assessment at the rate of fourteen percent (14%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
- (5) Notwithstanding the provisions of KRS 342.1242, in addition to the assessments in subsection (3) and (4) of this section, for the calendar years of 2017 and 2018, an assessment at the rate of fifteen cents (\$0.15) per ton shall be imposed upon the total annual amount of tons of coal severed by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.
- (6) The assessments imposed by this section shall supersede any assessment imposed pursuant to KRS 342.1242 for the calendar years of 2017 and 2018. Any amount paid and collected that exceeds the assessment imposed by this section in calendar year 2017 shall be reimbursed to the employer or credited to the employer's account subject to the preference of the employer.
- (7) Assessments pursuant to this section and KRS 342.1242 that are collected by the Kentucky Worker's Compensation Funding Commission shall be transferred to the Kentucky Employers' Mutual Insurance Authority.
- (8) When the Kentucky Workers' Compensation Funding Commission and the Kentucky Employers' Mutual Insurance Authority have determined final audits are closed and the liability of the fund is fully funded, then the authority for imposing assessment rates pursuant to this section and KRS 342.1242 shall cease to exist. ~~[Any remaining assessments received following the exhaustion of liabilities shall be refunded pro rata to all employers who have paid an assessment in the year that liabilities are fully funded.]~~ When all distributions pursuant to KRS 342.1242(8) have been completed, the Kentucky coal workers' pneumoconiosis fund shall be abolished. ***Any funds collected, following the abolition of the Kentucky coal workers' pneumoconiosis fund, from subrogation or otherwise, after the final distribution shall be transferred to the Kentucky coal employers self-insurance guaranty fund.*** ~~[The Kentucky Employers' Mutual Insurance Authority may thereafter apply all funds received through subrogation or otherwise to expenses incurred in the administration and distribution of funds.]~~

**Signed by Governor March 15, 2021.**

## CHAPTER 26

( SB 168 )

AN ACT relating to reorganization.

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

➔Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they

are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

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

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

II. Program cabinets headed by appointed officers:

- (1) Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Department of Public Advocacy.
- (2) Education and Workforce Development Cabinet:
  - (a) Office of the Secretary.
    1. Governor's Scholars Program.
    2. Governor's School for Entrepreneurs Program.
    3. Office of the Kentucky Workforce Innovation Board.

4. Foundation for Adult Education.
5. Early Childhood Advisory Council.
- (b) Office of Legal and Legislative Services.
  1. Client Assistance Program.
- (c) Office of Communication.
- (d) Office of Administrative Services.
  1. Division of Human Resources.
  2. Division of Operations and Support Services.
  3. Division of Fiscal Management.
- (e) Office of Technology Services.
- (f) Office of Educational Programs.
- (g) Office of the Kentucky Center for Statistics.
- (h) Board of the Kentucky Center for Statistics.
- (i) Board of Directors for the Center for School Safety.
- (j) Department of Education.
  1. Kentucky Board of Education.
  2. Kentucky Technical Education Personnel Board.
  3. ***Education Professional Standards Board.***
- (k) Department for Libraries and Archives.
- (l) Department of Workforce Investment.
  1. Office of Vocational Rehabilitation.
    - a. Division of Kentucky Business Enterprise.
    - b. Division of the Carl D. Perkins Vocational Training Center.
    - c. Division of Blind Services.
    - d. Division of Field Services.
    - e. Statewide Council for Vocational Rehabilitation.
  2. Office of Unemployment Insurance.
  3. Office of Employer and Apprenticeship Services.
    - a. Division of Apprenticeship.
  4. Office of Career Development.
  5. Office of Adult Education.
  6. Unemployment Insurance Commission.
  7. Kentucky Apprenticeship Council.
- (m) Foundation for Workforce Development.
- (n) Kentucky Workforce Investment Board.
- (o) ~~Education Professional Standards Board.~~
  1. ~~Division of Educator Preparation.~~
  2. ~~Division of Certification.~~
  3. ~~Division of Professional Learning and Assessment.~~

4. ~~Division of Legal Services.~~

~~(p)~~ Kentucky Commission on the Deaf and Hard of Hearing.

~~(p)~~~~(q)~~ Kentucky Educational Television.

~~(q)~~~~(r)~~ Kentucky Environmental Education Council.

(3) Energy and Environment Cabinet:

(a) Office of the Secretary.

1. Office of Legislative and Intergovernmental Affairs.
2. Office of Legal Services.
  - a. Legal Division I.
  - b. Legal Division II.
3. Office of Administrative Hearings.
4. Office of Communication.
5. Mine Safety Review Commission.
6. Office of Kentucky Nature Preserves.
7. Kentucky Public Service Commission.

(b) Department for Environmental Protection.

1. Office of the Commissioner.
2. Division for Air Quality.
3. Division of Water.
4. Division of Environmental Program Support.
5. Division of Waste Management.
6. Division of Enforcement.
7. Division of Compliance Assistance.

(c) Department for Natural Resources.

1. Office of the Commissioner.
2. Division of Mine Permits.
3. Division of Mine Reclamation and Enforcement.
4. Division of Abandoned Mine Lands.
5. Division of Oil and Gas.
6. Division of Mine Safety.
7. Division of Forestry.
8. Division of Conservation.
9. Office of the Reclamation Guaranty Fund.

(d) Office of Energy Policy.

1. Division of Energy Assistance.

(e) Office of Administrative Services.

1. Division of Human Resources Management.
2. Division of Financial Management.
3. Division of Information Services.



- (4) Public Protection Cabinet.
  - (a) Office of the Secretary.
    - 1. Office of Communications and Public Outreach.
    - 2. Office of Legal Services.
      - a. Insurance Legal Division.
      - b. Charitable Gaming Legal Division.
      - c. Alcoholic Beverage Control Legal Division.
      - d. Housing, Buildings and Construction Legal Division.
      - e. Financial Institutions Legal Division.
      - f. Professional Licensing Legal Division.
    - 3. Office of Administrative Hearings.
    - 4. Office of Administrative Services.
      - a. Division of Human Resources.
      - b. Division of Fiscal Responsibility.
  - (b) Kentucky Claims Commission.
  - (c) Kentucky Boxing and Wrestling Commission.
  - (d) Kentucky Horse Racing Commission.
    - 1. Office of Executive Director.
      - a. Division of Pari-mutuel Wagering and Compliance.
      - b. Division of Stewards.
      - c. Division of Licensing.
      - d. Division of Enforcement.
      - e. Division of Incentives and Development.
      - f. Division of Veterinary Services.
  - (e) Department of Alcoholic Beverage Control.
    - 1. Division of Distilled Spirits.
    - 2. Division of Malt Beverages.
    - 3. Division of Enforcement.
  - (f) Department of Charitable Gaming.
    - 1. Division of Licensing and Compliance.
    - 2. Division of Enforcement.
  - (g) Department of Financial Institutions.
    - 1. Division of Depository Institutions.
    - 2. Division of Non-Depository Institutions.
    - 3. Division of Securities.
  - (h) Department of Housing, Buildings and Construction.
    - 1. Division of Fire Prevention.
    - 2. Division of Plumbing.
    - 3. Division of Heating, Ventilation, and Air Conditioning.

4. Division of Building Code Enforcement.
- (i) Department of Insurance.
  1. Division of Insurance Product Regulation.
  2. Division of Administrative Services.
  3. Division of Financial Standards and Examination.
  4. Division of Agent Licensing.
  5. Division of Insurance Fraud Investigation.
  6. Division of Consumer Protection.
- (j) Department of Professional Licensing.
  1. Real Estate Authority.
- (5) Labor Cabinet.
  - (a) Office of the Secretary.
    1. Office of General Counsel.
      - a. Workplace Standards Legal Division.
      - b. Workers' Claims Legal Division.
    2. Office of Administrative Services.
      - a. Division of Human Resources Management.
      - b. Division of Fiscal Management.
      - c. Division of Professional Development and Organizational Management.
      - d. Division of Information Technology and Support Services.
    3. Office of Inspector General.
  - (b) Department of Workplace Standards.
    1. Division of Occupational Safety and Health Compliance.
    2. Division of Occupational Safety and Health Education and Training.
    3. Division of Wages and Hours.
  - (c) Department of Workers' Claims.
    1. Division of Workers' Compensation Funds.
    2. Office of Administrative Law Judges.
    3. Division of Claims Processing.
    4. Division of Security and Compliance.
    5. Division of Information Services.
    6. Division of Specialist and Medical Services.
    7. Workers' Compensation Board.
  - (d) Workers' Compensation Funding Commission.
  - (e) Occupational Safety and Health Standards Board.
  - (f) State Labor Relations Board.
  - (g) Employers' Mutual Insurance Authority.
  - (h) Kentucky Occupational Safety and Health Review Commission.
  - (i) Workers' Compensation Nominating Committee.

- (6) Transportation Cabinet:
  - (a) Department of Highways.
    - 1. Office of Project Development.
    - 2. Office of Project Delivery and Preservation.
    - 3. Office of Highway Safety.
    - 4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    - 1. Office of Local Programs.
    - 2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    - 1. Office of Public Affairs.
    - 2. Office for Civil Rights and Small Business Development.
    - 3. Office of Budget and Fiscal Management.
    - 4. Office of Inspector General.
  - (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.
  - (i) Office of Human Resource Management.
  - (j) Office of Information Technology.
  - (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
  - (a) Office of the Secretary.
    - 1. Office of Legal Services.
    - 2. Department for Business Development.
    - 3. Department for Financial Services.
      - a. Kentucky Economic Development Finance Authority.
      - b. Finance and Personnel Division.
      - c. IT and Resource Management Division.
      - d. Compliance Division.
      - e. Incentive Administration Division.
      - f. Bluegrass State Skills Corporation.
    - 4. Office of Marketing and Public Affairs.
      - a. Communications Division.
      - b. Graphics Design Division.
    - 5. Office of Workforce, Community Development, and Research.
    - 6. Office of Entrepreneurship.
      - a. Commission on Small Business Advocacy.

- (8) Cabinet for Health and Family Services:
- (a) Office of the Secretary.
    - 1. Office of the Ombudsman and Administrative Review.
    - 2. Office of Public Affairs.
    - 3. Office of Legal Services.
    - 4. Office of Inspector General.
    - 5. Office of Human Resource Management.
    - 6. Office of Finance and Budget.
    - 7. Office of Legislative and Regulatory Affairs.
    - 8. Office of Administrative Services.
    - 9. Office of Application Technology Services.
  - (b) Department for Public Health.
  - (c) Department for Medicaid Services.
  - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (e) Department for Aging and Independent Living.
  - (f) Department for Community Based Services.
  - (g) Department for Income Support.
  - (h) Department for Family Resource Centers and Volunteer Services.
  - (i) Office for Children with Special Health Care Needs.
  - (j) Office of Health Data and Analytics.
- (9) Finance and Administration Cabinet:
- (a) Office of the Secretary.
  - (b) Office of the Inspector General.
  - (c) Office of Legislative and Intergovernmental Affairs.
  - (d) Office of General Counsel.
  - (e) Office of the Controller.
  - (f) Office of Administrative Services.
  - (g) Office of Policy and Audit.
  - (h) Department for Facilities and Support Services.
  - (i) Department of Revenue.
  - (j) Commonwealth Office of Technology.
  - (k) State Property and Buildings Commission.
  - (l) Office of Equal Employment Opportunity and Contract Compliance.
  - (m) Kentucky Employees Retirement Systems.
  - (n) Commonwealth Credit Union.
  - (o) State Investment Commission.
  - (p) Kentucky Housing Corporation.
  - (q) Kentucky Local Correctional Facilities Construction Authority.
  - (r) Kentucky Turnpike Authority.

- (s) Historic Properties Advisory Commission.
  - (t) Kentucky Tobacco Settlement Trust Corporation.
  - (u) Kentucky Higher Education Assistance Authority.
  - (v) Kentucky River Authority.
  - (w) Kentucky Teachers' Retirement System Board of Trustees.
  - (x) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Tourism.
    - 1. Division of Tourism Services.
    - 2. Division of Marketing and Administration.
    - 3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - 1. Division of Information Technology.
    - 2. Division of Human Resources.
    - 3. Division of Financial Operations.
    - 4. Division of Facilities Management.
    - 5. Division of Facilities Maintenance.
    - 6. Division of Customer Services.
    - 7. Division of Recreation.
    - 8. Division of Golf Courses.
    - 9. Division of Food Services.
    - 10. Division of Rangers.
    - 11. Division of Resort Parks.
    - 12. Division of Recreational Parks and Historic Sites.
  - (c) Department of Fish and Wildlife Resources.
    - 1. Division of Law Enforcement.
    - 2. Division of Administrative Services.
    - 3. Division of Engineering, Infrastructure, and Technology.
    - 4. Division of Fisheries.
    - 5. Division of Information and Education.
    - 6. Division of Wildlife.
    - 7. Division of Marketing.
  - (d) Kentucky Horse Park.
    - 1. Division of Support Services.
    - 2. Division of Buildings and Grounds.
    - 3. Division of Operational Services.
  - (e) Kentucky State Fair Board.
    - 1. Office of Administrative and Information Technology Services.
    - 2. Office of Human Resources and Access Control.

3. Division of Expositions.
4. Division of Kentucky Exposition Center Operations.
5. Division of Kentucky International Convention Center.
6. Division of Public Relations and Media.
7. Division of Venue Services.
8. Division of Personnel Management and Staff Development.
9. Division of Sales.
10. Division of Security and Traffic Control.
11. Division of Information Technology.
12. Division of the Louisville Arena.
13. Division of Fiscal and Contract Management.
14. Division of Access Control.
- (f) Office of the Secretary.
  1. Office of Finance.
  2. Office of Government Relations and Administration.
  3. Office of Film and Tourism Development.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Arts and Cultural Heritage.
- (k) Kentucky African-American Heritage Commission.
- (l) Kentucky Foundation for the Arts.
- (m) Kentucky Humanities Council.
- (n) Kentucky Heritage Council.
- (o) Kentucky Arts Council.
- (p) Kentucky Historical Society.
  1. Division of Museums.
  2. Division of Oral History and Educational Outreach.
  3. Division of Research and Publications.
  4. Division of Administration.
- (q) Kentucky Center for the Arts.
  1. Division of Governor's School for the Arts.
- (r) Kentucky Artisans Center at Berea.
- (s) Northern Kentucky Convention Center.
- (t) Eastern Kentucky Exposition Center.
- (11) Personnel Cabinet:
  - (a) Office of the Secretary.
  - (b) Department of Human Resources Administration.
  - (c) Office of Employee Relations.

- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Office of Administrative Services.
- (f) Office of Legal Services.
- (g) Governmental Services Center.
- (h) Department of Employee Insurance.
- (i) Office of Diversity, Equality, and Training.
- (j) Office of Public Affairs.

III. Other departments headed by appointed officers:

- (1) Council on Postsecondary Education.
- (2) Department of Military Affairs.
- (3) Department for Local Government.
- (4) Kentucky Commission on Human Rights.
- (5) Kentucky Commission on Women.
- (6) Department of Veterans' Affairs.
- (7) Kentucky Commission on Military Affairs.
- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.
- (10) Kentucky Communications Network Authority.

➔Section 2. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
  - (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
  - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
  - (c) Members of boards and commissions;
  - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the Secretary of the Governor's Cabinet, and the Office of Program Administration;
  - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television ~~and the executive director and deputy executive director of the Education Professional Standards Board~~;
  - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
  - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
  - (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the secretary approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the secretary. Effective August 1, 2010:

1. All positions approved under this paragraph prior to August 1, 2010, shall be abolished effective December 31, 2010, unless reapproved under subparagraph 2. of this paragraph; and
  2. A position approved under this paragraph on or after August 1, 2010, shall be approved for a period of five (5) years, after which time the position shall be abolished unless reapproved under this subparagraph for an additional five (5) year period;
    - (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
    - (j) Physicians employed as such;
    - (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
    - (l) The judicial department, referees, receivers, jurors, and notaries public;
    - (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
    - (n) Patients or inmates employed in state institutions;
    - (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
    - (p) Interim employees;
    - (q) Officers and members of the state militia;
    - (r) Department of Kentucky State Police troopers;
    - (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
    - (t) Superintendents of state mental institutions, including heads of centers for individuals with an intellectual disability, and penal and correctional institutions as referred to in KRS 196.180(2);
    - (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
    - (v) County and Commonwealth's attorneys and their respective appointees;
    - (w) Chief district engineers and the state highway engineer;
    - (x) Veterinarians employed as such by the Kentucky Horse Racing Commission;
    - (y) Employees of the Kentucky Peace Corps;
    - (z) Employees of the Council on Postsecondary Education;
    - (aa) Executive director of the Commonwealth Office of Technology;
    - (ab) Employees of Serve Kentucky;
    - (ac) Persons employed in certified teaching positions at the Kentucky School for the Blind and the Kentucky School for the Deaf; and
    - (ad) Federally funded time-limited employees as defined in KRS 18A.005.
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
  - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.



- (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
- (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
- (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.
- (7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.
- (8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.
- (9) On May 1, 2017, all contract employees of Eastern Kentucky University who are engaged in providing instructional and support services to the Department of Criminal Justice Training shall be transferred to the personnel system under KRS Chapter 18A. All records shall be transferred, including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems for Eastern Kentucky University and under KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No employee shall suffer any penalty in the transfer.

➔Section 3. KRS 41.410 is amended to read as follows:

- (1) The Commonwealth Council on Developmental Disabilities is created within the Department of the Treasury.
- (2) The Commonwealth Council on Developmental Disabilities is established to comply with the requirements of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and any subsequent amendment to that act.
- (3) The members of the Commonwealth Council on Developmental Disabilities shall be appointed by the Governor to serve as advocates for persons with developmental disabilities. The council shall be composed of twenty-six (26) members.
  - (a) Ten (10) members shall be representatives of: the principal state agencies administering funds provided under the Rehabilitation Act of 1973 as amended; the state agency that administers funds provided under the Individuals with Disabilities Education Act (IDEA); the state agency that administers funds provided under the Older Americans Act of 1965 as amended; the single state agency designated by the Governor for administration of Title XIX of the Social Security Act for persons with developmental disabilities; higher education training facilities, each university-affiliated program or satellite center in

the Commonwealth; and the protection and advocacy system established under Public Law 101-496. These members shall represent the following:

1. Office of Vocational Rehabilitation;
  2. Division of Blind Services within the Office of Vocational Rehabilitation;
  3. ~~Division of Exceptional Children, within the~~ Department of Education;
  4. Department for Aging and Independent Living;
  5. Department for Medicaid Services;
  6. Department of Public Advocacy, Protection and Advocacy Division;
  7. University-affiliated programs;
  8. Local and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities;
  9. Department for Behavioral Health, Developmental and Intellectual Disabilities; and
  10. Department for Public Health, Division of Maternal and Child Health.
- (b) At least sixty percent (60%) of the members of the council shall be composed of persons with developmental disabilities or the parents or guardians of persons, or immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not managing employees or persons with ownership or controlling interest in any other entity that receives funds or provides services under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 as amended and who are not employees of a state agency that receives funds or provides services under this section. Of these members, five (5) members shall be persons with developmental disabilities, and five (5) members shall be parents or guardians of children with developmental disabilities or immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves. Six (6) members shall be a combination of individuals in these two (2) groups, and at least one (1) of these members shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability or an individual with a developmental disability who resides in an institution or who previously resided in an institution.
- (c) Members not representing principal state agencies shall be appointed for a term of three (3) years. Members shall serve no more than two (2) consecutive three (3) year terms. Members shall serve until their successors are appointed or until they are removed for cause.
- (d) The council shall elect its own chair, adopt bylaws, and operate in accordance with its bylaws. Members of the council who are not state employees shall be reimbursed for necessary and actual expenses. The Department of the Treasury shall provide personnel adequate to ensure that the council has the capacity to fulfill its responsibilities. The council shall be headed by an executive director. If the executive director position becomes vacant, the council shall be responsible for the recruitment and hiring of a new executive director.
- (4) The Commonwealth Council on Developmental Disabilities shall:
- (a) Develop and implement the state plan as required by Part B of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, as amended, with a goal of development of a coordinated consumer and family centered focus and direction, including the specification of priority services required by that plan;
  - (b) Monitor, review, and evaluate, not less often than annually, the implementation and effectiveness of the state plan in meeting the plan's objectives;
  - (c) To the maximum extent feasible, review and comment on all state plans that relate to persons with developmental disabilities;
  - (d) Submit to the Department of the Treasury and the Secretary of the United States Department of Health and Human Services any periodic reports on its activities as required by the United States Department of Health and Human Services and keep records and afford access as the Department of the Treasury finds necessary to verify the reports;

- (e) Serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that promote systematic change and capacity building;
- (f) Examine, not less than once every five (5) years, the provision of and need for federal and state priority areas to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance for individuals with developmental disabilities and their families; and
- (g) Prepare, approve, and implement a budget that includes amounts paid to the state under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, as amended, to fund all programs, projects, and activities under that Act.

➔Section 4. KRS 156.027 is amended to read as follows:

- (1) The following definitions shall apply to this section:
  - (a) "Alternative format" means any medium or format for the presentation of instructional materials that is needed by a student with an individualized education program or Section 504 Plan for a reading accommodation other than standard print, including but not limited to Braille, large print, audio recordings, digital text, and digital talking books;
  - (b) "Braille," "individualized education program," and "blind students" have the same meaning as defined under KRS 158.281;
  - (c) "Comparable version" denotes that all elements of the print version are present in the electronic version, including graphics with ALT tags though not necessarily in the same order or format;
  - (d) "Legacy materials" means images and graphics requiring release and permission from another source other than the publisher; and
  - (e) "Section 504 Plan" means a written statement developed for a student with a disability that includes the provision of regular or special education and related aids and services designed to meet individual educational needs in accordance with the federal regulations issued under 34 C.F.R. sec. 104.33.
- (2) The purpose of this section shall be to ensure, to the extent feasible, that all students with disabilities in the public schools kindergarten through grade twelve (12) who require reading accommodations in accordance with an individualized education program or Section 504 Plan, including but not limited to students who are blind, visually impaired, or who have a specific learning disability as defined in KRS 157.200 or other disability affecting reading, shall have access to textbooks and instructional materials as defined by administrative regulations of the Kentucky Board of Education in alternative formats that are appropriate to their disability and educational needs.
- (3) Notwithstanding any other statute to the contrary, the Department of Education shall give preferential procurement status to textbook and instructional materials from publishers who make their materials available in alternative formats for use by students with disabilities, or who can verify that an accessible format textbook or instructional material is currently available from or is in the process of being created by the American Printing House for the Blind, Recording for the Blind and Dyslexic, or another authorized entity, as defined under 17 U.S.C. sec. 121 and who commonly provide alternative format materials for use by students in Kentucky schools. The Department of Education may assign additional procurement preferences designed to ensure that students with disabilities have access to appropriate alternative formats to meet their needs.
- (4) Effective July 1, 2003, the Department of Education shall require to the extent feasible any publisher of a textbook or program adopted for use in the public schools in kindergarten through grade twelve (12) to furnish computer files or electronic versions of the printed textbooks and instructional materials in formats comparable to the printed version that are compatible with commonly used Braille translation and speech synthesis software and include corrections and revisions as may be necessary to assure clarity in presentation and use. Navigation within and between files should be reasonably efficient so that the disabled learner is able to fully utilize the material in a manner that yields the same result as the print version affords a nondisabled learner. File format shall be limited to those formats that allow for a comparable version that is readable with text and screen readers such as HTML, XML, or other formats that meet the criteria stated in this subsection. For extreme cases where ALT tags are not feasible, a tag may read, "This item is too complicated to render with current technology." Legacy materials shall be exempt from the criteria for this preference. These files shall be provided to the **Department of Education** [~~Division of Exceptional Children Services~~] and shall be provided at the same time and in composition and form comparable with the printed version and include corrections and revisions as may be necessary to ensure clarity in presentation and use. The Department of Education may

define further requirements regarding additional characteristics of digital files submitted in compliance with this section as needed to provide appropriate alternative formats to meet the needs of students with disabilities.

- (5) The Department of Education shall require publishers to make digital files, together with two (2) copies of the print version, available at no charge upon request to the American Printing House for the Blind for production of accessible Braille and other materials and to Recording for the Blind and Dyslexic or another authorized entity, as defined under 17 U.S.C. sec. 121, for production of accessible audio media, digital text, and digital talking books, which produce accessible format materials based on selection and scheduling needs.
- (6) Nothing in this section shall in any way lessen the obligation of the public schools to provide for the instruction of blind students in the use of Braille in accordance with KRS 158.282 nor lessen the provision of Braille textbooks for blind students under KRS 156.476.

➔Section 5. KRS 156.824 is amended to read as follows:

- (1) (a) When a certified, equivalent, or unclassified employee has been finally ordered reinstated without loss of pay, pursuant to the provisions of KRS 156.822, the board shall forward a certified copy of the order to the Department of Education. The department shall process proper payment to the employee for the period of suspension, the payment to be made out of the agency's appropriations. If no funds or insufficient funds are available in the agency's appropriations, then payment shall be made out of the judgments section of the general fund of the biennial state budget.
- (b) Gross moneys which are earned by the employee from other sources during the period of suspension shall set off against the gross sum due the employee, to the extent that the moneys were earned in a number of hours comparable to the length of time the employee would have worked in the previous job where dismissal occurred. The ~~commissioner of education~~~~executive director of the Office of Career and Technical Education~~ shall by regulation provide an administrative procedure for determining reasonable earnings to be set off.
- (c) All other deductions shall be deducted as required by law or by other state regulation.
- (2) (a) Both the employee's and employer's contributions to the Kentucky Teachers' Retirement System or the Kentucky Employees Retirement System shall be based upon the gross amount due the employee, before set-off or deduction, except for set-off caused by earnings on which employee and employer contributions to the Kentucky Teachers' Retirement System or the Kentucky Employees Retirement System have been paid.
- (b) Member and employer contributions paid into the system in which the employee participated after dismissal shall be transferred to the system in which the employee participated prior to illegal dismissal. In the event of a difference in member or employer contribution rates between the retirement system under which the member was covered prior to dismissal and the retirement system of participation before reinstatement by the board, the member and employer shall pay or receive a refund in order to adjust their respective contribution to the appropriate rate for the system under which the employee would have participated if dismissal had not occurred.

➔Section 6. KRS 157.360 is amended to read as follows:

- (1) (a) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.
- (b) When determining the biennial appropriations for the program, the average daily attendance for each fiscal year shall include an estimate of the number of students graduating early under the provisions of KRS 158.142.
- (2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year, except a district shall receive an amount equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level for each student who graduated early under the provisions of KRS 158.142. Each district's base funding level shall be adjusted by the following factors:
  - (a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay for:

1. Alternative programs for students who are at risk of dropping out of school before achieving a diploma; and
  2. A hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;
- (b) The number and types of exceptional children in the district as defined by KRS 157.200. Specific weights for each category of exceptionality shall be used in the calculation of the add-on factor for exceptional children; and
- (c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which ensures that no public school funds are used for the transportation of nonpublic students.
- (3) Beginning with the 2015-2016 school year and each year thereafter, the General Assembly shall annually allocate funds equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level for each student who graduated early under the provisions of KRS 158.142 the previous school year to the Kentucky Higher Education Assistance Authority for deposit in the early graduation scholarship trust fund.
- (4) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year.
- (5) (a) Except for those schools which have implemented school-based decision making, the commissioner of education shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (6) of this section, the maximum number of pupils enrolled in a class shall be as follows:
1. Twenty-four (24) in primary grades (kindergarten through third grade);
  2. Twenty-eight (28) in grade four (4);
  3. Twenty-nine (29) in grades five (5) and six (6);
  4. Thirty-one (31) in grades seven (7) to twelve (12).
- (b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.
- (c) The commissioner of education, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).
- (d) In all schools the commissioner of education shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.
- (6) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.
- (7) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time

- enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the commissioner of education.
- (8) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.
  - (9) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.
  - (10) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.
  - (11) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).
  - (12)
    - (a) Instructional salaries for vocational agriculture classes shall be for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the ~~Division of Career and Technical Education in the~~ Department of Education. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.
    - (b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the commissioner of education a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.
  - (13)
    - (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and
    - (b) Pursuant to administrative regulations of the Kentucky Board of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short-term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance

shall be calculated pursuant to KRS 157.270 and shall be reported annually on forms provided by the Department of Education.

- (14) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.
- (15) Effective July 1, 2001, there shall be no deduction applied against the base funding level for any pupil in average daily attendance who spends a portion of his or her school day in a program at a state-operated career and technical education or vocational facility.
- (16) During a fiscal year, a school district may request that the Department of Education recalculate its funds allocated under this section if the current year average daily attendance for the twenty (20) day school month as defined in KRS 158.060(1) that contains the most days within the calendar month of January exceeds the prior year adjusted average daily attendance plus growth by at least one percent (1%). Any adjustments in the allotments approved under this subsection shall be proportional to the remaining days in the school year and subject to available funds under the program to support education excellence in Kentucky.
- (17) To calculate the state portion of the program to support education excellence in Kentucky for a school district, the Department of Education shall subtract the local effort required under KRS 157.390(5) from the calculated base funding under the program to support education excellence in Kentucky, as required by this section. The value of the real estate used in this calculation shall be the lesser of the current year assessment or the prior year assessment increased by four percent (4%) plus the value of current year new property. The calculation under this subsection shall be subject to available funds.
- (18) Notwithstanding any other statute or budget of the Commonwealth language to the contrary, time missed due to shortening days for emergencies may be made up by lengthening school days in the school calendar without any loss of funds under the program to support education excellence in Kentucky.

➔Section 7. KRS 161.017 is amended to read as follows:

- (1) The *administration of the duties of the* Education Professional Standards Board, established in KRS 161.028, shall be headed by *the commissioner of education and shall include* ~~[an executive director who shall be responsible for the day-to-day operations of the board including]~~ the following:
  - (a) Setting up appropriate organizational structures and personnel policies for approval by the board;
  - (b) Appointing all staff, ~~including the deputy executive director;~~
  - (c) Preparing annual reports on the board's program of work;
  - (d) Carrying out policy and program directives of the board; *and*
  - (e) ~~[Preparing and submitting to the board for its approval a proposed biennial budget; and~~
  - (f) ~~]Performing all other duties and responsibilities assigned by state law.~~
- (2) ~~[When it is necessary to fill the position of executive director, the board shall conduct a comprehensive search for candidates and may employ a search firm if the board deems it necessary. The executive director shall possess broad-based experience in education and teacher development, and have demonstrated leadership skills in addition to other qualifications to be established by the board as authorized in KRS 161.028.~~
- (3) ~~]~~With approval of the board, the *commissioner of education* ~~[executive director]~~ may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the board.
- (3)~~(4)~~ The *commissioner of education* ~~[executive director]~~ shall have access to the papers, books, and records of education personnel as part of an inquiry or investigation relating to disciplinary actions against a certified employee.
- (4)~~(5)~~ Pursuant to KRS 161.120, the *commissioner of education* ~~[executive director]~~, on behalf of the board, may issue administrative subpoenas for the attendance of witnesses and the production of documents relevant to disciplinary cases under consideration. Compliance with the subpoenas shall be enforceable by the Circuit Court in Franklin County.

➔Section 8. KRS 161.028 is amended to read as follows:

- (1) The Education Professional Standards Board is recognized to be a public body corporate and politic and an agency and instrumentality of the Commonwealth, in the performance of essential governmental functions. The Education Professional Standards Board has the authority and responsibility to:
- (a) Establish standards and requirements for obtaining and maintaining a teaching certificate;
  - (b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel. Program standards shall reflect national standards and shall address, at a minimum, the following:
    - 1. The alignment of programs with the state's core content for assessment as defined in KRS 158.6457;
    - 2. Research-based classroom practices, including effective classroom management techniques;
    - 3. Emphasis on subject matter competency of teacher education students;
    - 4. Methodologies to meet diverse educational needs of all students;
    - 5. The consistency and quality of classroom and field experiences, including early practicums and student teaching experiences;
    - 6. The amount of college-wide or university-wide involvement and support during the preparation as well as the induction of new teachers;
    - 7. The diversity of faculty;
    - 8. The effectiveness of partnerships with local school districts; and
    - 9. The performance of graduates on various measures as determined by the board;
  - (c) Conduct an annual review of diversity in teacher preparation programs;
  - (d) Provide assistance to universities and colleges in addressing diversity, which may include researching successful strategies and disseminating the information, encouraging the development of nontraditional avenues of recruitment and providing incentives, waiving administrative regulations when needed, and other assistance as deemed necessary;
  - (e) Discontinue approval of programs that do not meet standards or whose graduates do not perform according to criteria set by the board;
  - (f) Issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate;
  - (g) Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;
  - (h) Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedures in sex offense cases, and effective intervention with victims and offenders;
  - (i) Recommend to the Kentucky Board of Education the essential data elements relating to teacher preparation and certification, teacher supply and demand, teacher attrition, teacher diversity, and employment trends to be included in a state comprehensive data and information system and periodically report data to the Interim Joint Committee on Education;
  - (j) Submit reports to the Governor and the Legislative Research Commission and inform the public on the status of teaching in Kentucky;
  - (k) Devise a credentialing system that provides alternative routes to gaining certification and greater flexibility in staffing local schools while maintaining standards for teacher competence;
  - (l) Develop a professional code of ethics;



- (m) ~~Set the qualifications and salary for the positions of executive director and deputy executive director to the board, notwithstanding the provisions of KRS 64.640;~~
- (n) ~~Recruit, select, employ and evaluate the executive director to the board;~~
- (o) ~~Approve employment procedures for the employment of policy level staff, subject to the provisions of KRS 12.050;~~
- (p) ~~Approve the biennial budget request;~~
- (q) ~~Charge reasonable fees for the issuance, reissuance, and renewal of certificates that are established by administrative regulation. The proceeds shall be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder under KRS 161.120;~~
- (n)~~(t)~~ Waive a requirement that may be established in an administrative regulation promulgated by the board. A request for a waiver shall be submitted to the board, in writing, by an applicant for certification, a postsecondary institution, or a superintendent of a local school district, with appropriate justification for the waiver. The board may approve the request if the person or institution seeking the waiver has demonstrated extraordinary circumstances justifying the waiver. Any waiver granted under this subsection shall be subject to revocation if the person or institution falsifies information or subsequently fails to meet the intent of the waiver;
- (o)~~(s)~~ Promote the development of one (1) or more innovative, nontraditional or alternative administrator or teacher preparation programs through public or private colleges or universities, private contractors, the Department of Education, or the Kentucky Commonwealth Virtual University and waive administrative regulations if needed in order to implement the program;
- (p)~~(t)~~ Grant approval, if appropriate, of a university's request for an alternative program that enrolls an administrator candidate in a postbaccalaureate administrator preparation program concurrently with employment as an assistant principal, principal, assistant superintendent, or superintendent in a local school district. An administrator candidate in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Principal Internship Program, notwithstanding provisions of KRS 161.030, or the Superintendent's Assessment process, notwithstanding provisions of KRS 156.111, as appropriate. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the candidate's successful completion of the program, internship requirements, and assessments as required by the board;
- (q)~~(u)~~ Employ consultants as needed;
- (r)~~(v)~~ Enter into contracts. Disbursements to professional educators who receive less than one thousand dollars (\$1,000) in compensation per fiscal year from the board for serving on an assessment validation panel or as a test scorer or proctor shall not be subject to KRS 45A.690 to 45A.725;
- (s)~~(w)~~ Sponsor studies, conduct research, conduct conferences, and publish information as appropriate; and
- (t)~~(x)~~ Issue orders as necessary in any administrative action before the board.
- (2) (a) The board shall be composed of seventeen (17) members. The **secretary of the Education and Workforce Development Cabinet**~~commissioner of education~~ and the president of the Council on Postsecondary Education, or their designees, shall serve as ex officio voting members. The Governor shall make the following fifteen (15) appointments:
1. Nine (9) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
  2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;
  3. One (1) member representative of local boards of education; and
  4. Three (3) members representative of postsecondary institutions, two (2) of whom shall be deans of colleges of education at public universities and one (1) of whom shall be the chief academic officer of an independent not-for-profit college or university.

- (b) The members appointed by the Governor~~[after June 21, 2001,]~~ shall be confirmed by the Senate~~[and the House of Representatives]~~ under KRS 11.160. If the General Assembly is not in session at the time of the appointment, persons appointed shall serve prior to confirmation, but the Governor shall seek the consent of the *Senate*~~[General Assembly]~~ at the next regular session or at an intervening extraordinary session if the matter is included in the call of the General Assembly.
- (c) ***Each appointed member shall serve a three (3) year term.*** A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.
- (d) Members of the board shall serve without compensation but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.
- (e) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from the member's place of employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.
- (f) A chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman.~~[The executive director shall keep records of proceedings.]~~ Regular meetings shall be held at least semiannually on call of the chairman.
- (g) ***The commissioner of education shall serve as executive secretary to the board and may designate staff to facilitate his or her duties.***
- (h) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.

➔Section 9. KRS 161.100 is amended to read as follows:

When a district board of education satisfies the Education Professional Standards Board that it is impossible to secure qualified teachers for a position in a school under the control of the district board, the Education Professional Standards Board may issue emergency certificates to persons who meet the qualifications determined by the Education Professional Standards Board for emergency certificates. An emergency certificate shall be valid only for the specific job for which issued and for the current school term. The Education Professional Standards Board may require the passing of a written examination before an emergency certificate is issued. The examination shall be prepared and administered and the papers graded in the state offices of the Education Professional Standards Board under the direction of the ***commissioner of education***~~[executive director]~~, in accordance with administrative regulations approved by the Education Professional Standards Board.

➔Section 10. KRS 161.126 is amended to read as follows:

- (1) The "designated state official" for this state shall be the ***commissioner of education***~~[executive director of the Education Professional Standards Board]~~. The ***commissioner of education***~~[executive director]~~ shall enter into contracts pursuant to Article III of the agreement only with the approval of the specific text by the Education Professional Standards Board.
- (2) True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the Education Professional Standards Board and in the office of the Secretary of State. The ***commissioner of education***~~[executive director of the board]~~ shall publish all contracts in convenient form.

➔Section 11. KRS 161.220 is amended to read as follows:

As used in KRS 161.220 to 161.716 and 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, employees participating in the system pursuant to

KRS 196.167(3)(b)1., and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:

- (a) Local boards of education;
- (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;
- (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
- (d) ~~The Education Professional Standards Board,~~ Other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;
- (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
- (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included, except as limited by KRS 161.612. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;
- (g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;
- (h) The Office of Career and Technical Education~~[- except that the executive director shall not be a member];~~
- (i) The Office of Vocational Rehabilitation;
- (j) The Kentucky Educational Collaborative for State Agency Children;
- (k) The Governor's Scholars Program;
- (l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member, except that any person who retires on or after January 1, 2019, shall upon reemployment after retirement not earn a second retirement account;
- (m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;
- (n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and

Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.235, 161.540, and 161.620;

- (o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000;
  - (p) Employees of the Kentucky Department of Education only who are graduates of a four (4) year college or university, notwithstanding a substitution clause within a job classification, and who are serving in a professional job classification as defined by the department;
  - (q) The Governor's School for Entrepreneurs Program; ~~and~~
  - (r) Employees of the Office of Adult Education within the Department of Workforce Investment in the Education and Workforce Development Cabinet who were employees of the Council on Postsecondary Education, Kentucky Adult Education Program and who were members of the Kentucky Teachers' Retirement System at the time the program was transferred to the cabinet pursuant to Executive Orders 2019-0026 and 2019-0027; *and*
  - (s) *Employees of the Education Professional Standards Board who were members of the Kentucky Teachers' Retirement System at the time the employees were transferred to the Kentucky Department of Education pursuant to Executive Order 2020-590.*
- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
  - (6) "New teacher" means any member not a present teacher;
  - (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
  - (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
  - (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:
    - (a) The member's actual salary; or
    - (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave if the individual becomes a member before July 1, 2008, or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service as provided by KRS 161.155;

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;
- (13) "Regular interest" means interest at three percent (3%) per annum, except:
  - (a) For an individual who becomes a member on or after July 1, 2008, but prior to January 1, 2019, "regular interest" means interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment; and
  - (b) For an individual who becomes a member on or after January 1, 2019, who is participating in the hybrid cash balance plan, "regular interest" means the regular interest credited to the member's accumulated account balance as provided by KRS 161.235;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;
- (21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;
- (22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary

for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400;

- (23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick leave authorized by KRS 161.155, annual, personal, and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1, 2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation;
- (24) "Participant" means a member, as defined by subsection (4) of this section, or an annuitant, as defined by subsection (15) of this section;
- (25) "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;
- (26) "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;
- (27) "University member" means an individual who becomes a member through employment with an employer specified in subsection (4)(b) and (n) of this section;
- (28) "Nonuniversity member" means an individual who becomes a member through employment with an employer specified under subsection (4) of this section, except for those members employed by an employer specified in subsection (4)(b) and (n) of this section;
- (29) "Accumulated employer credit" means the employer pay credit deposited to the member's account and regular interest credited on such amounts as provided by KRS 161.235; and
- (30) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2019, the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, 2019, in the hybrid cash balance plan as provided by KRS 161.235, the combined sum of the member's accumulated contributions and the member's accumulated employer credit.

➔Section 12. The following KRS sections are repealed:

151B.230 Foundation for Workforce Development -- Funding -- Board of trustees -- Annual report.

156.017 Regional service centers.

➔Section 13. All personnel, records, files, equipment, and funds of the Education Professional Standards Board shall be transferred to the Kentucky Department of Education in accordance with Section 7 of this Act.

➔Section 14. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser shall base these actions on the functions assigned to the new entities by this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

➔Section 15. Notwithstanding KRS 12.028(5), the General Assembly confirms:

(1) Executive Order 2020-590, dated July 13, 2020, relating to the reorganization of the Kentucky Department of Education, to the extent not otherwise confirmed or superseded by this Act; and

(2) Executive Order 2020-1033, dated December 11, 2020, relating to the reorganization of the Education Professional Standards Board, to the extent not otherwise confirmed or superseded by this Act, except the members of the Education Professional Standards Board appointed by Executive Order 2020-1033 are not confirmed by the passage of this Act.

Signed by Governor March 15, 2021.

## CHAPTER 27

### ( HB 4 )

AN ACT proposing to amend the Constitution of Kentucky relating to sessions of the General Assembly.

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

➔Section 1. It is proposed that the following sections of the Constitution of Kentucky be repealed:

Section 36 Time and place of meetings of General Assembly.

Section 42 Compensation of members -- Length of sessions -- Legislative day.

Section 55 When laws to take effect -- Emergency legislation.

➔SECTION 2. IT IS PROPOSED THAT A NEW SECTION BE ADDED TO THE CONSTITUTION OF KENTUCKY TO READ AS FOLLOWS:

(1) *The General Assembly, in odd-numbered years, shall convene in regular session on the first Tuesday following the first Monday in January for the purpose of electing legislative leaders, adopting rules of procedure, organizing committees, and introducing and considering legislation.*

(2) *No regular session of the General Assembly occurring in odd-numbered years shall continue beyond thirty legislative days.*

(3) *No bill raising revenue or appropriating funds shall be passed by the General Assembly in a regular session in an odd-numbered year unless it shall be agreed upon by three-fifths of all the members elected to each House.*

(4) *The General Assembly, in even-numbered years, shall convene in regular session on the first Tuesday following the first Monday in January, and no regular session of the General Assembly in even-numbered years shall extend beyond sixty legislative days.*

(5) *Except as otherwise provided in this Constitution, the General Assembly shall establish by general law or joint resolution the date the regular session shall end. No bill establishing a later date shall be passed by the General Assembly unless it shall be agreed upon by three-fifths of all the members elected to each House. No session of the General Assembly shall extend beyond December 31.*

(6) *In addition to a regular session, the General Assembly may be convened by Joint Proclamation of the President of the Senate and the Speaker of the House of Representatives for no more than twelve legislative days annually, during which the General Assembly may recess from time to time as it determines necessary. Should a vacancy occur in the office of the President of the Senate or the Speaker of the House of Representatives, the Joint Proclamation for the House with the vacancy may be issued by the Senate President Pro Tempore or the Speaker Pro Tempore of the House of Representatives.*

(7) *All sessions of the General Assembly shall be held at the seat of government, except in the case of war, insurrection, or pestilence, when it may, by Joint Proclamation of the President of the Senate and the Speaker of the House of Representatives, assemble, for the time being, elsewhere. Should a vacancy occur in the office of the President of the Senate or the Speaker of the House of Representatives, the Joint Proclamation for the House with the vacancy may be issued by the Senate President Pro Tempore or the Speaker Pro Tempore of the House of Representatives.*

(8) *Limitations as to the length of any session of the General Assembly shall not apply to any extraordinary session under Section 80 of this Constitution or in the Senate when sitting as a court of impeachment.*

(9) *A legislative day shall be construed to mean a calendar day, exclusive of Sundays, legal holidays, or any day on which neither House meets.*

➔SECTION 3. IT IS PROPOSED THAT A NEW SECTION BE ADDED TO THE CONSTITUTION OF KENTUCKY TO READ AS FOLLOWS:

*No act, except general appropriation bills, shall become a law until July 1 of the year in which it was passed, or until ninety days after it becomes law under Section 88 of this Constitution, whichever occurs later, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journals, an act may become a law when approved by the Governor or when it otherwise becomes a law under Section 88; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House.*

➔Section 4. 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. The following shall be printed on the ballot:

"Are you in favor of amending the present Constitution of Kentucky to repeal sections 36, 42, and 55 and replace those sections with new sections of the Constitution of Kentucky to allow the General Assembly to meet in regular session for thirty legislative days in odd-numbered years, for sixty legislative days in even-numbered years, and for no more than twelve additional days during any calendar year if convened by a Joint Proclamation of the President of the Senate and the Speaker of the House of Representatives, with no session of the General Assembly to extend beyond December 31; and to provide that any act passed by the General Assembly shall become law on July 1 of the year in which it was passed, or ninety days after passage and signature of the Governor, whichever occurs later, or in cases of emergency when approved by the Governor or when it otherwise becomes law under Section 88 of the Constitution?"

#### **Proposed New Section**

(1) *The General Assembly, in odd-numbered years, shall convene in regular session on the first Tuesday following the first Monday in January for the purpose of electing legislative leaders, adopting rules of procedure, organizing committees, and introducing and considering legislation.*

(2) *No regular session of the General Assembly occurring in odd-numbered years shall continue beyond thirty legislative days.*

(3) *No bill raising revenue or appropriating funds shall be passed by the General Assembly in a regular session in an odd-numbered year unless it shall be agreed upon by three-fifths of all the members elected to each House.*

(4) *The General Assembly, in even-numbered years, shall convene in regular session on the first Tuesday following the first Monday in January, and no regular session of the General Assembly in even-numbered years shall extend beyond sixty legislative days.*

(5) *Except as otherwise provided in this Constitution, the General Assembly shall establish by general law or joint resolution the date the regular session shall end. No bill establishing a later date shall be passed by the General Assembly unless it shall be agreed upon by three-fifths of all the members elected to each House. No session of the General Assembly shall extend beyond December 31.*

(6) *In addition to a regular session, the General Assembly may be convened by Joint Proclamation of the President of the Senate and the Speaker of the House of Representatives for no more than twelve legislative days annually, during which the General Assembly may recess from time to time as it determines necessary. Should a vacancy occur in the office of the President of the Senate or the Speaker of the House of Representatives, the Joint Proclamation for the House with the vacancy may be issued by the Senate President Pro Tempore or the Speaker Pro Tempore of the House of Representatives.*

(7) *All sessions of the General Assembly shall be held at the seat of government, except in the case of war, insurrection, or pestilence, when it may, by Joint Proclamation of the President of the Senate and the Speaker of the House of Representatives, assemble, for the time being, elsewhere. Should a vacancy occur in the office of the President of the Senate or the Speaker of the House of Representatives, the Joint Proclamation for the House with the vacancy may be issued by the Senate President Pro Tempore or the Speaker Pro Tempore of the House of Representatives.*

(8) *Limitations as to the length of any session of the General Assembly shall not apply to any extraordinary session under Section 80 of this Constitution or in the Senate when sitting as a court of impeachment.*

(9) *A legislative day shall be construed to mean a calendar day, exclusive of Sundays, legal holidays, or any day on which neither House meets.*

#### **Proposed New Section**



*No act, except general appropriation bills, shall become a law until July 1 of the year in which it was passed, or until ninety days after it becomes law under Section 88 of this Constitution, whichever occurs later, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a ye and nay vote entered upon their journals, an act may become a law when approved by the Governor or when it otherwise becomes a law under Section 88; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House."*

**Govenor's signature not required. Delivered to Secretary of State March 16, 2021.**

## CHAPTER 28

### ( SB 214 )

AN ACT relating to cessation of participation by Kentucky Employees Retirement System employers, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. KRS 61.522 (Effective until April 1, 2021) is amended to read as follows:

Notwithstanding any other provision of KRS 61.510 to 61.705 or 78.510 to 78.852 to the contrary:

- (1) For purposes of this section:
  - (a) "Active member" means a member who is participating in the system;
  - (b) "Employer" means the governing body of a department, as defined by KRS 61.510, or a county as defined by KRS 78.510;
  - (c) "Employer's effective cessation date" means:
    1. The last day of the system's plan year in the year in which the employer has elected to cease participation in the system, provided the employer has met the requirements of this section and has given the Kentucky Retirement Systems sufficient notice as provided by administrative regulations promulgated by the systems; or
    2. For Kentucky Employees Retirement System employers making an election to cease participating under the provisions of subsection (8) of this section, it shall be June 30, 2021; and
  - (d) "Inactive member" means a member who is not participating with the system;
- (2) Any employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System on July 1, 2015, except as limited by subsection (6) of this section, may:
  - (a) Voluntarily cease participation in its respective retirement system subject to the requirements and restrictions of this section;
  - (b) Be required to involuntarily cease participation in the system under the provisions of this section if the board has determined the employer is no longer qualified to participate in a governmental plan or has failed to comply with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852; or
  - (c) If the employer is participating in the Kentucky Employees Retirement System, request an estimate of the cost of voluntarily ceasing participation in the system prior to officially making a request to cease participation. For those Kentucky Employees Retirement System nonhazardous employers who are considering ceasing participating in the system under the provisions of subsection (8) of this section on June 30, 2021, the request for an estimate to voluntarily cease participating must be made prior to December 31, 2019, and the estimate shall be provided to that employer within sixty (60) days of the request, except that no estimate shall be required to be provided prior to January 31, 2020;
- (3) (a) If an employer desires to voluntarily cease participation in the Kentucky Employees Retirement System or the County Employees Retirement System as provided by subsection (2)(a) of this section:
  1. The employer shall adopt a resolution requesting to cease participation in the system and shall submit the resolution to the board for its approval. The board shall not be able to deny a

resolution to cease participation in the Kentucky Employees Retirement System for any employer who seeks to voluntarily cease participation in the system as provided by subsection (8) of this section;

2. Except as provided by subsection (8)(d) of this section, the cessation of participation in the system shall apply to all employees of the employer;
3. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section;
4. The employer shall provide an alternative retirement program for employees who will no longer be covered by the system, which may include a voluntary defined contribution plan but, for Kentucky Employees Retirement System employers with effective cessation dates occurring on or after June 30, 2020, the alternative retirement program shall not include a defined benefit plan which by its nature can have an unfunded liability;
5. If the alternative retirement program established by the employer meets the qualification requirements under 26 U.S.C. sec. 401(a) or 26 U.S.C. sec. 403(b) and is capable of accepting trustee-to-trustee transfers of both pre-tax and post-tax contributions, employees of the employer ceasing participation may, except for those employees continuing to participate in the system as provided by subsection (8)(d)2. of this section, seek to transfer his or her account balance to the employer's qualified alternate retirement program within sixty (60) days of the employer's effective cessation date. An employee's election to transfer his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits in the system for the time worked for the employer ceasing participation;
6. The employer shall pay to the system by lump sum or in installments as provided by subsection (8) of this section, if eligible, the full actuarial cost, except as provided by subsection (8)(g)4. of this section, of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 3. of this paragraph. If the employer makes an election for employees to continue to participate in the system as provided by subsection (8)(d)2. of this section, the cost shall also include the present value of future normal costs of those employees who will continue to participate in the system after the employer's effective cessation date. The full actuarial cost shall not include any employee who seeks a transfer of his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subparagraph 5. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid or the installment payments have commenced; and
7. Kentucky Employees Retirement System employers ceasing participating under the provisions of subsection (8) of this section who elect to pay their actuarial costs by a lump sum shall ~~pay~~ ~~make~~ ~~the entire costs~~ ~~[full lump-sum payment]~~, ***in one (1) or more payments, so that the full actuarial costs are paid*** by June 30, 2022, ~~and shall pay~~ Interest on the ***unpaid*** principal amount ***of the full actuarial costs shall begin*** ~~beginning~~ on July 1, 2021, ***and accrue*** ~~equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs~~ until the ***full actuarial costs are paid*** ~~[lump-sum payment is made]~~. ***If the ceasing employer makes a payment prior to July 1, 2021, the ceasing employer shall receive a credit against their full actuarial costs to be determined as of June 30, 2021, that is equal to the amount of the prior payment plus interest for the period beginning on the date of the prior payment and ending on June 30, 2021. If a final payment is due by June 30, 2022, for an employer who has made a payment or payments on or before June 30, 2021, it shall be equal to any unpaid actuarial costs due plus interest as of the date of final payment. If the payment or payments made by the ceasing employer exceed the final full actuarial costs of ceasing participation, the employer shall by June 30, 2022, be refunded an amount equal to the overpayment plus interest for the period beginning on the date of the overpayment and ending on the date the refund is paid to the employer.*** If the ceasing employer fails to make the full lump-sum payment by June 30, 2022, the ceasing employer shall make installments as provided by subsection (8)(g) of this section, and the ceasing employer shall have the costs recalculated based upon making installment payments as

provided by this section and shall be required to make up any missed installment payments as determined by the system. ***For purposes of this subparagraph, "interest" shall be equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs.***

- (b) If the board determines an employer must involuntarily cease participation in the system as provided by subsection (2)(b) of this section:
1. The cessation of participation in the system shall apply to all employees of the employer;
  2. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section; and
  3. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 2. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid.

A Kentucky Employees Retirement System employer who ceases participation in the systems under this paragraph shall not establish or contribute to on behalf of its employees a defined benefit plan which by its nature can have an unfunded liability;

- (4) Any employee hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System or the County Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that employer;
- (5) If an employer has ceased participation in the system as provided by this section:
- (a) The rights of recipients and the vested rights of inactive members accrued as of the employer's effective cessation date shall not be impaired or reduced in any manner as a result of the employer ceasing participation in the system; and
  - (b) Except as provided by subsection (8)(d)2. of this section, employees of the employer ceasing participation shall accrue benefits through the employer's effective cessation date but shall not accrue any additional benefits in the Kentucky Employees Retirement System or the County Employees Retirement System, including earning years of service credit through the ceased employer, after the employer's effective cessation date for as long as they remain employed by the employer. The day after the employer's effective cessation date, each employee described by this paragraph, except as provided by subsection (8)(d)2. of this section, shall be considered an inactive member with respect to his or her employment with the employer that ceased participation and, subject to the provisions and limitations of KRS 61.510 to 61.705 and 78.510 to 78.852, shall:
    1. Retain his or her accounts with the Kentucky Employees Retirement System or the County Employees Retirement System and have those accounts credited with interest in accordance with KRS 61.510 to 61.705 and 78.510 to 78.852;
    2. Retain his or her vested rights in accordance with paragraph (a) of this subsection; and
    3. Be eligible to take a refund of his or her accumulated account balance in accordance with KRS 61.625 or any other available distribution if eligible;
- (6) (a) Kentucky Employees Retirement System employers who are county attorney offices, Commonwealth's attorney offices, local and district health departments governed by KRS Chapter 212, master commissioners, executive branch agencies whose employees are subject to KRS 18A.005 to 18A.200, state-administered retirement systems, state-supported universities and community colleges, property valuation administration offices, or employers in the legislative or judicial branch of Kentucky state government, shall not be eligible to voluntarily discontinue participation in the Kentucky Employees Retirement System, except that:
1. Any employer who is a nonstock nonprofit corporation organized under KRS Chapter 273 may voluntarily cease participation; and

2. Local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, and the Kentucky Higher Education Student Loan Corporation may voluntarily cease participation in the Kentucky Employees Retirement System solely under the provisions and requirements of subsection (8) of this section.
- (b) Only the employers in the County Employees Retirement System who are a nonstock nonprofit corporation organized under KRS Chapter 273 may voluntarily cease participation in the County Employees Retirement System;
- (7) For purposes of this section, the full actuarial cost shall be determined by the Kentucky Retirement Systems' consulting actuary separately for the pension fund and the insurance fund using the assumptions and methodology established by the system specifically for determining the full actuarial cost of ceasing participation as of the employer's effective cessation date. For purposes of determining the full actuarial cost, the assumed rate of return used to calculate the cost shall be the lesser of the assumed rate of return utilized in the system's most recent actuarial valuation or the yield on a thirty (30) year United States treasury bond as of the employer's effective cessation date, but shall in no case be lower than:
  - (a) Except as provided by paragraphs (b) to (e) of this subsection, the assumed rate of return utilized in the system's most recent actuarial valuation minus three and one-half percent (3.5%);
  - (b) Four and one-half percent (4.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do not make an election for their employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section;
  - (c) Three and one-half percent (3.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
  - (d) Three and one-half percent (3.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by installment payments and who do not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section; or
  - (e) Three percent (3%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by installment payments and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
- (8) Notwithstanding the provisions of this section, any Kentucky Employees Retirement System employer who is eligible to voluntarily cease participating as provided by subsection (6) of this section may, on or after April 1, 2020, but prior to May 1, 2021, except that in the case of university or community college employers it shall be prior to January 1, 2021, elect to voluntarily cease participating in the systems for its nonhazardous employees by submitting a resolution in accordance with subsection (3)(a)1. of this section. If an employer makes an election to voluntarily cease participation by submitting a resolution as provided by this subsection:
  - (a) The board shall accept any election to cease participation on or before June 30, 2021, and the employer's effective cessation date shall be June 30, 2021. Prior to May 1, 2021, or January 1, 2021, in the case of university or community college employers, the employer may rescind a previously submitted election to cease participation;
  - (b) Nonhazardous employees hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that ceasing employer;
  - (c) Nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems on or after January 1, 2014, and who are

participating in the hybrid cash balance plan as provided by KRS 61.597, shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, the employee shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section. A nonhazardous employee covered by this paragraph who elects to transfer his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subsection (3)(a)5. of this section, shall, notwithstanding KRS 61.597, receive a transfer of the employee's accumulated account balance, including the entire accumulated employer credit, regardless of the employee's years of service credit;

- (d)
  - 1. The employer shall, in the resolution submitted in accordance with subsection (3)(a)1. of this section, make an election as to whether or not nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems prior to January 1, 2014, who are participating in the systems administered by Kentucky Retirement Systems through the employer, will continue to participate in the system after the employer's effective cessation date.
  - 2. If the employer makes an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees will continue to contribute and earn service credit in the systems for as long as they remain employed by the employer in a regular full-time position that is eligible to participate in the systems, except in the event the employer fails to make installment payments as provided by KRS 61.675(4). Any costs for the present value of future normal costs of the employees covered by this subparagraph who will contribute and earn service in the system after the employer's effective cessation date shall be included in the cost calculation established by subsection (7) of this section.
  - 3. If the employer does not make an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, these employees shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section;
- (e) The cost of ceasing participating to an individual employer shall be equal to the cost determined under subsection (7) of this section and shall include the costs of those employees who continue to participate in the system as provided by paragraph (d)2. of this subsection;
- (f) The employer may pay the full actuarial cost of ceasing participation by lump-sum payment or in installments as provided by paragraph (g) of this subsection;
- (g) If the employer elects to pay the costs in installment payments, the cost of ceasing participation as provided by this subsection shall be financed by the systems using the following method:
  - 1. Annual payments occurring on or after July 1, 2021, shall be a set dollar value and shall be paid in monthly installments. In fiscal year 2021-2022, the set dollar value shall be equal to the higher of the actual contributions paid by the employer in fiscal year 2020-2021 or the annualized average of the creditable compensation reported to the systems by the ceasing employer over the last sixty (60) months occurring prior to July 1, 2019, for which contributions were paid by the ceasing employer, and multiplied by an employer rate of forty-nine and forty-seven one-hundredths percent (49.47%). Annual payments, for fiscal years occurring on or after July 1, 2022, which shall be paid monthly, shall be increased by one and one-half percent (1.5%) annually and shall be paid until the cost as provided by subsection (7) of this section and as adjusted annually by subparagraphs 2. and 3. of this paragraph are paid in full or until an employer as described by subparagraph 4. of this paragraph has paid for thirty (30) years from the effective cessation date;
  - 2. Interest shall be assigned to the principal amount annually beginning on July 1, 2021, and for each July 1 thereafter, that is equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs;
  - 3. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of

the thirty (30) year installment period from the employer's effective cessation date, and the employer makes an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)2. of this subsection, then the systems shall adjust the base value for the first annual payments occurring on or after July 1, 2021, in order to keep the maximum period of installments to thirty (30) years; and

4. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer does not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)3. of this subsection, the employer shall pay the amount determined by subparagraph 1. of this paragraph for thirty (30) years from the effective cessation date and no additional costs shall be billed to a ceasing employer after the conclusion of the thirty (30) year period nor shall the employer be subject to adjustments under subparagraph 3. of this paragraph. The system may request in future biennial executive branch budgets the additional funding needed on an annual basis to fully pay off the installments at the conclusion of the thirty (30) year period for the employers described by this paragraph, and it is the intent of the General Assembly to pay the additional funding needed by appropriation in the biennial executive branch budget.

An employer ceasing participation who is making installment payments as provided by this paragraph may at any time pay off a portion of the remaining balance or the entire remaining balance and shall not be charged any interest for periods beyond the pay-off date for the balance that is paid off;

- (h) Kentucky Employees Retirement System employers eligible to cease participation under the provisions of this subsection who do not make an election to cease participation in the system prior to May 1, 2021, or prior to January 1, 2021, in the case of university and community college employers, shall be required to pay the full actuarially determined contributions established by KRS 61.565 and 61.702 for fiscal years occurring on or after July 1, 2021; and
- (i) Kentucky Employees Retirement System employers who elect to cease participation in the system as provided by this subsection who are currently receiving a distribution of general fund appropriations in the biennial executive branch budget under the provisions of 2018 Ky. Acts ch. 169, Part I, G., 4., (5), 2018 Ky. Acts ch. 169, Part I, G., 5., (2), or 2018 Ky. Acts ch. 169, Part I, G., 9., (2) to help pay employer contributions to the system shall continue to receive the same level of distribution of general fund appropriations to help pay the costs of ceasing participation until such time that the employer's full actuarial costs of ceasing participation are paid off;
- (9) The Kentucky Retirement Systems shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this section;
- (10) (a) Any employer who voluntarily ceases participation, or who is required to involuntarily cease participation as provided in this section, shall hold the Commonwealth and the Kentucky Retirement Systems, including board members and employees of the Kentucky Retirement Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the departing employer related to the employer's cessation of participation as set forth in this section.
- (b) Any employer who is voluntarily ceasing participation under the provisions of subsection (8) of this section shall be required to pledge any security in any relevant real estate, chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money to the costs of ceasing participation until all costs of ceasing participation are paid in full; and
- (11) Notwithstanding any other provision of statute to the contrary, the provisions of KRS 61.510 to 61.705 and 78.510 to 78.852, and the administrative regulations promulgated thereunder, shall prevail regarding any question of participation in the systems of any employer or any employee of an employer who ceases participation in the Kentucky Employees Retirement System.

➔Section 2. KRS 61.522 (Effective April 1, 2021) is amended to read as follows:

Notwithstanding any other provision of KRS 61.510 to 61.705 or 78.510 to 78.852 to the contrary:

- (1) For purposes of this section:

- (a) "Active member" means a member who is participating in the system;
  - (b) "Employer" means the governing body of a department, as defined by KRS 61.510;
  - (c) "Employer's effective cessation date" means:
    - 1. The last day of the system's plan year in the year in which the employer has elected to cease participation in the system, provided the employer has met the requirements of this section and has given the Kentucky Retirement Systems sufficient notice as provided by administrative regulations promulgated by the systems; or
    - 2. For Kentucky Employees Retirement System employers making an election to cease participating under the provisions of subsection (8) of this section, it shall be June 30, 2021; and
  - (d) "Inactive member" means a member who is not participating with the system;
- (2) Any employer participating in the Kentucky Employees Retirement System on July 1, 2015, except as limited by subsection (6) of this section, may:
- (a) Voluntarily cease participation in its respective retirement system subject to the requirements and restrictions of this section;
  - (b) Be required to involuntarily cease participation in the system under the provisions of this section if the board has determined the employer is no longer qualified to participate in a governmental plan or has failed to comply with the provisions of KRS 61.510 to 61.705; or
  - (c) If the employer is participating in the Kentucky Employees Retirement System, request an estimate of the cost of voluntarily ceasing participation in the system prior to officially making a request to cease participation. For those Kentucky Employees Retirement System nonhazardous employers who are considering ceasing participating in the system under the provisions of subsection (8) of this section on June 30, 2021, the request for an estimate to voluntarily cease participating must be made prior to December 31, 2019, and the estimate shall be provided to that employer within sixty (60) days of the request, except that no estimate shall be required to be provided prior to January 31, 2020;
- (3) (a) If an employer desires to voluntarily cease participation in the Kentucky Employees Retirement System as provided by subsection (2)(a) of this section:
- 1. The employer shall adopt a resolution requesting to cease participation in the system and shall submit the resolution to the board for its approval. The board shall not be able to deny a resolution to cease participation in the Kentucky Employees Retirement System for any employer who seeks to voluntarily cease participation in the system as provided by subsection (8) of this section;
  - 2. Except as provided by subsection (8)(d) of this section, the cessation of participation in the system shall apply to all employees of the employer;
  - 3. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section;
  - 4. The employer shall provide an alternative retirement program for employees who will no longer be covered by the system, which may include a voluntary defined contribution plan but, for Kentucky Employees Retirement System employers with effective cessation dates occurring on or after June 30, 2020, the alternative retirement program shall not include a defined benefit plan which by its nature can have an unfunded liability;
  - 5. If the alternative retirement program established by the employer meets the qualification requirements under 26 U.S.C. sec. 401(a) or 26 U.S.C. sec. 403(b) and is capable of accepting trustee-to-trustee transfers of both pre-tax and post-tax contributions, employees of the employer ceasing participation may, except for those employees continuing to participate in the system as provided by subsection (8)(d)2. of this section, seek to transfer his or her account balance to the employer's qualified alternate retirement program within sixty (60) days of the employer's effective cessation date. An employee's election to transfer his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits in the system for the time worked for the employer ceasing participation;

6. The employer shall pay to the system by lump sum or in installments as provided by subsection (8) of this section, if eligible, the full actuarial cost, except as provided by subsection (8)(g)4. of this section, of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 3. of this paragraph. If the employer makes an election for employees to continue to participate in the system as provided by subsection (8)(d)2. of this section, the cost shall also include the present value of future normal costs of those employees who will continue to participate in the system after the employer's effective cessation date. The full actuarial cost shall not include any employee who seeks a transfer of his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subparagraph 5. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid or the installment payments have commenced; and
  7. Kentucky Employees Retirement System employers ceasing participating under the provisions of subsection (8) of this section who elect to pay their actuarial costs by a lump sum shall ~~pay~~~~make~~ the *entire costs*~~[full lump-sum payment]~~, *in one (1) or more payments, so that the full actuarial costs are paid* by June 30, 2022, ~~[and shall pay]~~ Interest on the *unpaid* principal amount *of the full actuarial costs shall begin*~~[beginning]~~ on July 1, 2021, *and accrue*~~[equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs]~~ until the *full actuarial costs are paid*~~[lump-sum payment is made]~~. *If the ceasing employer makes a payment prior to July 1, 2021, the ceasing employer shall receive a credit against their full actuarial costs to be determined as of June 30, 2021, that is equal to the amount of the prior payment plus interest for the period beginning on the date of the prior payment and ending on June 30, 2021. If a final payment is due by June 30, 2022, for an employer who has made a payment or payments on or before June 30, 2021, it shall be equal to any unpaid actuarial costs due plus interest as of the date of final payment. If the payment or payments made by the ceasing employer exceed the final full actuarial costs of ceasing participation, the employer shall by June 30, 2022, be refunded an amount equal to the overpayment plus interest for the period beginning on the date of the overpayment and ending on the date the refund is paid to the employer.* If the ceasing employer fails to make the full lump-sum payment by June 30, 2022, the ceasing employer shall make installments as provided by subsection (8)(g) of this section, and the ceasing employer shall have the costs recalculated based upon making installment payments as provided by this section and shall be required to make up any missed installment payments as determined by the system. *For purposes of this subparagraph, "interest" shall be equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs.*
- (b) If the board determines an employer must involuntarily cease participation in the system as provided by subsection (2)(b) of this section:
1. The cessation of participation in the system shall apply to all employees of the employer;
  2. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section; and
  3. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 2. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid.

A Kentucky Employees Retirement System employer who ceases participation in the systems under this paragraph shall not establish or contribute to on behalf of its employees a defined benefit plan which by its nature can have an unfunded liability;

- (4) Any employee hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees



Retirement System through the employer that ceased participation for the duration of his or her employment with that employer;

- (5) If an employer has ceased participation in the system as provided by this section:
  - (a) The rights of recipients and the vested rights of inactive members accrued as of the employer's effective cessation date shall not be impaired or reduced in any manner as a result of the employer ceasing participation in the system; and
  - (b) Except as provided by subsection (8)(d)2. of this section, employees of the employer ceasing participation shall accrue benefits through the employer's effective cessation date but shall not accrue any additional benefits in the Kentucky Employees Retirement System, including earning years of service credit through the ceased employer, after the employer's effective cessation date for as long as they remain employed by the employer. The day after the employer's effective cessation date, each employee described by this paragraph, except as provided by subsection (8)(d)2. of this section, shall be considered an inactive member with respect to his or her employment with the employer that ceased participation and, subject to the provisions and limitations of KRS 61.510 to 61.705, shall:
    1. Retain his or her accounts with the Kentucky Employees Retirement System and have those accounts credited with interest in accordance with KRS 61.510 to 61.705;
    2. Retain his or her vested rights in accordance with paragraph (a) of this subsection; and
    3. Be eligible to take a refund of his or her accumulated account balance in accordance with KRS 61.625 or any other available distribution if eligible;
- (6) Kentucky Employees Retirement System employers who are county attorney offices, Commonwealth's attorney offices, local and district health departments governed by KRS Chapter 212, master commissioners, executive branch agencies whose employees are subject to KRS 18A.005 to 18A.200, state-administered retirement systems, state-supported universities and community colleges, property valuation administration offices, or employers in the legislative or judicial branch of Kentucky state government, shall not be eligible to voluntarily discontinue participation in the Kentucky Employees Retirement System, except that:
  - (a) Any employer who is a nonstock nonprofit corporation organized under KRS Chapter 273 may voluntarily cease participation; and
  - (b) Local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, and the Kentucky Higher Education Student Loan Corporation may voluntarily cease participation in the Kentucky Employees Retirement System solely under the provisions and requirements of subsection (8) of this section;
- (7) For purposes of this section, the full actuarial cost shall be determined by the Kentucky Retirement Systems' consulting actuary separately for the pension fund and the insurance fund using the assumptions and methodology established by the system specifically for determining the full actuarial cost of ceasing participation as of the employer's effective cessation date. For purposes of determining the full actuarial cost, the assumed rate of return used to calculate the cost shall be the lesser of the assumed rate of return utilized in the system's most recent actuarial valuation or the yield on a thirty (30) year United States treasury bond as of the employer's effective cessation date, but shall in no case be lower than:
  - (a) Except as provided by paragraphs (b) to (e) of this subsection, the assumed rate of return utilized in the system's most recent actuarial valuation minus three and one-half percent (3.5%);
  - (b) Four and one-half percent (4.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do not make an election for their employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section;
  - (c) Three and one-half percent (3.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
  - (d) Three and one-half percent (3.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs

of ceasing participation by installment payments and who do not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section; or

- (e) Three percent (3%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by installment payments and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
- (8) Notwithstanding the provisions of this section, any Kentucky Employees Retirement System employer who is eligible to voluntarily cease participating as provided by subsection (6) of this section may, on or after April 1, 2020, but prior to May 1, 2021, except in the case of university or community college employers it shall be prior to January 1, 2021, elect to voluntarily cease participating in the systems for its nonhazardous employees by submitting a resolution in accordance with subsection (3)(a)1. of this section. If an employer makes an election to voluntarily cease participation by submitting a resolution as provided by this subsection:
- (a) The board shall accept any election to cease participation on or before June 30, 2021, and the employer's effective cessation date shall be June 30, 2021. Prior to May 1, 2021, or January 1, 2021, in the case of university or community college employers, the employer may rescind a previously submitted election to cease participation;
  - (b) Nonhazardous employees hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that ceasing employer;
  - (c) Nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems on or after January 1, 2014, and who are participating in the hybrid cash balance plan as provided by KRS 61.597, shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, the employee shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section. A nonhazardous employee covered by this paragraph who elects to transfer his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subsection (3)(a)5. of this section, shall, notwithstanding KRS 61.597, receive a transfer of the employee's accumulated account balance, including the entire accumulated employer credit, regardless of the employee's years of service credit;
  - (d)
    1. The employer shall, in the resolution submitted in accordance with subsection (3)(a)1. of this section, make an election as to whether or not nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems prior to January 1, 2014, who are participating in the systems administered by Kentucky Retirement Systems through the employer, will continue to participate in the system after the employer's effective cessation date.
    2. If the employer makes an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees will continue to contribute and earn service credit in the systems for as long as they remain employed by the employer in a regular full-time position that is eligible to participate in the systems, except in the event the employer fails to make installment payments as provided by KRS 61.675(4). Any costs for the present value of future normal costs of the employees covered by this subparagraph who will contribute and earn service in the system after the employer's effective cessation date shall be included in the cost calculation established by subsection (7) of this section.
    3. If the employer does not make an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, these employees shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section;

- (e) The cost of ceasing participating to an individual employer shall be equal to the cost determined under subsection (7) of this section and shall include the costs of those employees who continue to participate in the system as provided by paragraph (d)2. of this subsection;
- (f) The employer may pay the full actuarial cost of ceasing participation by lump-sum payment or in installments as provided by paragraph (g) of this subsection;
- (g) If the employer elects to pay the costs in installment payments, the cost of ceasing participation as provided by this subsection shall be financed by the systems using the following method:
  1. Annual payments occurring on or after July 1, 2021, shall be a set dollar value and shall be paid in monthly installments. In fiscal year 2021-2022, the set dollar value shall be equal to the higher of the actual contributions paid by the employer in fiscal year 2020-2021 or the annualized average of the creditable compensation reported to the systems by the ceasing employer over the last sixty (60) months occurring prior to July 1, 2019, for which contributions were paid by the ceasing employer, and multiplied by an employer rate of forty-nine and forty-seven one-hundredths percent (49.47%). Annual payments, for fiscal years occurring on or after July 1, 2022, which shall be paid monthly, shall be increased by one and one-half percent (1.5%) annually and shall be paid until the cost as provided by subsection (7) of this section and as adjusted annually by subparagraphs 2. and 3. of this paragraph are paid in full or until an employer as described by subparagraph 4. of this paragraph has paid for thirty (30) years from the effective cessation date;
  2. Interest shall be assigned to the principal amount annually beginning on July 1, 2021, and for each July 1 thereafter, that is equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs;
  3. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer makes an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)2. of this subsection, then the systems shall adjust the base value for the first annual payments occurring on or after July 1, 2021, in order to keep the maximum period of installments to thirty (30) years; and
  4. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer does not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)3. of this subsection, the employer shall pay the amount determined by subparagraph 1. of this paragraph for thirty (30) years from the effective cessation date and no additional costs shall be billed to a ceasing employer after the conclusion of the thirty (30) year period nor shall the employer be subject to adjustments under subparagraph 3. of this paragraph. The system may request in future biennial executive branch budgets the additional funding needed on an annual basis to fully pay off the installments at the conclusion of the thirty (30) year period for the employers described by this paragraph, and it is the intent of the General Assembly to pay the additional funding needed by appropriation in the biennial executive branch budget.

An employer ceasing participation who is making installment payments as provided by this paragraph may at any time pay off a portion of the remaining balance or the entire remaining balance and shall not be charged any interest for periods beyond the pay-off date for the balance that is paid off;

- (h) Kentucky Employees Retirement System employers eligible to cease participation under the provisions of this subsection who do not make an election to cease participation in the system prior to May 1, 2021, or prior to January 1, 2021, in the case of university and community college employers, shall be required to pay the full actuarially determined contributions established by KRS 61.565 and 61.702 for fiscal years occurring on or after July 1, 2021; and
- (i) Kentucky Employees Retirement System employers who elect to cease participation in the system as provided by this subsection who are currently receiving a distribution of general fund appropriations in the biennial executive branch budget under the provisions of 2018 Ky. Acts ch. 169, Part I, G., 4., (5),

2018 Ky. Acts ch. 169, Part I, G., 5., (2), or 2018 Ky. Acts ch. 169, Part I, G., 9., (2) to help pay employer contributions to the system shall continue to receive the same level of distribution of general fund appropriations to help pay the costs of ceasing participation until such time that the employer's full actuarial costs of ceasing participation are paid off;

- (9) The Kentucky Retirement Systems shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this section;
- (10) (a) Any employer who voluntarily ceases participation, or who is required to involuntarily cease participation as provided in this section, shall hold the Commonwealth and the Kentucky Retirement Systems, including board members and employees of the Kentucky Retirement Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the departing employer related to the employer's cessation of participation as set forth in this section.
- (b) Any employer who is voluntarily ceasing participation under the provisions of subsection (8) of this section shall be required to pledge any security in any relevant real estate, chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money to the costs of ceasing participation until all costs of ceasing participation are paid in full; and
- (11) Notwithstanding any other provision of statute to the contrary, the provisions of KRS 61.510 to 61.705, and the administrative regulations promulgated thereunder, shall prevail regarding any question of participation in the systems of any employer or any employee of an employer who ceases participation in the Kentucky Employees Retirement System.

➔Section 3. Northern Kentucky University is hereby authorized to issue agency bonds in fiscal year 2020-2021 in an amount not to exceed three hundred twenty million dollars (\$320,000,000) for the actuarial costs of voluntarily ceasing participation in the Kentucky Employees Retirement System as provided by KRS 61.522. The Kentucky Asset/Liability Commission is authorized to issue notes to finance this authorization. Notwithstanding KRS 56.8605(9) and (14), funding notes or project notes issued pursuant to the above authorization may have a final maturity of up to thirty (30) years. The provisions of KRS 164A.608 shall apply to any debt issuance made by the Kentucky Asset/Liability Commission pursuant to the above authorization.

➔Section 4. Whereas employers ceasing participation in the system desire to make prompt payments for any actuarial costs, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by Governor March 17, 2021.**

## CHAPTER 29

### ( HB 79 )

AN ACT relating to massage therapy.

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

➔Section 1. KRS 309.350 is amended to read as follows:

As used in KRS 309.350 to 309.364 unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of Licensure for Massage Therapy;
- (2) "Board-approved massage program" means one which meets minimum standards for training and curriculum as determined by the board;
- (3) "Compensation" means the direct or indirect payment, loan, advance, donation, contribution, deposit, barter, gratuity, or gift of money or anything of value;
- (4) "Feldenkrais Method" means a system of somatic education in which touch and words are used to eliminate faulty habits, learn new patterns of self-organization and action, and improve a person's own functional movement patterns. The method is based on principles of physics, biomechanics and an understanding of, or

learning about, human development. The practice is federally trademarked and requires permission from the Feldenkrais Guild to use the term and methodology;

- (5) "Massage therapist" means a person who is licensed by the board to administer massage or massage therapy to the public for compensation;
- (6) "Polarity therapy" means diverse applications affecting the human energy system. These applications include energetic approaches to somatic contact, verbal facilitation, nutrition, exercise, and health education. Polarity therapy does not make medical claims, diagnose physical ailments, or allow prescription of medications. Standards for schools, education, and practice, the administration of a code of ethics, and a registration process are provided by the American Polarity Therapy Association. ***The practice of polarity therapy is federally trademarked;***
- (7) "Practice of massage therapy" means the application, by a massage therapist licensed by the board, of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the intent to enhance or restore the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations; use of electromechanical devices that mimic or enhance the actions of the hands; and determination of whether massage therapy is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate; and
- (8) "Trager Approach" means a form of movement education that uses subtle directed movements and the skilled touch of a practitioner. The Trager Approach combines physical movement with sensory awareness and internal imagery designed to increase the client's self-awareness and generate physiological changes in the body tissues so as to allow the client to experience a new way of moving his or her body. The practice is federally trademarked.

➔Section 2. KRS 309.351 is amended to read as follows:

Massage therapists practicing under KRS 309.350 to 309.364 shall not perform any of the following: diagnosis of illness or disease; high-velocity, low-amplitude thrust applied to a joint; spinal or pelvic adjustment or chiropractic manipulation; ***application of ultrasound; prescription of medication; or*** deep physical agent modalities, except hydrotherapy methods ***and pulsed electromagnetic field therapy or microcurrent devices for which the massage therapist has completed training required by the board*** [~~application of ultrasound; or prescription of medication~~].

➔Section 3. KRS 309.354 is amended to read as follows:

- (1) There is created a board to be known as the Kentucky Board of Licensure for Massage Therapy, which shall be an independent agency.
- (2) The Governor shall appoint seven (7) members to serve on the board with the following representation:
  - (a) Five (5) members who are massage therapists licensed under KRS 309.350 to 309.364, who have been in the practice of massage therapy for at least five (5) of the last seven (7) years, and who have been residents of Kentucky for at least one (1) year;
  - (b) Of these five (5), at least one (1) but no more than two (2) shall own or direct a board-approved massage therapy training program ***or be a designated representative of a school owner or of a school director;*** and
  - (c) Two (2) members shall be appointed by the Governor and shall serve as members at large who are neither licensed massage therapists nor spouses of persons who are licensed, or have a direct or indirect interest in the profession regulated under KRS 309.350 to 309.364. One (1) of the two (2) may hold a license in another health care profession.
- (3) Appointments shall be for three (3) years with initial appointments as follows: three (3) appointees shall serve three (3) year terms; two (2) shall serve two (2) year terms; and two (2) shall serve one (1) year terms. The Governor shall assign terms to initial members at his or her discretion.
- (4) The board shall elect initially, and annually thereafter, a chair, vice chair, and secretary from its membership and shall meet at least once per year, and more often as deemed necessary, at a time and at a place in Kentucky for the board to fulfill its duties.
- (5) Each member of the board shall receive a per diem not to exceed one hundred dollars (\$100) and other actual and necessary expenses for each day he or she is actually engaged in the discharge of the board's official duties.

- (6) Upon recommendation of the board, the Governor may remove any member of the board for a poor attendance record, neglect of duty, or malfeasance in office.

➔Section 4. KRS 309.355 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of KRS 309.350 to 309.364 and shall have the responsibility to evaluate the qualifications of applicants for licensure and to authorize issuing, renewing, suspending, and revoking licenses.
- (2) The board shall 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 KRS 309.350 to 309.364 and administrative regulations promulgated pursuant to KRS 309.350 to 309.364. The board shall have the authority to administer oaths, receive evidence, interview persons, and require the production of books, papers, documents, or other evidence. The board may institute civil and criminal proceedings against violators of KRS 309.350 to 309.364. The Attorney General, Commonwealth's attorneys, and county attorneys shall assist the board in prosecuting violations of KRS 309.350 to 309.364.
- (3) The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364, including creating a code of ethics, standards of practice, standards of educational program curriculum and instructor qualification, and continuing education requirements for licensed massage therapists.
- (4) The board shall keep a record of its proceedings and a register of all persons licensed as massage therapists. The register shall include the name, license number and date of issue, last known place of business, and residence of each licensee. The board shall publish annually a directory of licensed massage therapists and their places of business. The list shall be available to any Kentucky citizen upon request and payment of a fee not to exceed the cost of the publication.
- (5) The board shall make an annual report to the Governor and the General Assembly, which shall contain an account of its duties performed, actions taken, and appropriate recommendations.
- (6) The board may seek an injunction in the Circuit Court of the county where the alleged violation occurred against any individual who practices massage therapy in the Commonwealth without a license.
- (7) ***The board shall require a fingerprint-supported criminal record check by the Department of Kentucky State Police and the Federal Bureau of Investigation of any applicant for licensure to practice massage therapy.***
- (8) ***The board may employ staff as needed in the conduct of its duties and functions, and shall fix their compensation.***

➔Section 5. KRS 309.357 is amended to read as follows:

- (1) (a) ***The board shall promulgate administrative regulations establishing a reasonable schedule of fees and charges for the issuance and restoration of licenses and certificates, and for the renewal of licenses and certificates issued under KRS 309.350 to 309.364.***
- (b) ***Former licensees with an expired license may have their licenses reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulations of the board. If the reinstatement application is made within five (5) years from the date of termination, applicants shall not be required to submit to any examination as a condition for reinstatement.***
- (c) ***A revoked license may not be reinstated or renewed. For a license that is reinstated, the licensee shall pay the reinstatement fee and the renewal fee as established by the board through administrative regulations.***
- (d) ***A former licensee who fails to reinstate a license within five (5) years after termination may not have it renewed, restored, or reinstated. A person may apply for and obtain a new license by meeting the current requirements for licensure.***
- (e) ***The board may require that a person applying for a renewal or reinstatement of licensure show evidence of completion of continuing professional education as prescribed by the board in administrative regulations.***

~~The following fees shall be required of licensees and prospective applicants:~~

- ~~(1) Application fee of fifty dollars (\$50), which shall be credited to the initial license fee for successful applicants;~~
- ~~(2) Initial, nonrefundable license fee not to exceed one hundred twenty five dollars (\$125);~~

- ~~(3) Biennial renewal fees not to exceed one hundred dollars (\$100);~~
- ~~(4) Late renewal fees not to exceed one hundred fifty dollars (\$150) up to sixty (60) days after expiration of license;~~
- ~~(5) Sixty (60) to ninety (90) days after expiration of license, late renewal fees not to exceed two hundred dollars (\$200); and~~
- ~~(6) Beyond ninety (90) days after the expiration of a license:~~
- ~~(a) Late renewal fees not to exceed two hundred dollars (\$200) if the applicant for renewal can demonstrate to the satisfaction of the board that the applicant was unable to renew in a timely manner due to circumstances beyond his or her control; or~~
- ~~(b) The application and initial, nonrefundable license fees required by subsections (1) and (2) of this section, accompanied by:~~
- ~~1. A new application for licensure; and~~
- ~~2. Proof of compliance with all of the requirements to practice massage therapy specified in KRS 309.358.†~~
- ~~(f) If the board determines that the applicant practiced on an expired license, the board may require one (1) continuing education credit per month of expiration, at the discretion of the board.~~
- (2) *Any licensed massage therapist who does not desire to meet the qualifications for active license renewal shall, upon application and payment of an inactive renewal fee, be issued an inactive license. The license shall not entitle the license holder to use the term "licensed massage therapist," or to engage in the practice of massage therapy. The inactive annual renewal fee shall be promulgated by the board in administrative regulation.*
- (3) *To regain active status, the licensee shall, upon the submission of an application, show completion of one (1) hour of continuing professional education for every six (6) months the license has been in an inactive state, not to exceed five (5) years. Waivers or extensions of continuing education may be approved at the discretion of the board. Beyond five (5) years, the licensee shall meet the requirements in Section 7 of this Act to regain active status.*

➔Section 6. KRS 309.358 is amended to read as follows:

- (1) The board may issue a license as a massage therapist to an applicant who:
- ~~(a)(1)~~ Is eighteen (18) years of age or older;
- ~~(b)(2)~~ Has paid the application fee and other fees required by the board;
- ~~(c)(3)~~ Is a person of good moral character;
- ~~(d) Has submitted a recent criminal background check performed by means of a fingerprint check pursuant to subsection (7) of Section 4 of this Act;~~
- ~~(e) Has submitted a recent color photograph as prescribed by administrative regulation promulgated by the board;~~
- ~~(f)(4)~~ Has successfully completed:
1. A course of study consisting of a minimum of six hundred (600) hours of supervised instruction in a massage therapy training program approved by the board; *or*
2. *An associate degree having a massage therapy emphasis which meets the requirements of a massage therapy training program with supervised technique instruction and approved by the board;* and
- ~~(g)(5)~~ Has successfully passed an examination administered by the *Federation of State Massage Therapy Boards, the National Certification Board for Therapeutic Massage and Bodywork, or a certifying agency that has been approved by the National Commission for Certifying Agencies, or other examinations approved by the board.*
- (2) *The board shall incorporate the photograph provided in subsection (1)(e) of this section into the license. The photograph shall not be merely affixed to the license.*

➔Section 7. KRS 309.361 is amended to read as follows:

- (1) When renewing a license, each licensee shall document the successful completion of the required board-approved continuing education credits. **Twelve (12)**~~Twenty-four (24)~~ hours of training shall be required for each two (2) year renewal period. **Three (3) hours of the twelve (12) required shall be in ethics**~~[A maximum of twelve (12) additional hours may be carried over into the next renewal period]~~. Courses may include ethics, business practices, science, and techniques related to massage therapy.
- (2) Waivers or extensions of continuing education may be approved at the discretion of the board.

➔Section 8. KRS 309.362 is amended 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 **one thousand dollars (\$1,000) per violation**~~[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 the act or acts for which the licensee or applicant for license was convicted are determined by the board to have a direct bearing on whether the person is trustworthy to serve the public as a licensed massage therapist, if in accordance with KRS Chapter 335B. "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 this chapter or administrative regulations promulgated thereunder;
  - (e) Having sexual contact as defined by KRS 510.010(7) with a client or having engaged or attempted to engage in lewd or immoral conduct with any client or patient;
  - (f) Engaging in fraud or material deception in the delivery of professional services, including reimbursement or advertising services, in a false or misleading manner;
  - (g) Evidence of gross negligence or gross incompetence in the practice of massage therapy;
  - (h) Violating the standards of practice or the code of ethics as promulgated by administrative regulations;
  - (i) Violating KRS 304.39-215; or
  - (j) Engaging in conduct that is subject to the penalties under KRS 304.99-060(4) or (5).
- ~~(2) [Any licensed massage therapist who does not desire to meet the qualifications for active license renewal shall, upon application and payment of an inactive renewal fee, be issued an inactive license. The license shall not entitle the license holder to use the term "licensed massage therapist," nor to engage in the practice of massage therapy. The inactive renewal fee shall not exceed fifty dollars (\$50) annually.~~
- ~~(3) To regain active status, the licensee shall upon application show completion of one (1) hour of continuing professional education for each month the license has been in an inactive state not to exceed five (5) years. Waivers or extensions of continuing education may be approved at the discretion of the board. Beyond five (5) years, the licensee shall meet the requirements in KRS 309.358.~~
- ~~(4) ]The board may, at its discretion, deny, refuse to renew, suspend or revoke a license, or impose probationary conditions following an administrative hearing pursuant to KRS Chapter 13B and in accordance with administrative regulations promulgated by the board.~~
- ~~(3)(5) ] The surrender of a license shall not deprive the board of jurisdiction to proceed with disciplinary actions under KRS 309.350 to 309.364.~~

➔Section 9. KRS 309.363 is amended to read as follows:

- (1) A person, institution, or business entity offering a massage therapy program of instruction shall file a completed application for a certificate of good standing with the board on a form prescribed by the board and pay a fee as specified in KRS 309.357. The completed application shall provide proof acceptable to the board that the following criteria have been met:



- (a) The school is licensed to operate by the Kentucky Commission on Proprietary Education, the Council on Postsecondary Education, or their equivalent in another state;
  - (b) A curriculum statement showing clock hours devoted to each subject with the following minimums:
    - 1. One hundred twenty-five (125) hours of anatomy, physiology, or kinesiology;
    - 2. A two hundred (200) hour course to include massage theory, technique, and practice focusing on gliding strokes, kneading, direct pressure, deep friction, joint movement, superficial warming techniques, percussion, compression, vibration, jostling, shaking, and rocking;
    - 3. Two hundred (200) hours of approach to the business of massage, specifically including contraindications, benefits, business, history, ethics, client documentation, legalities of massage, and modality courses designed to meet the school's specific program objectives;
    - 4. Forty (40) hours of pathology; and
    - 5. The school may use its discretion in allotting the additional thirty-five (35) curricular hours that are required under KRS 309.358; *and*
  - (c) A listing of instructional staff and their qualifications as follows:
    - 1. Instructors of the practical courses shall be licensed massage therapists and shall have three (3) years of experience in the practice of massage therapy;
    - 2. Instructors of science courses shall be either licensed massage therapists with three (3) years of experience in the practice of massage therapy or have certification or specific higher education in the subject they are teaching; and
    - 3. Instructors in adjunctive courses shall have subject-specific education and experience.
- (2) *A school may be presumed to have met the qualifications in subsection (1)(b) and (c) of this section if it holds a current designation of "Approved School" from the National Certification Board of Therapeutic Massage and Bodywork or has the designation of "accredited" or "COMTA-endorsed curriculum" from the Council for Massage Therapy Accreditation.*
- (3) The board shall accept National Certification Board for Therapeutic Massage and Bodywork guidelines in approving continuing education.
- ➔Section 10. KRS 309.3631 is amended to read as follows:
- (1) A person, institution, or business entity offering a massage therapy program of instruction shall renew a certificate of good standing annually.
  - (2) During the renewal process, the person, institution, or business entity shall submit to the board documentation of program updates, personnel changes, graduation rates, and licensing examination rates.
  - (3) *Application for the initial certificate of good standing and annual renewals shall include a fee prescribed by the board in administrative regulations.*

**Signed by Governor March 17, 2021.**

## CHAPTER 30

( HB 48 )

AN ACT relating to reimbursement for pharmacist services.

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:*
  - (a) *"Insurer":*

1. *Means any insurer, self-insurer, self-insured plan, or self-insured group; and*
  2. *Shall include any health maintenance organization, provider-sponsored integrated health delivery network, or nonprofit hospital, medical-surgical, dental, and health service corporation; and*
- (b) *"Practice of pharmacy" has the same meaning as in KRS 315.010.*
- (2) *To the extent permitted under federal law, for policies, plans, or contracts issued or renewed on or after the effective date of this Act, an insurer, or a third-party administrator for such insurer, shall provide reimbursement to a pharmacist for a service or procedure at a rate not less than that provided to other nonphysician practitioners if the service or procedure:*
- (a) *Is within the scope of the practice of pharmacy;*
  - (b) *Would otherwise be covered under the policy, plan, or contract if the service or procedure were provided by a:*
    1. *Physician;*
    2. *Advanced practice registered nurse; or*
    3. *Physician assistant; and*
  - (c) *Is performed by the pharmacist in strict compliance with laws and administrative regulations related to the pharmacist's license.*
- (3) *This section shall not be construed to limit coverage provided under a policy, plan, or contract, or required under any other law.*

➔Section 2. KRS 304.14-135 is amended to read as follows:

- (1) The commissioner shall prescribe the following uniform health insurance claim forms which shall be used by all insurers transacting health insurance in this state and by all state agencies that require health insurance claim forms for their records as the sole instrument for reimbursement:
- (a) The uniform health insurance claim form for an institutional provider shall consist of the UB-92 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Billing Committee;
  - (b) The uniform health insurance claim form for a dentist shall consist of a data set and form approved by the American Dental Association;
  - (c) The uniform health insurance claim form for all other health care providers shall consist of the HCFA 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform ~~Claim~~~~Claims~~ Committee; and
  - (d) A clean claim for pharmacists shall consist of:
    1. *For prescription drug claims, a universal claim form ~~and~~~~for~~ data set approved by the National Council ~~for~~~~on~~ Prescription Drug ~~Programs~~~~Program~~; and*
    2. *For all other claims for services or procedures that are within the scope of the practice of pharmacy, as defined in KRS 315.010, a 1500 Health Insurance Claim Form or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claim Committee.*
- (2) An insurer shall not require a provider to:
- (a) Use a claim form that is different than the uniform claim form for the provider type as set out in subsection (1) of this section;
  - (b) Modify the uniform claims form or its content; or
  - (c) Submit additional claims forms.

➔Section 3. KRS 304.17A-844 is amended to read as follows:

- (1) After a hearing or upon agreement by the self-insured employer-organized association group, the commissioner may suspend or revoke the certificate of filing of a self-insured employer-organized association

group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a self-insured employer-organized association group, or both, for:

- (a) Violations of KRS 304.17A-800 to 304.17A-844, *Section 1 of this Act*, or administrative regulations promulgated thereunder;
  - (b) Obtaining a certificate of filing by unfair or deceptive means;
  - (c) Operating in a financially hazardous manner;
  - (d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or
  - (e) Unfair or deceptive business practices.
- (2) The commissioner, in his or her discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any self-insured employer-organized association group upon the commencement of the following proceedings:
- (a) Receivership;
  - (b) Conservatorship;
  - (c) Rehabilitation; or
  - (d) Other delinquency proceedings.

➔Section 4. KRS 304.17B-011 is amended to read as follows:

- (1) The Office of Health Data and Analytics shall select a third-party administrator, through the state competitive bidding process, to administer Kentucky Access. The third-party administrator shall be an administrator licensed by the department. The office shall consider criteria in selecting a third-party administrator that shall include, but not be limited to, the following:
- (a) A third-party administrator's proven ability to demonstrate performance of the operations of an insurer to include the following: enrollee enrollment, eligibility determination, provider enrollment and credentialing, utilization management, quality improvement, drug utilization review, premium billing and collection, claims payment, and data reporting;
  - (b) The total cost to administer Kentucky Access;
  - (c) A third-party administrator's proven ability to demonstrate that Kentucky Access shall be administered in a cost-efficient manner;
  - (d) A third-party administrator's proven ability to demonstrate experience in two (2) or more states administering a risk pool for a minimum of a three (3) year period; and
  - (e) A third-party administrator's financial condition and stability.
- (2) The office may contract with the third-party administrator for a period of four (4) years with an option for a two (2) year extension as approved by the office on a year-by-year contract basis. At least one (1) year prior to the expiration of the third-party administrator's contract, the office may solicit third-party administrators, including the current third-party administrator, to submit bids to serve as the third-party administrator for the succeeding four (4) year period.
- (3) In addition to any duties and obligations set forth in the contract with the third-party administrator, the third-party administrator shall:
- (a) Develop and establish policies and procedures for enrollee enrollment, eligibility determination, provider enrollment and credentialing, utilization management, case management, disease management, quality improvement, drug utilization review, premium billing and collection, data reporting, and other responsibilities determined by the office;
  - (b) Develop and establish policies and procedures for paying the agent referral fee under KRS 304.17B-001 to 304.17B-031;
  - (c) Develop and establish policies and procedures to ensure timely and efficient payment of claims to include, but not limited to, the following:

1. Develop and provide a claims billing manual to health care providers enrolled in Kentucky Access that includes information relating to the proper billing of a claim and the types of claim forms to use;
  2. Payment of all claims in accordance with the provisions of this chapter, *Section 1 of this Act*, and the administrative regulations promulgated thereunder; and
  3. Notification to an enrollee through an explanation of benefits if a claim is denied or if there is enrollee financial responsibility of a paid claim for deductible or coinsurance amounts;
- (d) Issue denial letters under KRS 304.17A-540 for denial of preauthorization and precertification requests for medical necessity and medical appropriateness determinations;
- (e) Submit information to the office and the department under KRS 304.17A-330;
- (f) Submit reports to the office regarding the operation and financial condition of Kentucky Access. The frequency, content, and form of the reports shall be determined by the office;
- (g) Submit an annual report to the office three (3) months after the end of each calendar year. The annual report shall include:
1. Earned premium;
  2. Administrative expenses;
  3. Incurred losses for the year;
  4. Paid losses for the year;
  5. Number of enrollees enrolled in Kentucky Access by category of eligibility; and
  6. Any other information requested by the office; and
- (h) Be subject to examination by the office under Subtitles 2 and 3 of this chapter.
- (4) The third-party administrator shall be paid for necessary and reasonable expenses, as provided in the contract between the office and the third-party administrator.

➔Section 5. KRS 18A.225 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) The term "employee" for purposes of this section means:
1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567; or is eligible to participate in a retirement plan established by an employer who ceases participating in the Kentucky Employees Retirement System pursuant to KRS 61.522 whose employees participated in the health insurance plans administered by the Personnel Cabinet prior to the employer's effective cessation date in the Kentucky Employees Retirement System;
  2. Any certified or classified employee of a local board of education;
  3. Any elected member of a local board of education;
  4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS

61.702(4)(c), unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and

5. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;
  - (b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;
  - (c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and
  - (d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.
- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.
- (b) The policy or policies shall be approved by the commissioner of insurance and may contain the provisions the commissioner of insurance approves, whether or not otherwise permitted by the insurance laws.
- (c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection (20) of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program.
- (d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.
- (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of

the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.

- (f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.
  - (g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.
  - (h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.
- (3) The premiums may be paid by the policyholder:
- (a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;
  - (b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or
  - (c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.
- (4) If an employee moves his or her place of residence or employment out of the service area of an insurer offering a managed health care plan, under which he or she has elected coverage, into either the service area of another managed health care plan or into an area of the Commonwealth not within a managed health care plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health benefit plan.
- (5) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.
- (6) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.
- (7) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he or she has been determined to be eligible for federal Social Security disability benefits.
- (8) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.
- (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or the secretary's designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The

secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.

- (10) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.
- (11) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Department of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.
- (12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.
- (13)
  - (a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.
  - (b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.
  - (c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.
- (14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months pursuant to KRS 304.17A-132.
- (15) Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for the diagnosis and treatment of autism spectrum disorders consistent with KRS 304.17A-142.
- (16) Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining amino acid-based elemental formula pursuant to KRS 304.17A-258.
- (17) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- (18) If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.
- (20) Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar

year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:

- (a) The regional rating bid scenario shall not include a request for bid on a statewide option;
  - (b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;
  - (c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;
  - (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and
  - (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.
- (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.
- (22) Any fully insured health benefit plan or self-insured plan issued or renewed on or after *the effective date of this Act* ~~July 12, 2006~~, to public employees pursuant to this section shall comply with:
- (a) *Section 1 of this Act*;
  - (b) ~~the provisions of~~ KRS 304.17A-270 and 304.17A-525;
  - (c) **KRS 304.17A-600 to 304.17A-633**;
  - (d) **KRS 205.593**;
  - (e) **KRS 304.17A-700 to 304.17A-730**;
  - (f) **KRS 304.14-135**;
  - (g) **KRS 304.17A-580 and 304.17A-641**;
  - (h) **KRS 304.99-123**;
  - (i) **KRS 304.17A-138**; and
  - (j) *Administrative regulations promulgated pursuant to statutes listed in this subsection.*

~~(23) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to 304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to 304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to uniform health insurance claim forms, KRS 304.17A-580 and 304.17A-641 pertaining to emergency medical care, KRS 304.99-123, and any administrative regulations promulgated thereunder.~~

~~(24) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 1, 2019, to public employees pursuant to this section shall comply with KRS 304.17A-138.~~

➔Section 6. KRS 342.020 is amended to read as follows:

- (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter for the length of time set forth in this section, or as may be required for the cure and treatment of an occupational disease.
- (2) In claims resulting in an award of permanent total disability or resulting from an injury described in subsection (9) of this section, the employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits.



- (3)
  - (a) In all permanent partial disability claims not involving an injury described in subsection (9) of this section, the employer's obligation to pay the benefits specified in this section shall continue for seven hundred eighty (780) weeks from the date of injury or date of last exposure.
  - (b) In all permanent partial disability claims not involving an injury described in subsection (9) of this section, the commissioner shall, in writing, advise the employee of the right to file an application for the continuation of benefits as described in this section. This notice shall be made to the employee seven hundred fifty-four (754) weeks from the date of injury or last exposure.
  - (c) An employee shall receive a continuation of benefits as described in this section for additional time beyond the period provided in paragraph (a) of this subsection as long as continued medical treatment is reasonably necessary and related to the work injury or occupational disease if:
    1. An application is filed within seventy-five (75) days prior to the termination of the seven hundred eighty (780) week period;
    2. The employee demonstrates that continued medical treatment is reasonably necessary and related to the work injury or occupational disease; and
    3. An administrative law judge determines and orders that continued benefits are reasonably necessary and related to the work injury or occupational disease for additional time beyond the original seven hundred eighty (780) week period provided in paragraph (a) of this subsection.
  - (d) If the administrative law judge determines that medical benefits are not reasonably necessary or not related to the work injury or occupational disease, or if an employee fails to make proper application for continued benefits within the time period provided in paragraph (c) of this subsection, any future medical treatment shall be deemed to be unrelated to the work injury and the employer's obligation to pay medical benefits shall cease permanently.
- (4) In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (7) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.
- (5) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.
- (6) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.
- (7) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:
  - (a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;
  - (b) The employee shall be allowed choice of provider within the plan;
  - (c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;
  - (d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;

- (e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;
  - (f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and
  - (g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.
  - (h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.
  - (i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.
- (8) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.
- (9) When a compensable injury or occupational disease results in the amputation or partial amputation of an arm, hand, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, or permanent total or permanent partial paralysis, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability .
- (10) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.
- (11) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.
- (12) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.
- (13) (a) Except as provided in paragraphs (b) and (c) of this subsection, the employer, insurer, or payment obligor shall not be liable for urine drug screenings of patients in excess of:
- 1. One (1) per year for a patient considered to be low-risk;
  - 2. Two (2) per year for a patient considered to be moderate-risk; and
  - 3. Four (4) per year for patients considered to be high-risk;

based upon the screening performed by the treating medical provider and other pertinent factors.

- (b) The employer, insurer, or payment obligor may be liable for urine drug screening at each office visit for patients that have exhibited aberrant behavior documented by multiple lost prescriptions, multiple requests for early refills of prescriptions, multiple providers prescribing or dispensing opioids or opioid substitutes as evidenced by the electronic monitoring system established in KRS 218A.202 or a similar system, unauthorized dosage escalation, or apparent intoxication.
  - (c) The employer, insurer, or payment obligor may request additional urine drug screenings which shall not count toward the maximum number of drug screenings enumerated in paragraph (a) of this subsection.
  - (d) The commissioner shall promulgate administrative regulations related to urine drug screenings as part of the practice parameters or treatment guidelines required under KRS 342.035.
- (14) (a) *As used in this subsection, "practice of pharmacy" has the same meaning as in KRS 315.010.*
- (b) *In addition to all other compensation that may be reimbursed to a pharmacist under this chapter, the employer, insurer, or payment obligor shall be liable for the reimbursement of a pharmacist for a service or procedure at a rate not less than that provided to other nonphysician practitioners if the service or procedure:*
- 1. *Is within the scope of the practice of pharmacy;*
  - 2. *Would otherwise be compensable under this chapter if the service or procedure were provided by a:*
    - a. *Physician;*
    - b. *Advanced practice registered nurse; or*
    - c. *Physician assistant; and*
  - 3. *Is performed by the pharmacist in strict compliance with laws and administrative regulations related to the pharmacist's license.*

**Signed by Governor March 17, 2021.**

## CHAPTER 31

### ( HB 84 )

AN ACT relating to exemptions for disaster response businesses and employees.

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, for taxable years beginning on or after January 1, 2018:

- (1) "Adjusted gross income," in the case of taxpayers other than corporations, means the amount calculated in KRS 141.019;
- (2) "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;
  - (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; and

- 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 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;
- (3) "Commissioner" means the commissioner of the department;
- (4) "Corporation" has the same meaning as in Section 7701(a)(3) of the Internal Revenue Code;
- (5) *"Critical infrastructure" means property and equipment owned or used by communications networks, electric generation, transmission or distribution systems, gas distribution systems, or water or wastewater pipelines that service multiple customers or citizens, including but not limited to real and personal property such as buildings, offices, lines, poles, pipes, structures, or equipment;*
- (6) *"Declared state disaster or emergency" means a disaster or emergency event for which:*
  - (a) *The Governor has declared a state of emergency pursuant to KRS 39A.100; or*
  - (b) *A presidential declaration of a federal major disaster or emergency has been issued;*
- (7) "Department" means the Department of Revenue;
- ~~(8)(6)~~ "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (9) *"Disaster or emergency-related work" means repairing, renovating, installing, building, or rendering services that are essential to the restoration of critical infrastructure that has been damaged, impaired, or destroyed by a declared state disaster or emergency;*
- (10) *"Disaster response business" means any entity:*
  - (a) *That has no presence in the state and conducts no business in the state, except for disaster or emergency-related work during a disaster response period;*
  - (b) *Whose services are requested by a registered business or by a state or local government for purposes of performing disaster or emergency-related work in the state during a disaster response period; and*
  - (c) *That has no registrations, tax filings, or nexus in this state other than disaster or emergency-related work during the calendar year immediately preceding the declared state disaster or emergency;*
- (11) *"Disaster response employee" means an employee who does not work or reside in the state, except for disaster or emergency-related work during the disaster response period;*
- (12) *"Disaster response period" means a period that begins ten (10) days prior to the first day of the Governor's declaration under KRS 39A.100, or the President's declaration of a federal major disaster or emergency, whichever occurs first, and that extends thirty (30) calendar days after the declared state disaster or emergency;*
- ~~(13)(7)~~ "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;

- ~~(14)(8)~~ "Employee" has the same meaning as in Section 3401(c) of the Internal Revenue Code;
- ~~(15)(9)~~ "Employer" has the same meaning as in Section 3401(d) of the Internal Revenue Code;
- ~~(16)(10)~~ "Fiduciary" has the same meaning as in Section 7701(a)(6) of the Internal Revenue Code;
- ~~(17)(11)~~ "Financial institution" means:
  - (a) A national bank organized as a body corporate and existing or in the process of organizing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. secs. 21 et seq., in effect on December 31, 1997, exclusive of any amendments made subsequent to that date;
  - (b) Any bank or trust company incorporated or organized under the laws of any state, except a banker's bank organized under KRS 286.3-135;
  - (c) Any corporation organized under the provisions of 12 U.S.C. secs. 611 to 631, in effect on December 31, 1997, exclusive of any amendments made subsequent to that date, or any corporation organized after December 31, 1997, that meets the requirements of 12 U.S.C. secs. 611 to 631, in effect on December 31, 1997; or
  - (d) Any agency or branch of a foreign depository as defined in 12 U.S.C. sec. 3101, in effect on December 31, 1997, exclusive of any amendments made subsequent to that date, or any agency or branch of a foreign depository established after December 31, 1997, that meets the requirements of 12 U.S.C. sec. 3101 in effect on December 31, 1997;
- ~~(18)(12)~~ "Fiscal year" has the same meaning as in Section 7701(a)(24) of the Internal Revenue Code;
- ~~(19)(13)~~ "Gross income":
  - (a) In the case of taxpayers other than corporations, has the same meaning as in Section 61 of the Internal Revenue Code; and
  - (b) In the case of corporations, means the amount calculated in KRS 141.039;
- ~~(20)(14)~~ "Individual" means a natural person;
- ~~(21)(15)~~ "Internal Revenue Code" means:
  - (a) For taxable years beginning on or after January 1, 2018, but before January 1, 2019, the Internal Revenue Code in effect on December 31, 2017, including the provisions contained in Pub. L. No. 115-97 apply to the same taxable year as the provisions apply for federal purposes, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2017, that would otherwise terminate; and
  - (b) For taxable years beginning on or after January 1, 2019, the Internal Revenue Code in effect on December 31, 2018, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2018, that would otherwise terminate;
- ~~(22)(16)~~ "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;
- ~~(23)(17)~~ "Modified gross income" means the greater of:
  - (a) Adjusted gross income as defined in 26 U.S.C. sec. 62, including any 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 (1) 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);
- ~~(24)(18)~~ "Net income":
- (a) In the case of taxpayers other than corporations, means the amount calculated in KRS 141.019; and
  - (b) In the case of corporations, means the amount calculated in KRS 141.039;
- ~~(25)(19)~~ "Nonresident" means any individual not a resident of this state;
- ~~(26)(20)~~ "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;
- ~~(27)(21)~~ "Part-year resident" means any individual that has established or abandoned Kentucky residency during the calendar year;
- ~~(28)(22)~~ "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;
- ~~(29)(23)~~ "Payroll period" has the same meaning as in Section 3401(b) of the Internal Revenue Code;
- ~~(30)(24)~~ "Person" has the same meaning as in Section 7701(a)(1) of the Internal Revenue Code;
- (31) "Registered business" means a business entity that owns or otherwise possesses critical infrastructure and that is registered to do business in the state prior to the declared state disaster or emergency;**
- ~~(32)(25)~~ "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;
- ~~(33)(26)~~ "S corporation" has the same meaning as in Section 1361(a) of the Internal Revenue Code;
- ~~(34)(27)~~ "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;
- ~~(35)(28)~~ "Taxable net income":
- (a) In the case of corporations that are taxable in this state, means "net income" as defined in subsection ~~(24)(18)~~ of this section;
  - (b) In the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection ~~(24)(18)~~ of this section and as allocated and apportioned under KRS 141.120;
  - (c) For 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 ~~(21)(45)~~ 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) For 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;
- ~~(36)(29)~~ "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 administrative regulations prescribed by the commissioner, "taxable year" means the period for which the return is made; and

~~(37)(30)~~ "Wages" has the same meaning as 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.

➔Section 2. KRS 141.020 is amended to read as follows:

- (1) An annual tax shall be paid for each taxable year by every resident individual of this state upon his entire net income as defined in this chapter. The tax shall be determined by applying the rates in subsection (2) of this section to net income and subtracting allowable tax credits provided in subsection (3) of this section.
- (2)
  - (a) For taxable years beginning on or after January 1, 2018, the tax shall be five percent (5%) of net income.
  - (b) For taxable years beginning after December 31, 2004, and before January 1, 2018, the tax shall be determined by applying the following rates to net income:
    1. Two percent (2%) of the amount of net income up to three thousand dollars (\$3,000);
    2. Three percent (3%) of the amount of net income over three thousand dollars (\$3,000) and up to four thousand dollars (\$4,000);
    3. Four percent (4%) of the amount of net income over four thousand dollars (\$4,000) and up to five thousand dollars (\$5,000);
    4. Five percent (5%) of the amount of net income over five thousand dollars (\$5,000) and up to eight thousand dollars (\$8,000);
    5. Five and eight-tenths percent (5.8%) of the amount of net income over eight thousand dollars (\$8,000) and up to seventy-five thousand dollars (\$75,000); and
    6. Six percent (6%) of the amount of net income over seventy-five thousand dollars (\$75,000).
- (3)
  - (a) The following tax credits, when applicable, shall be deducted from the result obtained under subsection (2) of this section to arrive at the annual tax:
    1.
      - a. For taxable years beginning before January 1, 2014, twenty dollars (\$20) for an unmarried individual; and
      - b. For taxable years beginning on or after January 1, 2014, and before January 1, 2018, ten dollars (\$10) for an unmarried individual;
    2.
      - a. For taxable years beginning before January 1, 2014, twenty dollars (\$20) for a married individual filing a separate return and an additional twenty dollars (\$20) for the spouse of taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or forty dollars (\$40) for married persons filing a joint return, provided neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code; and
      - b. For taxable years beginning on or after January 1, 2014, and before January 1, 2018, ten dollars (\$10) for a married individual filing a separate return and an additional ten dollars (\$10) for the spouse of a taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, had no Kentucky gross income and is not the dependent of another taxpayer; or twenty dollars (\$20) for married persons filing a joint return, provided neither spouse is the dependent of another taxpayer. The determination of marital status for the purpose of this section shall be made in the manner prescribed in Section 153 of the Internal Revenue Code;
    3.
      - a. For taxable years beginning before January 1, 2014, twenty dollars (\$20) credit for each dependent. No credit shall be allowed for any dependent who has made a joint return with his or her spouse; and
      - b. For taxable years beginning on or after January 1, 2014, and before January 1, 2018, ten dollars (\$10) credit for each dependent. No credit shall be allowed for any dependent who has made a joint return with his or her spouse;

4. An additional forty dollars (\$40) credit if the taxpayer has attained the age of sixty-five (65) before the close of the taxable year;
  5. An additional forty dollars (\$40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse has attained the age of sixty-five (65) before the close of the taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;
  6. An additional forty dollars (\$40) credit if the taxpayer is blind at the close of the taxable year;
  7. An additional forty dollars (\$40) credit for taxpayer's spouse if a separate return is made by the taxpayer and if the taxpayer's spouse is blind, and, for the calendar year in which the taxable year of the taxpayer begins, has no Kentucky gross income and is not the dependent of another taxpayer;
  8. In the case of a fiduciary, other than an estate, the allowable tax credit shall be two dollars (\$2);
  9. In the case of an estate, the allowable tax credit shall be ten dollars (\$10); and
  10. An additional twenty dollars (\$20) credit shall be allowed if the taxpayer is a member of the Kentucky National Guard at the close of the taxable year.
- (b) In the case of nonresidents, the tax credits allowable under this subsection shall be the portion of the credits that are represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.019 to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code. However, in the case of a married nonresident taxpayer with income from Kentucky sources, whose spouse has no income from Kentucky sources, the taxpayer shall determine allowable tax credit(s) by either:
1. The method contained above applied to the taxpayer's tax credit(s), excluding credits for a spouse and dependents; or
  2. Prorating the taxpayer's tax credit(s) plus the tax credits for the taxpayer's spouse and dependents by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.019 to the total joint federal adjusted gross income of the taxpayer and the taxpayer's spouse.
- (c) In the case of a part-year resident, the tax credits allowable under this subsection shall be the portion of the credits represented by the ratio of the taxpayer's Kentucky adjusted gross income as determined by KRS 141.019 to the taxpayer's adjusted gross income as defined in Section 62 of the Internal Revenue Code.
- (4) An annual tax shall be paid for each taxable year as specified in this section upon the entire net income except as herein provided, from all tangible property located in this state, from all intangible property that has acquired a business situs in this state, and from business, trade, profession, occupation, or other activities carried on in this state, by natural persons not residents of this state. A nonresident individual shall be taxable only upon the amount of income received by the individual from labor performed, business done, or from other activities in this state, from tangible property located in this state, and from intangible property which has acquired a business situs in this state; provided, however, that the situs of intangible personal property shall be at the residence of the real or beneficial owner and not at the residence of a trustee having custody or possession thereof. ***For taxable years beginning on or after January 1, 2021, but before January 1, 2025, the tax imposed by this section shall not apply to a disaster response employee or to a disaster response business.*** The remainder of the income received by such nonresident shall be deemed nontaxable by this state.
- (5) Subject to the provisions of KRS 141.081, any individual may elect to pay the annual tax imposed by KRS 141.023 in lieu of the tax levied under this section.
- (6) A part-year resident is subject to taxation, as prescribed in subsection (1) of this section, during that portion of the taxable year that the individual is a resident and, as prescribed in subsection (4) of this section, during that portion of the taxable year when the individual is a nonresident.
- ➔Section 3. KRS 141.040 is amended to read as follows:
- (1) Every corporation doing business in this state, except those corporations listed in paragraphs (a) and (b) of this subsection, shall pay for each taxable year a tax to be computed by the taxpayer on taxable net income at the rates specified in this section:
- (a) For taxable years beginning prior to January 1, 2021:



1. Financial institutions, as defined in KRS 136.500, except bankers banks organized under KRS 286.3-135;
  2. Savings and loan associations organized under the laws of this state and under the laws of the United States and making loans to members only;
  3. Banks for cooperatives;
  4. Production credit associations;
  5. Insurance companies, including farmers' or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
  6. Corporations or other entities exempt under Section 501 of the Internal Revenue Code;
  7. Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit; and
  8. Corporations whose only owned or leased property located in this state is located at the premises of a printer with which it has contracted for printing, provided that:
    - a. The property consists of the final printed product, or copy from which the printed product is produced; and
    - b. The corporation has no individuals receiving compensation in this state as provided in KRS 141.120(8)(b); and
- (b) For taxable years beginning on or after January 1, 2021:
1. Insurance companies, including farmers' or other mutual hail, cyclone, windstorm, or fire insurance companies, insurers, and reciprocal underwriters;
  2. Corporations or other entities exempt under Section 501 of the Internal Revenue Code;
  3. Religious, educational, charitable, or like corporations not organized or conducted for pecuniary profit; ~~and~~
  4. Corporations whose only owned or leased property located in this state is located at the premises of a printer with which it has contracted for printing, provided that:
    - a. The property consists of the final printed product, or copy from which the printed product is produced; and
    - b. The corporation has no individuals receiving compensation in this state as provided in KRS 141.120(8)(b); *and*
  5. *For taxable years beginning before January 1, 2025, a disaster response business.*
- (2) For taxable years beginning on or after January 1, 2018, the rate of five percent (5%) of taxable net income shall apply.
- (3) For taxable years beginning on or after January 1, 2007, and before January 1, 2018, the following rates shall apply:
- (a) Four percent (4%) of the first fifty thousand dollars (\$50,000) of taxable net income;
  - (b) Five percent (5%) of taxable net income over fifty thousand dollars (\$50,000) up to one hundred thousand dollars (\$100,000); and
  - (c) Six percent (6%) of taxable net income over one hundred thousand dollars (\$100,000).
- (4) (a) An S corporation shall pay income tax on the same items of income and in the same manner as required for federal purposes, except to the extent required by differences between this chapter and the federal income tax law and regulations.
- (b) 1. If the S corporation is required under Section 1363(d) of the Internal Revenue Code to submit installments of tax on the recapture of LIFO benefits, installments to pay the Kentucky tax due shall be paid on or before the due date of the S corporation's return, as extended, if applicable.
  2. Notwithstanding KRS 141.170(3), no interest shall be assessed on the installment payment for the period of extension.

- (c) If the S corporation is required under Section 1374 or 1375 of the Internal Revenue Code to pay tax on built-in gains or on passive investment income, the amount of tax imposed by this subsection shall be computed by applying the highest rate of tax for the taxable year.

➔Section 4. KRS 68.180 is amended to read as follows:

- (1) The fiscal court of each county having a population of three hundred thousand (300,000) or more may by order or resolution impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing.
- (2) License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, shall be imposed at a percentage rate not to exceed one and one-fourth percent (1.25%) of:
  - (a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county; and
  - (b) The net profits of businesses, trades, professions, or occupations from activities conducted in the county.
- (3)
  - (a) No public service company that pays an ad valorem tax shall be required to pay a license tax.
  - (b)
    1. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to January 1, 2006.
    2. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.
  - (c) No license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association, whether state or federally chartered.
  - (d) No license tax shall be imposed upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training.
  - (e) No license tax shall be imposed upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
  - (f) No license tax shall be imposed upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor, or in other cases where the county is prohibited by law from imposing a license tax.
  - (g)
    1. *No license tax shall be imposed upon:*
      - a. *The profits earned; or*
      - b. *Income received for work performed;**during a disaster response period by a disaster response business or a disaster response employee.*
    2. *As used in this paragraph, "disaster response business," "disaster response employee," and "disaster response period" have the same meaning as in Section 1 of this Act.*
- (4) The provisions and limitations of subsection (2) of this section shall not apply to license fees imposed for regulatory purposes as to form and amount, or to the license fees authorized by KRS 160.482 to 160.488.
- (5) Pursuant to this section, no fiscal court shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities

as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the county on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

➔Section 5. KRS 68.197 is amended to read as follows:

- (1) The fiscal court of each county having a population of thirty thousand (30,000) or more may by ordinance impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing.
- (2) License fees on business, trade, occupation, or profession for revenue purposes, except those of the common schools, may be imposed at a percentage rate not to exceed one percent (1%) of:
  - (a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county;
  - (b) The net profits of self-employed individuals, partnerships, professional associations, or joint ventures resulting from trades, professions, occupations, businesses, or activities conducted in the county; and
  - (c) The net profits of corporations resulting from trades, professions, occupations, businesses, or activities conducted in the county.
- (3) In order to reduce administrative costs and minimize paperwork for employers, employees, and businesses, the fiscal court may provide:
  - (a) For an annual fixed amount license fee which a person may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on salaries, wages, commissions, and other compensation earned within the county for work done and services performed or rendered in the county; and
  - (b) For an annual fixed amount license fee which an individual, partnership, professional association, joint venture, or corporation may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on net profits of businesses, trades, professions, or occupations from activities conducted in the county.
- (4)
  - (a) Licenses imposed for regulatory purposes are not subject to limitations as to form and amount.
  - (b) No public service company that pays an ad valorem tax is required to pay a license tax.
  - (c)
    1. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to the effective date of this section.
    2. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming services including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.
  - (d) No license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust company, combined bank and trust company, combined trust, banking, and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license fee.
- (5) No license fee shall be imposed or collected on:
  - (a) Income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training;~~[- or on]~~
  - (b) Income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections;~~[- or upon]~~

- (c) Any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor; *or*
- (d)
  - 1.
    - a. *The profits earned; or*
    - b. *Income received for work performed; during a disaster response period by a disaster response business or a disaster response employee.*
  - 2. *As used in this paragraph, "disaster response business," "disaster response employee," and "disaster response period" have the same meaning as in Section 1 of this Act.*
- (6) Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may, upon agreement between the county and the city, credit their city license fee against their county license fee. As used in this subsection, "city contained in the county" shall include a city that is in more than one (1) county.
- (7) The provisions of subsection (6) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee. As used in this subsection, "city contained in the county" shall include a city that is in more than one (1) county.
- (8) Notwithstanding any statute to the contrary, the provisions of subsection (7) of this section shall apply as follows from March 14, 2012, through July 15, 2014:
  - (a) Any set-off or credit of city license fees against county license fees that exists between a city and county as of March 15, 2012, shall remain in effect as it is on March 15, 2012; and
  - (b) The provisions of subsection (7) of this section shall not apply to a city and county unless both the city and the county have both levied and are collecting license fees on March 15, 2012.
- (9) A county that enacted an occupational license fee under the authority of KRS 67.083 shall not be required to reduce its occupational tax rate when it is determined that the population of the county exceeds thirty thousand (30,000).
- (10) Notwithstanding any statute to the contrary:
  - (a) In those counties where a license fee has been authorized by a public question approved by the voters, there shall be no credit of a city license fee against a county license fee except by agreement between the county and the city in accordance with subsection (6) of this section;
  - (b) Notwithstanding any provision of the KRS to the contrary, no taxpayer shall be refunded or credited for any overpayment of a license tax paid to any county to the extent the overpayment is attributable to or derives from this section as it existed at any time subsequent to July 15, 1986, and the taxpayer seeks a credit for a license tax paid to a city located within such county, if such refund claim or amended tax return claim was filed or perfected after November 18, 2004, except by agreement between the city and county in accordance with subsection (6) of this section;
  - (c) In those counties where a license fee has been authorized by a public question approved by the voters, the percentage rate of the license fee in effect on January 1, 2005, and any maximum salary limit upon which the license fee is calculated shall remain unchanged for subsequent fiscal years. A percentage rate higher than the percentage rate in effect on January 1, 2005, or any change in the maximum salary limit upon which a license fee is calculated shall be prohibited unless approved by the voters at a public referendum. The percentage rate of a license fee in such counties shall at no time exceed one percent (1%). Any question to be placed before the voters as a result of this paragraph shall be placed on the ballot at a regular election or nominating primary.
  - (d) This subsection shall have retroactive application; and
  - (e) If any provision of this subsection or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this section that can be given effect without the invalid provision or application, and to this end the provisions of this subsection are severable.

- (11) Pursuant to this section, no fiscal court shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the county on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

➔Section 6. KRS 91.200 is amended to read as follows:

- (1) The board of aldermen of every city of the first class, in addition to levying ad valorem taxes, may by ordinance impose license fees on franchises, provide for licensing any business, trade, occupation, or profession and the using, holding, or exhibiting of any animal, article, or other thing.
- (2) License fees on a business, trade, occupation, or profession for revenue purposes may be imposed at a percentage rate not to exceed those hereinafter set forth on:
- (a) Salaries, wages, commissions and other compensations earned by every person within the city for work done and services performed or rendered in the city (all of such being hereinafter collectively referred to as "wages"); and
  - (b) The net profits of all businesses, professions, or occupations from activities conducted in the city (hereinafter collectively referred to as "net profits").
- (3) (a) Licenses imposed for regulatory purposes shall not be subject to such limitations as to form and amount.
- (b) No company that pays an ad valorem tax and a franchise tax is required to pay a license tax.
- (c) 1. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to January 1, 2006.
2. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services.
- (d) No license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company or combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered.
- (e) No license tax shall be imposed upon income received by members of the Kentucky national guard for active duty training, unit training assemblies, and annual field training.
- (f) No license tax shall be imposed on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
- (g) No license tax shall be imposed upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor, or in any other case where the city is prohibited by statute from imposing a license tax.
- (h) 1. *No license tax shall be imposed upon:*
- a. *The profits earned; or*
  - b. *Income received for work performed;*
- during a disaster response period by a disaster response business or a disaster response employee.*
2. *As used in this paragraph, "disaster response business," "disaster response employee," and "disaster response period" have the same meaning as in Section 1 of this Act.*

- (4) The rate fixed on both "wages" and "net profits" shall be one and one-fourth percent (1.25%).
- (5) License fees or taxes shall be collected by the commissioners of the sinking fund. The proceeds from the taxes shall be paid to the secretary and treasurer of the sinking fund until income from all sources of the sinking fund is sufficient to pay the cost of administration and the interest charges for the current fiscal year of the sinking fund in addition to a sum sufficient to amortize the outstanding principal indebtedness of the city on a yearly basis in accordance with regularly used amortization tables.
- (6) Revenue remaining after meeting the foregoing requirements shall be transferred to the city. Such revenues shall be credited to the general fund of the city as received and may be expended for general purposes or for capital improvements.
- (7) The term "capital improvements" as used in this section is limited to additions or improvements of a substantial and permanent nature and services rendered in connection therewith, and includes but is not limited to:
  - (a) The purchase of rights of way for highways, expressways, and the widening of existing streets;
  - (b) The purchase of lands for park, recreational, and other governmental facilities and for public off-street parking facilities;
  - (c) The purchase, construction, reconstruction, renovation, or remodeling of municipal buildings, and facilities;
  - (d) The replacement of machinery, wires, pipes, structural members or fixtures, and other essential portions of municipal buildings;
  - (e) The initial equipment of any newly acquired facility wherein any essential governmental function of the municipality may be located or carried on;
  - (f) The purchase and installation of traffic control devices and fire alarm equipment;
  - (g) The reconstruction and resurfacing, but not routine maintenance, of streets and other public ways;
  - (h) The acquisition of motorized equipment purchased as additions to, but not replacements for, existing equipment; and
  - (i) Engineering and other costs incurred by the city in connection with the construction of public improvements financed under a special assessment plan.
- (8) Ad valorem taxes for the benefit of the sinking fund shall not be levied unless the income of the sinking fund is otherwise insufficient to meet such requirements.
- (9) Licenses shall be issued and enforced on terms and conditions as prescribed by ordinance.
- (10) Pursuant to this section, no city of the first class shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the city on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

➔Section 7. KRS 92.300 is amended to read as follows:

- (1) (a) The legislative body of an urban-county government and any city of the home rule class may by ordinance exempt manufacturing establishments, including qualified data centers, from city taxation for a period not exceeding five (5) years as an inducement to their location in the urban-county government, or city.
- (b) As used in this subsection:
  1. "Data center" means a structure or portion of a structure that is predominantly used to house and continuously operate computer servers and associated telecommunications, electronic data processing or storage, or other similar components;
  2. "Overall tier rating" means the overall tier rating of a data center according to the TIA-942 Telecommunications Infrastructure Standard for Data Centers established by the Telecommunications Industry Association and published in April 2005, exclusive of any amendments made subsequent to that date; and

3. "Qualified data center" means a data center having an overall tier rating of three (3) or four (4) on the assessment date of a given taxable year, as established by the owner thereof.
- (2) (a) No city of the home rule class or urban-county government may impose or collect any license tax upon:
    1. Any bank, trust company, combined bank and trust company, or trust, banking and title insurance company organized and doing business in this state;
    2. Any savings and loan association whether state or federally chartered;~~[-or]~~
    3. The provision of multichannel video programming services or communications services as defined in KRS 136.602. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to January 1, 2006. If only a portion of an entity's business is providing multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services including products or services that are related to and provided in support of the multichannel video programming services or communications services; **or**
    4. ***A disaster relief business as defined in Section 1 of this Act for work performed during a disaster response period as defined in Section 1 of this Act.***
  - (b) No city of the home rule class or urban-county government may impose or collect any license tax upon income received:
    1. By members of the Kentucky National Guard for active duty training, unit training assemblies and annual field training;~~[-or]~~
    2. By precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections; **or**
    3. ***By a disaster response employee as defined in Section 1 of this Act for work performed during a disaster response period as defined in Section 1 of this Act.***
- (3) Pursuant to KRS 92.281, no city shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the city enacted pursuant to KRS 92.281.

➔Section 8. KRS 227.480 is amended to read as follows:

- (1) (a) A city, county, urban-county government, charter county, or consolidated local government or the state shall, according to the Uniform State Building Code as it pertains to the plan review and inspection responsibilities of local governments or the state, require any person to obtain a permit before commencing construction, alteration, or repairs of any electrical system.
  - (b) The city, county, urban-county government, charter county, or consolidated local government or the state shall require all inspections that are deemed necessary by the department for the safety of life and property. The department shall promulgate administrative regulations to describe the circumstances where inspections are required.
- (2) A city, county, urban-county government, charter county, or consolidated local government or the state shall not issue a permit unless the applicant submits proof of being licensed as an electrical contractor under KRS Chapter 227A or of acting on behalf of a licensed electrical contractor. However, the provisions of this subsection shall not apply to:
    - (a) A homeowner or farmer who does construction, alteration, or repairs of any electrical system on his or her own premises or any other person exempt from licensing under KRS 227A.030 or 227A.150;
    - (b) Electrical work performed by the Commonwealth of Kentucky, a city, county, urban-county government, charter county, or consolidated local government, or any subdivision thereof;~~[-or]~~
    - (c) A company with a recently deceased licensed electrical contractor, which shall be granted an interim period of up to one hundred eighty (180) continuous calendar days by the city, county, urban-county

government, charter county, consolidated local government, or state to allow the company to utilize the license of the deceased electrical contractor if:

1. The company effectuates and documents all necessary bonding and insurance policies required by KRS Chapter 227A; and
2. Ensures that the bonding and insurance policies remain in effect for the entirety of the interim period of time extended; **or**

**(d) A disaster response business as defined in Section 1 of this Act.**

- (3) A city, county, urban-county government, charter county, or consolidated local government shall appoint and may fix the compensation of city, county, urban-county government, charter county, or consolidated local government electrical inspectors, and may by ordinance fix reasonable fees and establish other requirements for the conduct of electrical inspections within its boundaries. All electrical inspectors shall be certified under KRS 227.489.
- (4) Reasonable standards for the construction, alteration, and repair of any electrical systems shall be those adopted in the Uniform State Building Code, as promulgated by the department, and shall have as a minimum standard the requirements of the National Electrical Code, which may include Kentucky amendments. These standards shall be used by the electrical inspector in making his inspections.

➔Section 9. KRS 227A.030 is amended to read as follows:

- (1) The provisions of KRS 227A.010 to 227A.140 shall not apply to installations under the exclusive control of electric utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for those purposes or located outdoors on property owned or leased by the utility or on public highways, streets, or roads, or outdoors by established rights on private property.
- (2) Nothing in KRS 227A.010 to 227A.140 shall require that a maintenance worker or maintenance engineer performing routine maintenance of electrical systems be licensed.
- (3) Nothing in KRS 227A.010 to 227A.140 shall prohibit or interfere with the ability of a homeowner or farmer to install or repair electrical wiring on his or her real property.
- (4) Nothing in KRS 227A.010 to 227A.140 shall require that a retailer or its agent engaged in making installations of an appliance purchased at a retail establishment be licensed.
- (5) Nothing in KRS 227A.010 to 227A.140 shall be construed to require persons making installations exempt by KRS 227.460 to be licensed or to work for a licensed person.
- (6) Nothing in KRS 227A.010 to 227A.140 shall preclude the use of unlicensed, nonresident electricians in temporary, emergency, or industrial shutdown situations. Those unlicensed, nonresident electricians shall apply for an electrician's license or a master electrician's license after they are employed and engaged in electrical work in the Commonwealth of Kentucky for a period of ten (10) days. No unlicensed, nonresident electrician shall be employed or engaged in electrical work in the Commonwealth of Kentucky for a total of more than thirty (30) days in any calendar year without applying for an electrician's license or a master electrician's license. The license shall be obtained by the temporary, unlicensed, nonresident electricians within sixty (60) days of securing employment.
- (7) Nothing in KRS 227A.010 to 227A.140 shall apply to a person performing work at a surface or underground coal mine or at a coal preparation plant.
- (8) Nothing in KRS 227A.010 to 227A.140 shall apply to a person performing work for a telecommunications company for which the voltage is fifty (50) volts or less.
- (9) Nothing in KRS 227A.010 to 227A.140 shall prohibit a factory-authorized representative from the installation, maintenance, or service of a medical equipment device. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.
- (10) Nothing in KRS 227A.010 to 227A.140 shall apply to low-voltage, power-limited installations for control or coordination of interconnected devices separated from a power source by a Class 2 or Class 3 transformer installed by a person licensed as:



- (a) A master or journeyman heating, ventilation, and air conditioning technician employed by a licensed HVAC contractor pursuant to KRS 198B.658;
  - (b) A fire protection sprinkler contractor pursuant to KRS 198B.560;
  - (c) A manufactured housing dealer or certified installer pursuant to KRS 227.610;
  - (d) A boiler mechanic pursuant to KRS 236.210;
  - (e) A master or journeyman plumber pursuant to KRS 318.030;
  - (f) An onsite sewage disposal system installer pursuant to KRS 211.357; or
  - (g) An electrician or master electrician employed by an electrical contractor pursuant to KRS 227A.010 to 227A.140.
- (11) The provisions of KRS 227A.010 to 227A.140 shall not apply to work performed at industrial manufacturing facilities or natural gas pipeline facilities by employees of those facilities.
- (12) *Notwithstanding subsection (6) of this section, KRS 227A.010 to 227A.140 shall not apply to a disaster response employee as defined in Section 1 of this Act who is licensed as an electrician or master electrician in another state.*
- (13) *KRS 227A.010 to 227A.140 shall not apply to a disaster response business as defined in Section 1 of this Act that is licensed as an electrical contractor in another state.*

➔SECTION 10. A NEW SECTION OF KRS 67.750 TO 67.790 IS CREATED TO READ AS FOLLOWS:

- (1) *The exceptions contained in subsection (3)(g) of Section 4 of this Act, subsection (5)(d) of Section 5 of this Act, subsection (3)(h) of Section 6 of this Act, and subsection (2)(a)4. and (b)3. of Section 7 of this Act shall not be interpreted, construed, or otherwise relied upon in any way to establish a minimum nexus or other minimum contact requirements for the purposes of determining the liability for either a tax or fee placed upon a business or employee by a taxing jurisdiction, except as related to disaster response businesses and disaster response employees for work performed within the taxing jurisdiction during a disaster response period.*
- (2) *As used in this section, the terms "disaster response business," "disaster response employee," and "disaster response period" shall have the same meaning as in Section 1 of this Act.*

Signed by Governor March 17, 2021.

## CHAPTER 32

( SB 21 )

AN ACT relating to mental health treatment.

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

➔Section 1. KRS 202A.021 is amended to read as follows:

- (1) The hospitalization of minors alleged to be mentally ill, except those provided for in KRS Chapter 640, shall be governed by KRS Chapter 645.
- (2) An authorized staff physician of a hospital may admit for observation, diagnosis, care and treatment any person who is mentally ill or who has symptoms of mental illness and who applies voluntarily therefor.
- (3) An authorized staff physician of a hospital shall discharge any voluntary patient who has recovered or whose hospitalization the staff physician determines to be no longer necessary or advisable.
- (4) A voluntary patient shall be released upon the patient's written request unless further detained under the applicable provisions of this chapter, *including subsection (5) of this section.*
- (5) (a) *A voluntary patient who presents or is admitted to a hospital with symptoms of mental illness may be transported from the originating hospital to a receiving hospital or psychiatric facility:*

1. *Upon the order of an authorized staff physician of an originating hospital and an authorized staff physician of a receiving hospital or psychiatric facility; and*
  2. *Submission of the patient's signed written agreement to be voluntarily transported.*
- (b) *If the agreed-upon transport from the originating hospital has been initiated, the patient with a signed written agreement to be voluntarily transported under this subsection shall not be physically released upon his or her request during the transport to the receiving hospital or psychiatric facility. The patient shall be physically released upon request after the patient has been received by the receiving hospital or psychiatric facility upon the patient's written release request unless further detained under the applicable provisions of this chapter as provided for under subsection (4) of this section.*

➔Section 2. KRS 645.030 is amended to read as follows:

- (1) An authorized staff physician may admit for observation, diagnosis, and treatment at a hospital any child who is mentally ill or has symptoms of mental illness:
- (a)~~(1)~~ Upon written application of a parent or other person exercising custodial control or supervision, if the child is under sixteen (16) years of age. At or before the child's admission, the child, parent, or other person shall be informed of his *or her* rights under KRS 645.230 and 645.240. Any child admitted under this subsection who reaches his *or her* sixteenth birthday while hospitalized shall consent to his *or her* continued hospitalization or shall request his *or her* release. If the child fails to choose, the hospital shall advise the court-designated worker and the parent or other person exercising custodial control or supervision;
- (b)~~(2)~~ Upon written application by a child who is at least sixteen (16) years of age and one (1) of his *or her* parents or a person exercising custodial control or supervision. At or before admission, the child shall be informed of his *or her* right to give notice of his *or her* intent to leave under KRS 645.190 and his *or her* right to consult an attorney or his *or her* court-designated worker under KRS 645.130. The child may consult an attorney prior to his *or her* admission; or
- (c)~~(3)~~ Upon written application by a child who is at least sixteen (16) years of age. At or before admission, the child shall be informed of his *or her* rights under KRS 645.190 and his *or her* parents' rights under KRS 645.220, 645.230 and 645.240.
- (2) (a) *A child who presents or is voluntarily admitted to a hospital with symptoms of mental illness may be transported from an originating hospital to a receiving hospital or psychiatric facility upon the:*
1. *Order of an authorized staff physician of the originating hospital and an authorized staff physician of a receiving hospital or psychiatric facility; and*
  2. *Submission by the child or the child's parent or other person exercising custodial control or supervision, if the child is under sixteen (16) years of age, of a signed written agreement to be voluntarily transported.*
- (b) 1. *If the agreed-upon transport from an originating hospital has been initiated, the child with a signed written agreement to be voluntarily transported under this subsection shall not be physically released upon his or her request or the request of the child's parent or other person exercising custodial control or supervision, if the child is under sixteen (16) years of age, during the transport to the receiving hospital or psychiatric facility.*
2. *After the child has been received by the receiving hospital or psychiatric facility, the child shall be released upon the child or the child's parent or other person exercising custodial control or supervision, if the child is under sixteen (16) years of age, submitting a signed written release request, unless the child is further detained by court order.*

➔Section 3. KRS 645.190 is amended to read as follows:

- (1) Any child who was admitted pursuant to KRS 645.030(1)(b) *or* (c)~~(2) or (3)~~ may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the child can be discerned. The notice may be written by the child, a court-designated worker, or any other adult having an interest in the welfare of the child, provided that it reflects the stated wishes of the child.
- (2) Staff members receiving the notice shall immediately date it, record its existence on the child's medical chart, and send copies of it to:

- (a) The child's attorney, if any;
- (b) The court; and
- (c) The parents or other person exercising custodial control or supervision of the child.

➔Section 4. KRS 214.185 is amended to read as follows:

- (1) Any physician, upon consultation by a minor as a patient, with the consent of such minor may make a diagnostic examination for venereal disease, pregnancy, or substance use disorder and may advise, prescribe for, and treat such minor regarding venereal disease, substance use disorder, contraception, pregnancy, or childbirth, all without the consent of or notification to the parent, parents, or guardian of such minor patient, or to any other person having custody of such minor patient. Treatment under this section does not include inducing of an abortion or performance of a sterilization operation. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions.
- (2) Any physician may provide outpatient mental health counseling to any child age sixteen (16) or older upon request of such child without the consent of a parent, parents, or guardian of such child.
- (3) ***Any qualified mental health professional, as defined by KRS 202A.011, may provide outpatient mental health counseling to any child who is age sixteen (16) or older and is an unaccompanied youth, as defined by 42 U.S.C. sec. 11434a(6), upon request of such child without the consent of a parent, parents, or guardian of such child.***
- (4) Notwithstanding any other provision of the law, and without limiting cases in which consent may be otherwise obtained or is not required, any emancipated minor or any minor who has contracted a lawful marriage or borne a child may give consent to the furnishing of hospital, medical, dental, or surgical care to his or her child or himself or herself and such consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of such married or emancipated minor shall not be necessary in order to authorize such care. For the purpose of this section only, a subsequent judgment of annulment of marriage or judgment of divorce shall not deprive the minor of his adult status once obtained. The provider of care may look only to the minor or spouse for payment for services under this section unless other persons specifically agree to assume the cost.
- ~~(5)(4)~~ Medical, dental, and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional's judgment, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.
- ~~(6)(5)~~ The consent of a minor who represents that he may give effective consent for the purpose of receiving medical, dental, or other health services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.
- (7) ***The consent of a minor who represents that he or she may give effective consent for the purpose of receiving outpatient mental health counseling from a qualified mental health professional, but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian if the person rendering the service relied in good faith upon the representations of the minor after a reasonable attempt to obtain parental consent or to verify the minor's age and status as an unaccompanied youth.***
- ~~(8)(6)~~ The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, informing the parent or guardian would benefit the health of the minor patient.
- ~~(9)(7)~~ Except as otherwise provided in this section, parents, the Cabinet for Health and Family Services, or any other custodian or guardian of a minor shall not be financially responsible for services rendered under this section unless they are essential for the preservation of the health of the minor.

**Signed by Governor March 17, 2021.**

## CHAPTER 33

## ( HB 209 )

AN ACT relating to the donation of game meat.

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

➔Section 1. KRS 217.217 is amended to read as follows:

(1) As used in this section:

(a) ***"Cooperative extension agency" means the University of Kentucky Cooperative Extension Service and the Kentucky State University Cooperative Extension Program;***

~~(b)(a)~~ "Not-for-profit organization" means an organization duly organized and validly existing as a not-for-profit organization under the laws of the Commonwealth and exempt under Section 501(c)(3) of the Internal Revenue Code;

~~(c)(b)~~ "Take" has the same meaning as in KRS 150.010; and

~~(d)(c)~~ "Wildlife" has the same meaning as in KRS 150.010.

(2) Notwithstanding any provision of law to the contrary, no state or local government entity, including any local health department, shall restrict the donation of game meat to or from a not-for-profit organization, ***cooperative extension agency, the Kentucky Department of Fish and Wildlife Resources, or any government agency*** for the ~~purposes~~ ***purpose*** of ***education, promotion of hunting or fishing, or*** free meal distribution to individuals in need if the game meat came from fish or wildlife that was:

(a) Taken within the Commonwealth;

(b) Properly field dressed and processed; and

(c) Apparently disease-free when taken and unspoiled when processed.

**Signed by Governor March 17, 2021.**

## CHAPTER 34

## ( SB 15 )

AN ACT relating to microbreweries.

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

➔Section 1. KRS 243.157 is amended to read as follows:

(1) A microbrewery license shall authorize the licensee to perform the following functions:

(a) Engage in the business of a brewer under the terms and conditions of KRS 243.150, provided that production of malt beverages at the microbrewery shall not exceed fifty thousand (50,000) barrels in one (1) year;

(b) Serve on the premises complimentary samples of malt beverages produced by the microbrewery in amounts not to exceed sixteen (16) ounces per patron, provided the microbrewery is located in wet territory or a precinct that has authorized the sale of alcoholic beverages at microbreweries under KRS 242.1239;

(c) Sell malt beverages produced on the premises of the microbrewery to licensed distributors;

(d) Sell malt beverages produced on the premises of the microbrewery for on- and off-premises purposes in accordance with subsection (3)(b) and (c) of this section, pursuant to the following:

1. Without restriction on the amount of malt beverages sold by the drink for on-premises consumption provided the microbrewery is located in wet territory or a precinct that has authorized the sale of alcoholic beverages at microbreweries under KRS 242.1239; and

2. With a restriction on the amount of malt beverages sold for off-premises consumption, in an aggregate amount not to exceed thirty-one (31) gallons per person per day that shall not include more than three (3) cases in case format; ~~and~~
- (e) Sell:
1. Unlimited amounts of malt beverages by the drink; and
  2. Not more than one (1) case of packaged malt beverages;
- produced on the premises of the microbrewery to consumers at fairs, festivals, and other similar types of events located in wet territory, in accordance with subsection (3)(b)2. and (c)2. of this section; **and**
- (f) ***Sell and deliver up to two thousand five hundred (2,500) barrels of malt beverages annually to any retail license holder, provided that:***
1. ***Any products sold and delivered under this paragraph that are not otherwise registered by a licensed distributor shall be registered with the department by the microbrewery; and***
  2. ***The microbrewer notifies the distributor of any self-distribution delivery by electronic or other means.***
- (2) A microbrewery license shall not be deemed to be incompatible with any other license except for a distributor's license under the provisions of KRS 243.180.
- (3) In accordance with the provisions of this section, a microbrewery license holder may:
- (a) Hold retail drink and package licenses both on and off the premises of the microbrewery. The holder of a microbrewery license is exempt from the provisions of KRS 244.570 and 244.590 as applied to any retail licenses held by the microbrewery license holder, and from any other sections which would restrict the co-ownership of the microbrewery license and any retail licenses described in this section;
  - (b) Sell malt beverages produced on the premises of the microbrewery for on-premises purposes without having to transfer physical possession of those malt beverages to a licensed distributor provided:
    1. The microbrewery possesses a retail drink license for those premises; and
    2. The microbrewery reports and pays all taxes required by subsection (5)(a) and (b) of this section to the Department of Revenue at the time and in the manner required by the Department of Revenue in accordance with its powers under KRS 131.130(3); and
  - (c) Sell malt beverages produced on the premises of the microbrewery for off-premises purposes without having to transfer physical possession of those malt beverages to a licensed distributor provided that:
    1. The microbrewery possesses a retail package license for those premises; and
    2. The microbrewery reports and pays all taxes required by subsection (5)(a) and (b) of this section to the Department of Revenue at the time and in the manner required by the Department of Revenue in accordance with its powers under KRS 131.130(3).
- (4) The provisions of subsection (3)(b) and (c) of this section shall apply only to malt beverages that are produced by the microbrewery at its licensed premises and:
- (a) Offered for sale by the microbrewery at that same premises under the microbrewery's retail drink or package license; or
  - (b) Offered for sale by the microbrewery at a fair, festival, or other similar type of event as authorized under subsection (1)(e) of this section.
- All other malt beverages produced by the microbrewery which are offered for retail sale shall be sold and physically transferred to a licensed distributor in compliance with all other relevant provisions of KRS Chapters 241 to 244, and a licensed microbrewery shall not otherwise affect sales of malt beverages directly to retail customers except as provided in subsection (3)(b) and (c) of this section under KRS 243.027 to 243.029 if the microbrewery holds a direct shipper license.
- (5) (a) A microbrewery selling malt beverages in accordance with ***subsection (1)(f) or***~~subsection~~ (3)(b) and (c) of this section shall pay all wholesale sales taxes due under KRS 243.884. For the purposes of this subsection, "wholesale sales" means a sale of malt beverages made by a microbrewery under ***subsection (1)(f) or***~~subsection~~ (3)(b) and (c) of this section, as applicable.

- (b) A microbrewery shall pay the excise tax on malt beverages in accordance with KRS 243.720(3) and 243.730 and shall be entitled to the credit set forth in KRS 243.720(3)(b).
- (6) A microbrewery shall not be located in dry territory.
- (7) An employee of a microbrewery may sample the products produced by that microbrewery for purposes of education, quality control, and product development.
- (8) This section does not exempt the holder of a microbrewery license from the provisions of KRS Chapters 241 to 244, nor from any rules of the board as established by administrative regulations, nor from regulation by the board, except as expressly stated in this section. The provisions of this section shall not be deemed inconsistent with the provisions of KRS 244.602.
- (9) Nothing in this section shall be construed to vitiate the policy of this Commonwealth, as set forth in KRS 244.167 and 244.602, supporting an orderly three (3) tier system for the production and sale of malt beverages.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 244 IS CREATED TO READ AS FOLLOWS:

- (1) *As of the effective date of this Act, KRS 244.602 to 244.606 shall not apply to any new distribution agreement, or the renewal of an existing distribution agreement, between a distributor of malt beverages and a microbrewery. Any existing distribution agreement between a distributor of malt beverages and a microbrewery shall be deemed to renew upon the earlier of January 1, 2022, or the renewal date set forth in that agreement.*
- (2) *Every distribution agreement providing for and specifying the rights and duties of a microbrewer and distributor with and in regard to the sale of the products of the microbrewer within the Commonwealth of Kentucky shall be in writing. The terms and provisions of the agreement shall comply with and conform to this section.*
- (3) *A distribution agreement between a microbrewer and a distributor shall not:*
  - (a) *Require the microbrewer or distributor to agree to renew the distribution agreement at the expiration of a term;*
  - (b) *Except as set forth in subsection (4) or (9) of this section, permit a microbrewer or distributor to terminate a distribution agreement without first giving written notice of any alleged deficiency and giving the other party a reasonable opportunity to cure the alleged deficiency. For purposes of this paragraph, a reasonable opportunity to cure shall be sixty (60) days from the date a notice of an alleged deficiency is received;*
  - (c) *Permit the assignment of the distribution agreement, in part or in whole, without first obtaining the consent of the other party, which shall not be unreasonably withheld provided the assignee possesses the financial, technical, and operational skills necessary to perform under the distribution agreement;*
  - (d) *Permit the microbrewer or distributor to unilaterally amend a distribution agreement, or any document referred to or incorporated by reference in the distribution agreement;*
  - (e) *Require a microbrewer or distributor to mediate or arbitrate disputes which may arise between them, though nothing shall prohibit the parties from resolving the dispute by retaining an independent mediator or arbitrator while equally sharing the cost; or*
  - (f) *Prohibit a microbrewer or distributor from litigating in state or federal courts located in Kentucky or from litigating under the laws of the Commonwealth.*
- (4) *A microbrewer may terminate a distribution agreement according to the terms of the agreement or in any of the following instances:*
  - (a) *The assignment or attempted assignment by the distributor for the benefit of creditors, the institution of proceedings in bankruptcy by or against the distributor, the dissolution or liquidation of the distributor, the insolvency of the distributor, or the distributor's failure to pay for malt beverages in accordance with law;*
  - (b) *The felony conviction of a distributor, or any of its owners who participate in the distributor's management which, in the sole judgment of the microbrewer, may adversely affect the goodwill or interests of the microbrewer;*

- (c) *Fraudulent or discriminatory conduct of the distributor in any of its dealings with a microbrewery or a microbrewer's products;*
  - (d) *Revocation or suspension for more than thirty-one (31) days of the distributor's federal basic permit or any state or local license required of the distributor for the normal operation of its business;*
  - (e) *Sale of malt beverages by a distributor outside its sales territory prescribed by the distribution agreement in accordance with KRS 244.585;*
  - (f) *Without microbrewer consent, the distributor effectuates a change in ownership or possession of ownership interests, establishes a trust or other ownership interest, enters into buy-sell agreements, or grants an option to purchase an ownership interest; provided, however, this right of termination shall not apply to the transfer, creation, sale, gift, or grant of an ownership interest, or option thereon, of a total aggregate of less than ten percent (10%) of the total existing ownership or possession of ownership interest of the distributor or intrafamily transfer; or*
  - (g) *In the case of a microbrewer whose products represent five percent (5%) or less of a distributor's gross annual sales, the giving of a forty-five (45) day notice of termination and the payment to the distributor of reasonable compensation, which shall be equivalent to the fair market value of the distributor's total investment in the microbrewer's products being terminated. For purposes of this subsection, fair market value shall be calculated based on a multiple of the distributor's gross profits from the sale of the microbrewer's products in the twelve (12) months immediately prior to the date of the microbrewer's written notice of intent to terminate. The fair market valuation shall be based on an arm's length transaction entered into without duress or threat of termination, and shall include all elements of value, including goodwill and going-concern value. If the parties are unable to agree on the fair market valuation, the dispute shall be resolved as provided in Section 3 of this Act. A microbrewer terminating an agreement under this paragraph may do so not more than once in a thirty-six (36) month period and shall not be deemed to be in violation of subsection (5)(b) of this section.*
- (5) *A microbrewer or a distributor of malt beverages shall not:*
- (a) *Unreasonably discriminate or retaliate against the other party in the application or performance of the terms of a distribution agreement;*
  - (b) *Require or request payment, convey money or other consideration, or accept any sum of money or other consideration in exchange for the right to distribute the product or products of the microbrewer in a designated territory, provided that the following items shall not be prohibited:*
    - 1. *A microbrewer's request to a distributor to pay or contribute any sum of money for or toward the cost of marketing the product or products of the microbrewer so long as the money contributed by the distributor is spent by the microbrewer in a manner and at such times as agreed to in writing by the microbrewer and the distributor; and*
    - 2. *Any payment pursuant to subsection (4)(g) of this section;*
  - (c) *Unreasonably withhold timely consent to a proposed sale or transfer, in part or whole, of the stock or assets of the microbrewer or distributor, and in no event shall the microbrewer or distributor take more than thirty (30) days to approve or disapprove the proposed sale or transfer after the microbrewer or distributor has received written notice of the proposal and received all requested information to enable the microbrewer or distributor to pass upon the purchaser's or transferee's financial, technical, and operational skills necessary to perform under the distribution agreement; or*
  - (d) *Fail to give at least thirty (30) days' advance notice of a change in ownership or possession of an ownership interest, whether by sale, transfer, gift, or grant of an option.*
- (6) *A distributor of malt beverages shall not:*
- (a) *Refuse to enter into a distribution agreement with a microbrewery, in whole or in part, except for good cause and in good faith; or*
  - (b) *Continue to distribute the microbrewer's products thirty (30) days after receiving a notice of termination of a distribution agreement. However, any sums owed to the distributor by the microbrewer or another distributor assuming the obligation to distribute the microbrewer's product within the territory encompassed by the terminated distribution agreement shall still be owed.*

- (7) *A microbrewer shall not enter into a contract with more than one (1) distributor to sell any of its products or brands within the same territory or area at the same time. This subsection shall not apply to contracts entered into prior to January 1, 2004, or future renewals of those contracts to the extent the existing contract and the future renewal allow different distributors to sell some but not all of the brewer's or importer's brands or brand extensions within the same territory or area at the same time.*
- (8) *A distributor that enters into or renews a distribution agreement with a microbrewer following the effective date of this Act shall maintain physical facilities and personnel so that:*
- (a) *The product and brand of the microbrewer are reasonably represented in the territory of the distributor for which the distribution agreement applies;*
  - (b) *The reputation and trade name of the microbrewer are reasonably promoted and protected; and*
  - (c) *The public is fully serviced.*
- (9) *A distributor may terminate a distribution agreement according to the terms of the agreement or in any of the following instances:*
- (a) *The assignment or attempted assignment by the microbrewer for the benefit of creditors, the institution of proceedings in bankruptcy by or against the microbrewer, the dissolution or liquidation of the microbrewer, or the insolvency of the microbrewer;*
  - (b) *The felony conviction of a microbrewer, or any of its owners who participate in the microbrewer's management which, in the sole judgment of the distributor, may adversely affect the goodwill or interests of the distributor;*
  - (c) *Fraudulent or discriminatory conduct of the microbrewer in any of its dealings with a distributor or a distributor's brands;*
  - (d) *Revocation or suspension for more than thirty-one (31) days of the microbrewer's federal basic permit or any state or local license required of the microbrewer for the normal operation of its business;*
  - (e) *Without distributor consent, the microbrewer effectuates a change in ownership or possession of ownership interests, establishes a trust or other ownership interest, enters into buy-sell agreements, or grants an option to purchase an ownership interest; provided, however, this right of termination shall not apply to the transfer, creation, sale, gift, or grant of an ownership interest, or option thereon, of a total aggregate of less than ten percent (10%) of the total existing ownership or possession of ownership interest of the microbrewer or intrafamily transfer; or*
  - (f) *In the case of a microbrewer whose products represent five percent (5%) or less of a distributor's gross annual sales, the giving of a forty-five (45) day notice of termination and payment to the microbrewer of reasonable compensation, which shall be determined to be a sum equal to five (5) times the monthly average of purchases from the microbrewer over the twelve (12) months prior to the termination.*
- (10) *In the event of a termination of a contract between a microbrewer and a distributor, the microbrewer shall repurchase all of its product still in the distributor's inventory upon return from the distributor, provided that the "best by", "expiration", or other similar printed date is greater than thirty (30) days after the date of the return of the product.*
- (11) *Any microbrewer or distributor that violates any provision of this section shall pay the injured party all reasonable damages sustained as a result of the microbrewer's or distributor's violations, together with the costs and attorneys' fees incurred by the microbrewer or distributor in protecting its right.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 244 IS CREATED TO READ AS FOLLOWS:

*In the event the microbrewer and distributor cannot agree on the fair market value as set forth in subsection (4)(g) of Section 2 of this Act, then the parties shall arbitrate in accordance with the following:*

- (1) *If the parties fail to reach an agreement not later than thirty (30) days after the distributor receives the microbrewer's written notice to terminate, the distributor or microbrewer may send a written notice to the other party and the American Arbitration Association, or its successor in interest, declaring the party's intention to proceed with final and binding arbitration administered by the American Arbitration Association under the American Arbitration Association's Commercial Arbitration Rules. Thereafter, an arbitration shall be held for the purpose of determining the fair market value of the distributor's total*



*investment in the microbrewer's products being terminated. For the purpose of this paragraph, fair market value shall be the value that would be determined in an arm's length transaction entered into without duress or threat of termination of the existing distributor's right and shall include all elements of value, including goodwill and going-concern value.*

- (2) *Notice of intent to arbitrate shall be sent, as provided in paragraph (1) of this section, not later than thirty-five (35) days after the distributor receives written notice to terminate. The arbitration proceeding shall conclude not later than forty-five (45) days after the date the notice of intent to arbitrate is mailed to a party.*
- (3) *Any arbitration held pursuant to this subsection shall be conducted in the city within Kentucky that:*
  1. *Is closest to the distributor; and*
  2. *Has a population of more than twenty thousand (20,000).*
- (4) *Any arbitration held pursuant to this subsection shall be conducted before one (1) impartial arbitrator to be selected by the American Arbitration Association. The arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.*
- (5) *An arbitrator's award in any arbitration held pursuant to this subsection shall be monetary only and shall not enjoin or compel conduct. Any arbitration held pursuant to this subsection shall be instead of all other remedies and procedures.*
- (6) *The cost of the arbitrator and any other direct costs of any arbitration held pursuant to this subsection shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them.*
- (7) *The arbitrator in any arbitration held pursuant to this subsection shall render a decision not later than thirty (30) days after the conclusion of the arbitration, unless this time period is extended by mutual agreement of the parties or by the arbitrator. The decision of the arbitration is final and binding on the parties. Under no circumstances may the parties appeal the decision of the arbitrator.*
- (8) *A party who fails to participate in the arbitration hearings in any arbitration held pursuant to this subsection waives all rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitrator.*
- (9) *Nothing in this section shall be construed to limit or prohibit good-faith settlements voluntarily entered into by the parties.*

➔Section 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**Signed by Governor March 17, 2021.**

## CHAPTER 35

( SB 68 )

AN ACT relating to the manufacturing of distilled spirits.

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

➔Section 1. KRS 243.120 is amended to read as follows:

- (1) A distiller's, rectifier's, or winery license shall authorize the licensee to engage in the business of distiller, rectifier, or winery at the premises specifically designated in the license, to maintain aging warehouses, and to transport for himself or herself only any alcoholic beverage which he or she is authorized under the license to manufacture or sell. The licensee shall transport alcoholic beverages only by a vehicle operated by himself or herself, which has affixed to its sides at all times a sign of form and size prescribed by the state board, containing among other things the name and license number of the licensee. No distilled spirits or wine shall be transported on the same truck or vehicle with malt beverages, except by a common carrier, unless the owner of the truck or vehicle holds a distributor's license.

- (2) (a) 1. *A licensee holding a distiller's license, Class A license, or Class B license shall distill no less than six hundred (600) gallons in one (1) year at the distillery's licensed premises* ~~[The manufacture of distilled spirits at the distillery shall not be less than six hundred (600) gallons in one (1) year].~~
2. *A licensee that engages in the distilling process for the exclusive purpose of providing training and education, conducting research, or teaching about the distilling process, aging, or bottling of distilled spirits shall be exempt from subparagraph 1. of this paragraph, so long as the licensee does not produce spirits for sale to the general public.*
- (b) Distillers that produce more than fifty thousand (50,000) gallons of distilled spirits per calendar year at the premises shall obtain a distiller's license, Class A.
- (c) Distillers that produce fifty thousand (50,000) gallons or less of distilled spirits per calendar year at the premises shall obtain a distiller's license, Class B (craft distillery).
- (3) (a) Rectifiers that rectify more than fifty thousand (50,000) gallons of distilled spirits per calendar year at the premises shall obtain a rectifier's license, Class A.
- (b) Rectifiers that rectify fifty thousand (50,000) gallons or less of distilled spirits per calendar year at the premises shall obtain a rectifier's license, Class B (craft rectifier).
- (4) (a) A distiller that is located in wet territory, or in any precinct that has authorized the limited sale of alcoholic beverages at distilleries under KRS 242.1243, may sell distilled spirits by the drink or by the package at retail to consumers in accordance with KRS 243.0305.
- (b) Any distilled spirits sold under this subsection shall be taxed and distributed in the same manner as sales under KRS 243.0305(2).
- (c) Except as provided in this subsection, sales under this subsection shall be governed by all of the statutes and administrative regulations governing the retail sale of distilled spirits by the drink.
- (5) Nothing in this section shall be construed to:
- (a) Vitate the policy of this Commonwealth supporting an orderly three (3) tier system for the production and sale of alcoholic beverages; or
- (b) Allow delivery or shipment of alcohol into dry or moist territory.

**Signed by Governor March 17, 2021.**

## CHAPTER 36

### ( HB 250 )

AN ACT relating to the regulation of travel-related commerce.

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

➔SECTION 1. SUBTITLE 52 OF KRS CHAPTER 304 IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subtitle:*

- (1) *"Blanket travel insurance" means a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy, with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group;*
- (2) *"Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the non-refundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement;*
- (3) *"Certificate holder" means an individual person who elects and purchases group travel insurance;*

- (4) *"Eligible group" means two (2) or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including but not limited to the following:*
- (a) *1. Any entity engaged in the business of providing travel or travel services, including but not limited to tour operators, lodging providers, vacation property owners, hotels and resorts, travel clubs, travel agencies, property managers, cultural exchange programs, and common carriers; or*
  - 2. The operator, owner, or lessor of a means of transportation of passengers, including but not limited to airlines, cruise lines, railroads, steamship companies, and public bus carriers;*  
*wherein, with regard to any particular travel or type of travel or travelers, all members or customers of the group have a common exposure to risk attendant to the travel;*
  - (b) *Any college, school, or other institution of learning covering students, teachers, employees, or volunteers;*
  - (c) *Any employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;*
  - (d) *Any sports team, camp, or sponsor of a sports team or camp, covering participants, members, campers, employees, officials, supervisors, or volunteers;*
  - (e) *Any religious, charitable, recreational, educational, or civic organization, or branch thereof, covering any group of members, participants, or volunteers;*
  - (f) *Any financial institution or financial institution vendor, or parent holding company, trustee, or agent of or designated by one (1) or more financial institutions or financial institution vendors, including account holders, credit card holders, debtors, guarantors, or purchasers;*
  - (g) *Any incorporated or unincorporated association, including a labor union, that:*
    - 1. Has a common interest, constitution, and bylaws; and*
    - 2. Is organized and maintained in good faith for purposes other than obtaining insurance to cover members or participants of the association;*
  - (h) *Any trust or the trustees of a fund established, created, or maintained for the benefit of and covering members, employees, or customers of one (1) or more associations meeting the requirements of paragraph (g) of this subsection, if the commissioner permits the use of a trust;*
  - (i) *Any entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers;*
  - (j) *Any:*
    - 1. Volunteer fire department, ambulance, rescue, police, or court; or*
    - 2. First aid, civil defense, or other such volunteer group;*
  - (k) *Any preschool, daycare institution for children or adults, or senior citizen club;*
  - (l) *Any automobile, truck rental, or leasing company covering a group of individuals who may become renters, lessees, or passengers as defined by their travel status on the rented or leased vehicles, if the common carrier, operator, owner, or lessor of a means of transportation, or the automobile, truck rental, or leasing company, is the certificate holder under a policy to which this subtitle applies; or*
  - (m) *Any other group for which the commissioner has determined that:*
    - 1. The members are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship; and*
    - 2. Issuance of travel insurance to the group would not be contrary to the public interest;*
- (5) *"Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's travel insurance coverage and travel assistance services details;*
- (6) *"Group travel insurance" means travel insurance issued to any eligible group;*
- (7) *"Limited lines travel insurance producer" means a:*

- (a) *Licensed managing general agent;*
  - (b) *Licensed administrator;*
  - (c) *Licensed insurance agent with the applicable line of authority;*
  - (d) *Licensed limited lines travel insurance agent; or*
  - (e) *Surplus lines broker;*
- (8) *"Negotiate" or "negotiated" has the same meaning as "negotiate" in Section 10 of this Act;*
- (9) *"Policyholder" means an individual person who elects and purchases individual travel insurance;*
- (10) *"Sold" or "selling" has the same meaning as "sell" in Section 10 of this Act;*
- (11) *"Solicit" or "solicited" has the same meaning as "solicit" in Section 10 of this Act;*
- (12) *"Travel assistance services":*
- (a) *Means non-insurance services:*
    - 1. *For which the consumer is not indemnified based on a fortuitous event; and*
    - 2. *Where providing the services does not result in a transfer or shifting of risk that would constitute the business of insurance; and*
  - (b) *Shall include but are not limited to security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance, concierge services, and any other non-insurance services that are furnished in connection with planned travel;*
- (13) *"Travel insurance":*
- (a) *Means insurance coverage for personal risks incident to planned travel, including:*
    - 1. *Interruption or cancellation of a trip or event;*
    - 2. *Loss of baggage or personal effects;*
    - 3. *Damages to accommodations or rental vehicles;*
    - 4. *Sickness, accident, disability, or death occurring during travel;*
    - 5. *Emergency evacuation;*
    - 6. *Repatriation of remains; or*
    - 7. *Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel, as approved by the commissioner; and*
  - (b) *Does not include insurance coverage that provides comprehensive medical protection for travelers with trips lasting longer than six (6) months, including but not limited to those working or residing overseas as an expatriate or any other product that requires a specific insurance producer license; and*
- (14) *"Travel protection plan" means a plan that provides one (1) or more of the following:*
- (a) *Travel insurance;*
  - (b) *Travel assistance services; or*
  - (c) *A cancellation fee waiver.*

➔SECTION 2. A NEW SECTION OF SUBTITLE 52 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of this subtitle shall:*
- (a) *Apply to travel insurance that covers any resident of this state, and is sold, solicited, negotiated, or offered in this state, and policies and certificates are delivered or issued for delivery in this state; and*

- (b) *Not apply to cancellation fee waivers or travel assistance services, except as expressly provided.*
- (2) *All other provisions of this chapter shall apply to travel insurance, to the extent applicable and not in conflict with the express provisions of this subtitle.*
- (3) (a) *A cancellation fee waiver shall not be considered a contract of, or for, insurance.*
- (b) *Travel assistance services shall not be considered insurance or related to insurance.*

➔SECTION 3. A NEW SECTION OF SUBTITLE 52 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Offer and disseminate," "offers and disseminates," or "offering and disseminating" means to:*
    - 1. *Provide general information relating to the travel insurance offered, including a description of the coverage and price;*
    - 2. *Receive applications and premiums; and*
    - 3. *Perform other activities permitted by the commissioner that do not require a license; and*
  - (b) *"Travel retailer" means an entity that makes, arranges, or offers travel services and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.*
- (2) (a) *No person may act as a limited lines travel insurance producer unless the person is properly licensed as:*
- 1. *A managing general agent in accordance with KRS 304.9-085;*
  - 2. *An administrator in accordance with KRS 304.9-052;*
  - 3. *An insurance agent in accordance with KRS 304.9-105 with the applicable line of authority;*
  - 4. *A limited lines travel insurance agent in accordance with KRS 304.9-230; or*
  - 5. *A surplus lines broker in accordance with KRS 304.10-120.*
- (b) *A limited lines travel insurance producer may sell, solicit, or negotiate travel insurance through a licensed or authorized insurer.*
- (3) *A travel retailer may offer and disseminate travel insurance under the supervision of a business entity limited lines travel insurance producer only if the following conditions are met:*
- (a) *The limited lines travel insurance producer or travel retailer provides to purchasers of travel insurance:*
    - 1. *A description of the material terms or the actual material terms of the insurance coverage;*
    - 2. *A description of the process for filing a claim;*
    - 3. *A description of the review or cancellation process for the travel insurance policy; and*
    - 4. *The identity and contact information of the insurer and the limited lines travel insurance producer;*
  - (b) *The limited lines travel insurance producer establishes and maintains a register, on a form prescribed by the commissioner, of each travel retailer that offers and disseminates travel insurance on the limited lines travel insurance producer's behalf;*
  - (c) *The register shall be maintained and updated by the limited lines travel insurance producer and shall include the name, address, contact information, and Federal Employment Identification Number of the travel retailer and the name, address, and contact information of any officer or person employed by the travel retailer who directs or controls the travel retailer's operations;*
  - (d) *The limited lines travel insurance producer submits the register to the commissioner upon request;*
  - (e) *The limited lines travel insurance producer certifies that the registered travel retailer offering and disseminating travel insurance on its behalf complies with 18 U.S.C. sec. 1033;*

- (f) *The limited lines travel insurance producer designates one (1) of its employees, who shall be an individual limited lines travel insurance producer, as the person responsible for compliance with the travel insurance laws and regulations of the state that are applicable to the limited lines travel insurance producer and its registrants;*
- (g) *The individual designated under paragraph (f) of this subsection, the president, secretary, and treasurer of, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations, complies with the fingerprinting requirements applicable to an insurance agent in the home state of the limited lines travel insurance producer;*
- (h) *The limited lines travel insurance producer has paid all applicable licensing fees as set forth in KRS 304.4-010; and*
- (i)
  1. *The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training which is subject, at the discretion of the commissioner, to review and approval; and*
  2. *The training material shall, at a minimum, contain adequate instructions on the type of insurance offered, ethical sales practices, and required disclosures to prospective customers.*
- (4) *A travel retailer that offers and disseminates travel insurance shall make available to prospective purchasers of travel insurance brochures or other written materials that:*
  - (a) *Have been approved by the insurer providing the travel insurance; and*
  - (b) *Contain the following:*
    1. *The identity and contact information of the insurer and the limited lines travel insurance producer;*
    2. *An explanation that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and*
    3. *An explanation that a travel retailer that is not licensed as an insurance agent is permitted to provide only general information about the travel insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the travel insurance or to evaluate the adequacy of the customer's existing insurance coverage.*
- (5) *Unless licensed as an insurance agent, an employee or authorized representative of a travel retailer shall not:*
  - (a) *Evaluate or interpret the technical terms, benefits, and conditions of the travel insurance coverage;*
  - (b) *Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or*
  - (c) *Hold himself or herself out as a licensed or authorized insurer, licensed insurance agent, or insurance expert.*
- (6) *Notwithstanding any other provisions of law, a travel retailer, including its employees and authorized representatives, whose insurance-related activities are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions of this subtitle, shall be authorized to receive related compensation, upon registration by the limited lines travel insurance producer as described in subsection (3)(b) of this section.*
- (7) *A limited lines travel insurance producer shall be responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this chapter.*

➔SECTION 4. A NEW SECTION OF SUBTITLE 52 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A travel protection plan may be offered for one (1) price if:*
  - (a) *The plan clearly discloses to the consumer, at or prior to the time of purchase, that:*
    1. *It includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable; and*

2. *The consumer has the opportunity to obtain additional information regarding the features and pricing of the travel insurance, travel assistance services, and cancellation fee waivers, as applicable; and*
- (b) *The fulfillment materials:*
  1. *Describe any travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan; and*
  2. *Include:*
    - a. *Travel insurance disclosures required by this section, Section 3 of this Act, and Section 5 of this Act; and*
    - b. *Contact information for persons providing any travel assistance services or cancellation fee waivers.*
- (2) *The prohibition of negative options or opt-outs as provided in subsection (7) of Section 5 of this Act shall apply to the offer, solicitation, or negotiation of a travel protection plan.*

➔SECTION 5. A NEW SECTION OF SUBTITLE 52 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *"Aggregator site" means a Web site that provides access to information for use in comparison shopping regarding insurance products from more than one (1) insurer, including product and insurer information.*
- (2) *All persons offering travel insurance to residents of this state shall be subject to the provisions of Subtitle 12 of this chapter to the extent applicable and not in conflict with the provisions of this subtitle.*
- (3) *No person shall engage in the following in this state, which shall constitute an unfair trade practice:*
  - (a) *Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy; or*
  - (b) *Marketing blanket travel insurance as free.*
- (4)
  - (a) *All documents provided to consumers prior to the purchase of travel insurance, including but not limited to sales materials, advertising materials, and marketing materials, shall be consistent with the travel insurance policy or certificate itself, including but not limited to forms, endorsements, policies, rate filings, and certificates of insurance.*
  - (b) *For travel insurance policies or certificates containing pre-existing condition exclusions, information, and an opportunity to learn more, about the pre-existing condition exclusions shall be provided to the consumer prior to the time of purchase and in the fulfillment materials.*
  - (c)
    1. *The fulfillment materials and the information described in subsection (3)(a) of Section 3 of this Act shall be provided to a policyholder or certificate holder as soon as practicable following the purchase of a travel protection plan.*
    2. *Unless an insured has either started a covered trip or filed a claim under the travel insurance coverage, the policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:*
      - a. *Fifteen (15) days following the date of delivery of the travel protection plan's fulfillment materials by postal mail; or*
      - b. *Ten (10) days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail.*
    3. *Delivery of the fulfillment materials may be made by:*
      - a. *Handing the fulfillment materials to the policyholder or certificate holder; or*
      - b. *Sending the fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.*
- (5) *An insurer shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.*

- (6) *The following shall not constitute an unfair trade practice or other violation of law:*
- (a) *Providing an accurate summary or short description of coverage on an insurer's Web site, or through an aggregator site, that markets travel insurance directly to the consumer, so long as the consumer has access to the full provisions of the travel insurance policy through electronic means; and*
  - (b) *When a consumer's destination jurisdiction requires insurance coverage, requiring the consumer to choose between the following options as a condition of purchasing a trip or travel package:*
    - 1. *Purchasing the coverage required by the destination jurisdiction through the travel retailer, or limited lines travel insurance producer, supplying the trip or travel package; or*
    - 2. *Agreeing to obtain, and provide proof of, coverage that meets the destination jurisdiction's requirements prior to departure.*
- (7) *A person offering, soliciting, or negotiating travel insurance, on an individual or group basis, shall not do so through the use of a negative option or opt-out, which would require a consumer to take an affirmative action to deselect coverage, including unchecking a box on an electronic form, when the consumer purchases a trip.*

➔SECTION 6. A NEW SECTION OF SUBTITLE 52 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A person holding a managing general agent license or an administrator license in this state, or an insurance agent licensed in this state with property and casualty lines of authority for activities permitted under that license, may directly or indirectly underwrite, collect charges, collateral, or premiums from, or adjust or settle claims without an adjuster license on residents of this state, in connection with travel insurance.*
- (2) *An insurer is responsible for:*
- (a) *The acts of a managing general agent, administrator, or licensed insurance agent administering travel insurance underwritten by the insurer; and*
  - (b) *Ensuring that the managing general agent, administrator, or licensed insurance agent maintains all books and records relevant to the insurer, which shall be made available by the managing general agent, administrator, or licensed insurance agent to the commissioner upon request.*

➔SECTION 7. A NEW SECTION OF SUBTITLE 52 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of this chapter:*
- (a) *Except as provided in paragraph (b) of this subsection, travel insurance shall be classified and filed, for purposes of rates and forms, as inland marine insurance; and*
  - (b) *Travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, may be classified and filed by an insurer as either health insurance or inland marine insurance.*
- (2) *Travel insurance may be in the form of an individual, group, or blanket policy or certificate.*
- (3) *Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels if those standards also meet:*
- (a) *The state's statutory standards for inland marine insurance, if the travel insurance is classified as inland marine insurance; or*
  - (b) *The state's statutory standards for health insurance, if the travel insurance is classified as health insurance.*

➔SECTION 8. A NEW SECTION OF SUBTITLE 52 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The commissioner may promulgate administrative regulations to implement the provisions of this subtitle.*



➔SECTION 9. A NEW SECTION OF SUBTITLE 52 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*This subtitle may be cited as the Travel Insurance Act.*

➔Section 10. KRS 304.9-020 is amended to read as follows:

As used in this subtitle:

- (1) "Agent" means a person who sells, solicits, or negotiates insurance or annuity contracts;
- (2) "Appointment" means a notification filed with the insurance department that an insurer has established an agency relationship with a producer;
- (3) "Appointment renewal" means continuation of an insurer's existing appointment based on payment of the required fee without submission of an appointment form;
- (4) "Apprentice adjuster" means an individual who meets the qualification requirements to hold a license as an independent, staff, or public adjuster, except for the experience, education, and training requirements;
- (5) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, employer group, professional employer organization, or other legal entity;
- (6) "Catastrophe" means an event that results in a declaration of emergency by the Governor pursuant to KRS 39A.100 and:
  - (a) A large number of deaths or injuries;
  - (b) Extensive damage or destruction of facilities that provide and sustain human needs;
  - (c) An overwhelming demand on state and local response resources and mechanisms;
  - (d) A severe long-term effect on general economic activity; or
  - (e) A severe effect on state, local, and private sector capabilities to begin and sustain response activities;
- (7) "Crop insurance" means insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils provided by the private insurance market or that is subsidized by the Federal Crop Insurance Corporation, including multi-peril crop insurance;
- (8) "Home state" means the District of Columbia and any state or territory of the United States in which a licensee maintains his or her principal place of residence or principal place of business and is licensed by that state;
- (9) "Independent adjuster" means a person who:
  - (a) Is an independent contractor, an employee of an independent contractor, or for tax purposes is treated as an independent contractor under Subtitle C of the Internal Revenue Code, 26 U.S.C. secs. 3101 et seq.;
  - (b) Is compensated by an insurer or self-insurer; and
  - (c) Investigates, negotiates, or settles property, casualty, or workers' compensation claims for insurers or self-insurers;
- (10) "Insurance producer" means an individual or business entity required to be licensed under the laws of Kentucky to sell, solicit, or negotiate insurance or annuity contracts. "Insurance producer" includes agent, managing general agent, surplus lines broker, reinsurance intermediary broker and manager, rental vehicle agent and rental vehicle agent managing employee, and consultant;
- (11) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited line credit insurance;
- (12) "Limited line credit insurance agent" means an individual or business entity who sells, solicits, or negotiates one (1) or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;

- (13) "Limited lines insurance" means the lines of insurance defined in subsections (7), (11), (22), (27), and (29) of this section and any other line of insurance that the commissioner identifies in accordance with KRS 304.9-230(1)(g) or recognizes for the purpose of complying with KRS 304.9-140(5);
- (14) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers. "Negotiate" does not include negotiating a claims settlement;
- (15) "Pharmacy benefit manager" means an entity that, on behalf of a health benefit plan, state agency, insurer, managed care organization providing services under KRS Chapter 205, or other third-party payor:
- (a) Contracts directly or indirectly with pharmacies to provide prescription drugs to individuals;
  - (b) Administers a prescription drug benefit;
  - (c) Processes or pays pharmacy claims;
  - (d) Creates or updates prescription drug formularies;
  - (e) Makes or assists in making prior authorization determinations on prescription drugs;
  - (f) Administers rebates on prescription drugs; or
  - (g) Establishes a pharmacy network;
- (16) "Portable electronics" means electronic devices that are portable and the accessories and services related to the use of the device;
- (17) (a) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics for any one (1) or more of the following:
- 1. Loss;
  - 2. Theft;
  - 3. Inoperability due to mechanical failure;
  - 4. Malfunction;
  - 5. Damage; or
  - 6. Other similar causes of loss.
- (b) "Portable electronics insurance" does not mean:
- 1. A service contract governed by KRS 304.5-070;
  - 2. A policy of insurance covering a seller's or manufacturer's obligations under a warranty; or
  - 3. A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy;
- (18) "Portable electronics insurance supervising entity" means a business entity that is a licensed insurer or insurance agent that is appointed by an insurer to supervise the administration of a portable electronics insurance program;
- (19) "Portable electronics retailer" means a licensed business entity that offers and sells portable electronic devices and offers and disseminates portable electronics insurance on behalf and under the direction of a portable electronics insurance supervising entity;
- (20) "Public adjuster" means any person who, for compensation or anything of value:
- (a) Acts on behalf of an insured or aids an insured, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;
  - (b) Advertises for employment as a public adjuster of insurance claims, solicits business or represents himself, herself, or itself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or
  - (c) Directly or indirectly solicits business, investigates or adjusts losses, advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for

another person, or engages in the business of adjusting losses or damages covered by an insurance policy for the insured;

- (21) "Rental vehicle agent" means a business entity with a rental vehicle agent managing employee that is licensed to sell, solicit, or negotiate insurance offered, sold, or solicited in connection with, and incidental to, the rental of rental vehicles, whether at the rental office or by preselection of coverage in master, corporate, or group agreements that:
- (a) Are nontransferable;
  - (b) Apply only to the rental vehicle that is the subject of the rental agreement; and
  - (c) Are limited to the following kinds of insurance:
    1. Personal accident insurance for renters and other rental vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs with the rental vehicle during the rental period;
    2. Liability insurance that provides protection to the renters and other authorized drivers of a rental vehicle for liability arising from the operation or use of the rental vehicle during the rental period;
    3. Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of or damage to personal effects in the rental vehicle during the rental period;
    4. Roadside assistance insurance;
    5. Emergency sickness protection insurance; or
    6. Any other coverage designated by the commissioner;
- (22) "Rental vehicle insurance" means insurance underwritten by an insurer authorized to transact business in Kentucky that is sold in connection with, and incidental to, a rental vehicle agreement;
- (23) "Rental vehicle agent managing employee" means an individual who:
- (a) Is a salaried full-time employee of a licensed rental vehicle agent business entity that holds a license under KRS 304.9-505; and
  - (b) Is responsible for the supervision of the other employees engaged in the placement of insurance;
- (24) "Sell" means to exchange a contract of insurance by any means, for money or other valuable consideration, on behalf of an insurer;
- (25) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer;
- (26) "Staff adjuster" means an individual who is an employee of an insurer who investigates, negotiates, or settles property, casualty, or workers' compensation claims on behalf of his or her employer;
- (27) "Surety" means insurance or bond that covers obligation to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. Surety also includes surety insurance as defined in KRS 304.5-060;
- (28) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance;
- (29) ~~[(a) —] "Travel insurance" has the same meaning as in Section 1 of this Act [means insurance coverage for personal risks incident to planned travel, including but not limited to:~~
- ~~1. — Interruption or cancellation of a trip or event;~~
  - ~~2. — Loss of baggage or personal effects;~~
  - ~~3. — Damages to accommodations or rental vehicles; and~~
  - ~~4. — Sickness, accident, disability, or death occurring during travel.~~
- ~~(b) — "Travel insurance" does not include insurance coverage that provides comprehensive medical protection for travelers with trips lasting six (6) months or longer, including those working overseas as an expatriate or military personnel being deployed;]~~

- (30) "Uniform business entity application" means the current version of the uniform business entity application for resident and nonresident business entities; and
- (31) "Uniform individual application" means the current version of the uniform individual application for resident and nonresident individuals.

➔Section 11. KRS 304.9-080 is amended to read as follows:

- (1) **Except as provided in Section 3 of this Act**, an individual or business entity shall not sell, solicit, or negotiate insurance in this state unless duly licensed as the appropriate insurance producer for that line of authority in accordance with this subtitle or Subtitle 10 of this chapter.
- (2) Except as provided in KRS 304.9-430, no individual or business entity shall in this state be, act as, or hold himself, herself, or itself out as an adjuster unless then licensed as an adjuster.
- (3) No individual or business entity shall in this state be, act as, or hold himself, herself, or itself out as a consultant unless then licensed as a consultant. No consultant shall act as a consultant with respect to any kind of insurance unless duly licensed as a consultant for that line of authority.
- (4) Except as provided in KRS 304.9-410 and 304.9-270(4), no agent shall place, and no insurer shall accept, any insurance with any insurer as to which the agent does not then hold a license and appointment as agent under this subtitle.
- (5) A rental vehicle agent or rental vehicle managing employee shall not place, and an insurer shall not accept, any insurance with any insurer as to which the licensee does not then hold a license and appointment under this subtitle.
- (6) A travel retailer, its employee, or its representative shall not offer and disseminate travel insurance, **on behalf or under the direction of**, and an insurer shall not accept any travel insurance **from, a** ~~for which the~~ limited lines travel insurance producer **except in accordance with Section 3 of this Act** ~~does not then hold a license and appointment pursuant to KRS 304.9-475~~.
- (7) **No person shall act as a travel retailer that offers and disseminates travel insurance unless that person is registered in accordance with subsection (3) of Section 3 of this Act.**
- (8) The commissioner shall prescribe and furnish all forms required under this subtitle as to licenses and appointments.

➔Section 12. KRS 304.9-421 is amended to read as follows:

**Except as otherwise provided in Section 3 of this Act**, no agent, consultant, adjuster, or surplus lines broker shall directly or indirectly share his or her commission or other compensation received or to be received on account of a transaction under his or her license with any individual or business entity not also licensed as agent, consultant, adjuster, or surplus lines broker under this subtitle as to the kinds of insurance involved in the transaction. This provision shall not affect personal use of the commissions or compensation, override commission, payment of the regular salaries due employees of the agent, consultant, adjuster, or surplus lines broker, or distribution in the regular course of business of compensation and profits among members, employees, or stockholders of licensee business entities.

➔Section 13. KRS 304.9-430 is amended to read as follows:

- (1) Except as provided in this section **and Section 6 of this Act**, no person shall in this state act as or hold himself, herself, or itself out to be an independent, staff, or public adjuster unless then licensed by the department as an independent, staff, or public adjuster.
- (2) An individual applying for a resident independent, staff, or public adjuster license shall make application to the commissioner on the appropriate uniform individual application and in a format prescribed by the commissioner. The applicant shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual to be licensed:
  - (a) Is at least eighteen (18) years of age;
  - (b) Is eligible to designate Kentucky as his or her home state;
  - (c) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the commissioner;

- (d) Has not committed any act that is a ground for probation or suspension, revocation, or refusal of a license as set forth in KRS 304.9-440;
  - (e) Has successfully passed the examination for the adjuster license and the applicable line of authority for which the individual has applied;
  - (f) Has paid the fees established by the commissioner pursuant to KRS 304.4-010; and
  - (g) Is financially responsible to exercise the license.
- (3) (a) To demonstrate financial responsibility, a person applying for a public adjuster license shall obtain a bond or irrevocable letter of credit prior to issuance of a license and shall maintain the bond or letter of credit for the duration of the license with the following limits:
- 1. A surety bond executed and issued by an insurer authorized to issue surety bonds in Kentucky, which bond shall:
    - a. Be in the minimum amount of twenty thousand dollars (\$20,000);
    - b. Be in favor of the state of Kentucky and shall specifically authorize recovery of any person in Kentucky who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair trade practices in his or her capacity as a public adjuster; and
    - c. Not be terminated unless written notice is given to the licensee at least thirty (30) days prior to the termination; or
  - 2. An irrevocable letter of credit issued by a qualified financial institution, which letter of credit shall:
    - a. Be in the minimum amount of twenty thousand dollars (\$20,000);
    - b. Be subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair practices in his or her capacity as a public adjuster; and
    - c. Not be terminated unless written notice is given to the licensee at least thirty (30) days prior to the termination.
- (b) The commissioner may ask for evidence of financial responsibility at any time he or she deems relevant.
- (c) The public adjuster license shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired and shall be promptly surrendered to the commissioner without demand.
- (4) A business entity applying for a resident independent or public adjuster license shall make application to the commissioner on the appropriate uniform business entity application and in a format prescribed by the commissioner. The applicant shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the business entity's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:
- (a) Is eligible to designate Kentucky as its home state;
  - (b) Has designated a licensed independent or public adjuster responsible for the business entity's compliance with the insurance laws and regulations of Kentucky;
  - (c) Has not committed an act that is a ground for probation or suspension, revocation, or refusal of an independent or public adjuster's license as set forth in KRS 304.9-440; and
  - (d) Has paid the fees established by the commissioner pursuant to KRS 304.4-010.
- (5) The commissioner may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- (6) Unless denied licensure pursuant to KRS 304.9-440, a person or business entity who has met the requirements of subsections (2) to (5) of this section shall be issued an independent, staff, or public adjuster license.

- (7) An independent or staff adjuster may qualify for a license in one (1) or more of the following lines of authority:
- (a) Property and casualty;
  - (b) Workers' compensation; or
  - (c) Crop.
- (8) Notwithstanding any other provision of this subtitle, an individual who is employed by an insurer to investigate suspected fraudulent insurance claims, but who does not adjust losses or determine claims payments, shall not be required to be licensed as a staff adjuster.
- (9) A public adjuster may qualify for a license in one (1) or more of the following lines of authority:
- (a) Property and casualty; or
  - (b) Crop.
- (10) Notwithstanding any other provision of this subtitle, a license as an independent adjuster shall not be required of the following:
- (a) An individual who is sent into Kentucky on behalf of an insurer for the sole purpose of investigating or making adjustment of a particular loss resulting from a catastrophe, or for the adjustment of a series of losses resulting from a catastrophe common to all losses;
  - (b) An attorney licensed to practice law in Kentucky, when acting in his or her professional capacity as an attorney;
  - (c) A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed independent adjuster;
  - (d) An individual who is employed to investigate suspected fraudulent insurance claims, but who does not adjust losses or determine claims payments;
  - (e) A person who solely performs executive, administrative, managerial, or clerical duties, or any combination thereof, and who does not investigate, negotiate, or settle claims with policyholders, claimants, or their legal representatives;
  - (f) A licensed health care provider or its employee who provides managed care services as long as the services do not include the determination of compensability;
  - (g) A health maintenance organization or any of its employees or an employee of any organization providing managed care services as long as the services do not include the determination of compensability;
  - (h) A person who settles only reinsurance or subrogation claims;
  - (i) An officer, director, manager, or employee of an authorized insurer, surplus lines insurer, or risk retention group, or an attorney-in-fact of a reciprocal insurer;
  - (j) A United States manager of the United States branch of an alien insurer;
  - (k) A person who investigates, negotiates, or settles claims arising under a life, accident and health, or disability insurance policy or annuity contract;
  - (l) An individual employee, under a self-insured arrangement, who adjusts claims on behalf of his or her employer;
  - (m) A licensed agent, attorney-in-fact of a reciprocal insurer, or managing general agent of the insurer, to whom claim authority has been granted by the insurer; or
  - (n) A person who:
    1. Is an employee of a licensed independent adjuster or an employee of an affiliate that is a licensed independent adjuster or is supervised by a licensed independent adjuster, if there are no more than twenty-five (25) persons under the supervision of one (1) licensed individual independent adjuster or licensed agent who is exempt from licensure pursuant to paragraph (m) of this subsection;
    2. Collects claim information from insureds or claimants;

3. Enters data into an automated claims adjudication system; and
4. Furnishes claim information to insureds or claimants from the results of the automated claims adjudication system.

For purposes of this paragraph, "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and system-generated final resolution of consumer electronic products insurance claims that complies with claim settlement practices pursuant to Subtitle 12 of KRS Chapter 304.

- (11) Notwithstanding any other provision of this subtitle, a license as a public adjuster shall not be required of the following:
  - (a) An attorney licensed to practice law in Kentucky, when acting in his or her professional capacity as an attorney;
  - (b) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
  - (c) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts;
  - (d) A licensed health care provider or its employee who prepares or files a health claim form on behalf of a patient; or
  - (e) An employee or agent of an insurer adjusting claims relating to food spoilage with respect to residential property insurance in which the amount of coverage for the applicable type of loss is contractually limited to one thousand dollars (\$1,000) or less.
- (12) Notwithstanding any other provision of this subtitle, a license as a staff adjuster shall not be required of an employee or agent of an insurer adjusting claims relating to food spoilage with respect to residential property insurance in which the amount of coverage for the applicable type of loss is contractually limited to one thousand dollars (\$1,000) or less.
- (13) For purposes of this section, "home state" means any state or territory of the United States or the District of Columbia in which an independent, staff, or public adjuster maintains his, her, or its principal place of residence or business and is licensed to act as a resident independent, staff, or public adjuster. If the state of the principal place of residence does not license an independent, staff, or public adjuster for the line of authority sought, the independent, staff, or public adjuster shall designate as his, her, or its home state, any state in which the independent or public adjuster is licensed and in good standing.
- (14) Temporary registration for emergency independent or staff adjusters shall be issued by the commissioner in the event of a catastrophe declared in Kentucky in the following manner:
  - (a) An insurer shall notify the commissioner by submitting an application for temporary emergency registration of each individual not already licensed in the state where the catastrophe has been declared, who will act as an emergency independent adjuster on behalf of the insurer;
  - (b) A person who is otherwise qualified to adjust claims, but who is not already licensed in the state, may act as an emergency independent or staff adjuster and adjust claims if, within five (5) days of deployment to adjust claims arising from the catastrophe, the insurer notifies the commissioner by providing the following information, in a format prescribed by the commissioner:
    1. The name of the individual;
    2. The Social Security number of the individual;
    3. The name of the insurer that the independent or staff adjuster will represent;
    4. The catastrophe or loss control number;
    5. The catastrophe event name and date; and
    6. Any other information the commissioner deems necessary; and
  - (c) An emergency independent or staff adjuster's registration shall remain in force for a period not to exceed ninety (90) days, unless extended by the commissioner.

- (15) (a) Unless refused licensure in accordance with KRS 304.9-440, a nonresident person shall receive a nonresident independent, staff, or public adjuster license if:
1. The person is currently licensed in good standing as an independent, staff, or public adjuster in his, her, or its home state;
  2. The person has submitted the proper request for licensure, and has paid the fees required by KRS 304.4-010;
  3. The person has submitted, in a form or format prescribed by the commissioner, the uniform individual application; and
  4. The person's designated home state issues nonresident independent, staff, or public adjuster licenses to persons of Kentucky on the same basis.
- (b) The commissioner may verify the independent, staff, or public adjuster's licensing status through any appropriate database or may request certification of good standing.
- (c) As a condition to the continuation of a nonresident adjuster license, the licensee shall maintain a resident adjuster license in his, her, or its home state.
- (d) The nonresident adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the resident adjuster license terminates for any reason, unless the termination is due to the adjuster being issued a new resident independent or public adjuster license in his, her, or its new home state. If the new resident state does not have reciprocity with Kentucky, the nonresident adjuster license shall terminate.

➔Section 14. KRS 304.9-440 is amended to read as follows:

- (1) The commissioner may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twenty-four (24) months, revoke, or refuse to issue or renew any license issued under this subtitle or any surplus lines broker, life settlement broker, or life settlement provider license, or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for any one (1) or more of the following causes:
- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
  - (b) Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the commissioner or of another state's insurance commissioner;
  - (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
  - (d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance or the business of life settlements;
  - (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract, life settlement contract, or application for insurance;
  - (f) Having been convicted of or having pled guilty or nolo contendere to any felony;
  - (g) Having admitted or been found to have committed any unfair insurance trade practice, insurance fraud, or fraudulent life settlement act;
  - (h) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere;
  - (i) Having an insurance license, life settlement license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
  - (j) Surrendering or otherwise terminating any license issued by this state or by any other jurisdiction, under threat of disciplinary action, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;
  - (k) Forging another's name to an application for insurance, to any other document related to an insurance transaction, or to any document related to the business of life settlements;



- (l) Cheating, including improperly using notes or any other reference material to complete an examination for license;
  - (m) Knowingly accepting insurance or life settlement business from an individual or business entity who is not licensed, but who is required to be licensed under this subtitle;
  - (n) Failing to comply with an administrative or court order imposing a child support obligation;
  - (o) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;
  - (p) Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude;
  - (q) Failing to no longer meet the requirements for initial licensure;
  - (r) If a life settlement provider, demonstrating a pattern of unreasonable payments to owners or failing to honor contractual obligations set out in a life settlement contract;
  - (s) Entering into any life settlement contract or using any form that has not been approved pursuant to Subtitle 15 of this chapter;
  - (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life settlement contract to a person other than a life settlement provider licensed in this state, an accredited investor or qualified institutional buyer as defined, respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or
  - (u) Any other cause for which issuance of the license could have been refused, had it then existed and been known to the commissioner.
- (2) The license of a business entity may be suspended, revoked, or refused for any cause relating to an individual designated in or registered under the license if the commissioner finds that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the business entity and the violation was not reported to the Department of Insurance nor corrective action taken.
- (3) The license of a pharmacy benefit manager may, in the discretion of the commissioner, be suspended, revoked, or refused for any cause enumerated in subsection (1) of this section, and for violations of KRS 205.647, 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. The pharmacy benefit manager shall also be subject to the same civil penalties under KRS 304.99-020 as an insurer.
- (4) The applicant or licensee may make written request for a hearing in accordance with KRS 304.2-310.
- (5) The commissioner shall retain the authority to enforce the provisions and penalties of this chapter against any individual or business entity who is under investigation for or charged with a violation of this chapter, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law.
- (6) The commissioner may suspend, revoke, or refuse to renew the license of a licensed insurance agent operating as a life settlement broker, pursuant to KRS 304.15-700, if the commissioner finds that such insurance agent has violated the provisions of KRS 304.15-700 to 304.15-725.
- (7) If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a life settlement provider or life settlement broker, or suspends, revokes, or refuses to renew the license of a licensed life insurance agent operating as a life settlement broker pursuant to KRS 304.15-700, the commissioner shall comply with the provisions of this section and KRS Chapter 13B.
- (8) ***The sanctions and penalties applicable to licenses and licensees under subsection (1) of this section shall also be applicable to registrations and registrants under subsection (3) of Section 3 of this Act.***

➔Section 15. The following KRS section is repealed:

304.9-475 Travel insurance offered by travel retailer on behalf of limited lines travel insurance producer -- Requirements.

**Signed by Governor March 17, 2021.**

## CHAPTER 37

## ( HB 265 )

AN ACT relating to sheriffs' tax settlements.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

*The annual sheriff's tax settlement audit required by subsection (1) of Section 2 of this Act shall be one (1) audit encompassing the period September 1 to August 31 and the taxes collected on real estate, tangible personal property, unmined coal, oil and gas reserve, other mineral or energy resources, public service corporations, and any other ad valorem collections for which:*

- (1) *The collection schedule has been completed;*
- (2) *Delinquent tax claims have been filed with the county clerk in accordance with KRS 134.122, and*
- (3) *Settlements have been prepared in accordance with Section 2 of this Act.*

➔Section 2. KRS 134.192 is amended to read as follows:

- (1) Each sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year. If any sheriff resigns, dies, or otherwise vacates his or her office, the books and records shall be made available to the department, the county, and any other district for which the sheriff collects taxes within thirty (30) days from the date that the office is vacated. The annual settlement of the sheriff shall be audited in accordance with KRS 43.070, ~~and~~ 64.810, *and Section 1 of this Act.*
- (2)
  - (a) The department shall conduct the settlement relating to taxes collected for the state.
  - (b) The sheriff shall settle his or her accounts with the county, the school district, and any other taxing district for which he or she collects taxes. On request of the governing body of the county or any other district for which the sheriff collects taxes, the department may conduct the local settlement. If no local settlement has been initiated by July 1 of any year, the department may initiate the local settlement on behalf of the county, the school district, and the taxing districts. Upon completion of the local settlement, the department may receive reasonable reimbursement for expenses incurred.
- (3) In making his or her settlement with the local governments and the department, the sheriff shall be allowed credit for the uncollected tax claims properly filed with the county clerk's office as required by KRS 134.122.
- (4) All tax bills on omitted property that were not turned over to the sheriff in time to be collected shall be carried over as a charge against the sheriff as part of the annual settlement.
- (5) The report of the state and local settlement shall be filed in the county clerk's office and approved by the governing body of the county no later than September 1 of each year. The settlement shall show the amount of ad valorem tax collected for the county, the school district, and all taxing districts, and an itemized statement of the money disbursed to or on behalf of the county, the school district, and all taxing districts.
- (6) The settlement shall be published pursuant to KRS Chapter 424.
- (7) On the final settlement, the sheriff shall pay to the county treasurer all money that remains in his or her hands attributable to amounts charged against the sheriff relating to the collection of property taxes, and shall take receipts as provided in KRS 134.160. The sheriff shall pay any additional amounts charged against him or her as a result of the settlements.
- (8)
  - (a) If the sheriff fails to remit amounts charged against him or her to the appropriate taxing district, the department may issue bills for the subsequent year and may assume all collection duties in the name of and on behalf of the cities, counties, school districts, and other taxing districts.
  - (b) The fees and commissions which the sheriff would have been entitled to receive from the taxing districts shall be paid to the department.

- (9) No tax bills or tax books shall be delivered to the sheriff during the second or any subsequent calendar year of the sheriff's regular term until the settlement is submitted and approved by the department and the governing body of a county, and until the sheriff's bond is in place, should a bond be required by the fiscal court.
- (10) If the tax records of a county are destroyed by fire, flood, tornado, or other act of nature, or are lost, stolen, or mutilated so as to require a reassessment of the property in the county or a recertification of the tax bills, the sheriff shall have five (5) months from the time he or she receives the recertified tax bills to make settlement pursuant to this section.
- (11) In counties containing a population of less than seventy thousand (70,000), the sheriff shall ***provide to the fiscal court by March 15 of each year a complete statement for the preceding calendar year, which includes***~~file annually with his or her settlement~~:
- (a) A complete statement of all funds received by his or her office for official services, showing separately the total income received by his or her office for services rendered, exclusive of his or her commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and
  - (b) A complete statement of all expenditures of his or her office, including his or her salary, compensation of deputies and assistants, and reasonable expenses.
- (12) At the time he or she files the statements required by subsection (11) of this section, the sheriff shall pay to the governing body of the county any fees, commissions, and other income of his or her office, including income from investments, which exceed the sum of his or her maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810. The provisions of this subsection shall not be construed to amend KRS 64.820 or 64.830.
- (13) If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.

➔Section 3. This Act takes effect January 1, 2022.

**Signed by Governor March 17, 2021.**

## CHAPTER 38

### ( HB 158 )

AN ACT relating to local air boards.

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

➔Section 1. KRS 183.132 is amended to read as follows:

- (1) Any urban-county government, city, or county, or city and county acting jointly, or any combination of two (2) or more cities, counties, or both, may establish a nonpartisan air board composed of six~~(6)~~ members or, under subsection ~~(7)~~~~(5)~~ of this section, of eleven (11), twelve (12), or thirteen (13) members. Any city other than the first class and county jointly or an urban-county government established pursuant to KRS Chapter 67A may establish a nonpartisan board composed of ten (10) members. Any existing six (6) member board, including a board established in an urban-county government, may be expanded to ten (10) members by action of the government entity or entities that established the six (6) member board.
- (2) Any city of the first class, jointly with the county containing the city or a consolidated local government, may establish or maintain a nonpartisan air board. Membership of the board shall be appointed in accordance with subsection ~~(9)~~~~(7)~~ or ~~(14)~~~~(12)~~ of this section. Any air board established or maintained in a county containing a city of the first class or consolidated local government shall be composed of eleven (11) members.
- (3) ***In the case where a nonpartisan air board composed of six (6) members is created by cities, counties, or both, those cities, counties, or both may pass ordinances and adjust any existing memorandum of agreement to allow a state university which operates an aviation degree program approved by the Council on Postsecondary Education under KRS 164.020 to be a constituent party to the air board. In that case, the***

***board shall be eight (8) members in total, and the university shall nominate for appointment two (2) members to the air board as set out in subsection (6) of this section.***

~~(4)(3)~~ The board shall be a body politic and corporate with the usual corporate attributes, and in its corporate name may sue and be sued, contract and be contracted with, and do all things reasonable or necessary to effectively carry out the duties prescribed by statute. The board shall constitute a legislative body for the purposes of KRS 183.630 to 183.740.

~~(5)(4)~~ The members of an air board composed of six (6) members shall be appointed as follows:

- (a) If the air board is established by a city, the members shall be appointed by the mayor of the city;
- (b) If the air board is established as a joint city-county air board, the members shall be appointed jointly by the mayor of the city and the county judge/executive;
- (c) If a combination of cities, counties, or both, establishes a joint air board, the mayors and county judges/executive involved shall jointly choose six (6) members and shall jointly choose successors;
- (d) If the air board is established by an urban-county government, the mayor of the urban-county government or an officer of the urban-county government designated by the mayor shall serve as one (1) member of the board. The remaining five (5) members shall be appointed by the mayor. One (1) of the members appointed by the mayor shall live within a three (3) mile radius of the airport.

***(6) If an air board is composed of eight (8) members that are a combination of cities, counties, or both, and an eligible state university as set out in subsection (3) of this section, then the mayors, county judges/executive, and university board of regents involved shall jointly choose eight (8) members and shall jointly choose successors. In making the appointment for the university, the president of the university shall submit for confirmation the name of the individual and the university's board of regents shall confirm his or her nomination before the individual's name is submitted for joint appointment.***

~~(7)(5)~~ If the air board is established by a county, the members shall be appointed by the county judge/executive, except that in the event that an airport is located outside the boundary of the county establishing the airport board, the voting members of the air board are appointed as follows:

- (a) One (1) member appointed by the Governor of the Commonwealth;
- (b) Ten (10), eleven (11), or twelve (12) members appointed from the following jurisdictions located within a twenty (20) mile radius of the airport operations:
  1. Eight (8) members appointed by the judge/executive of the county establishing the air board, with the approval of the county fiscal court. If the air board is located within a metropolitan statistical area, as defined by the United States Bureau of the Census, the county judge/executive, with the approval of the county fiscal court, may choose to appoint two (2) of these members as follows:
    - a. One (1) member may be appointed following nomination by the chief executive officer of the largest city within the metropolitan statistical area;
    - b. One (1) member may be appointed following nomination by the chief executive officer of the county containing the largest city within the metropolitan statistical area, if that county does not already have representation on the board; and
    - c. The county judge/executive of the county establishing the air board may choose whether to invite the chief executive officers identified in subdivisions a. and b. of this subparagraph to nominate members. If the county judge/executive does invite a chief executive officer to make a nomination and the chief executive officer makes a nomination, the county judge/executive may choose whether to appoint that nominee or to appoint another person instead;
  2. Two (2) members appointed by the county judge/executive of the county containing the majority of territory encompassing the airport. This appointment shall be made with the approval of both the fiscal court of the county containing the majority of territory encompassing the airport and the fiscal court of the county establishing the air board; and
  3. One (1) or two (2) additional members, if there are any counties within the prescribed geographic limits that do not otherwise have an appointment to the air board. If there is one (1) such county, this appointment shall be made by the county judge/executive of that county, with the approval

of that county's fiscal court. If there are two (2) or more such counties, these appointments shall be made by the county judges/executive of the two (2) counties among them having the largest population, and the appointments shall receive the approval of those respective counties' fiscal courts and the fiscal court of the county establishing the air board; and

- (c) Board members of any air board established prior to June 24, 2015, that is operating an airport that is located outside the boundary of the county establishing the airport board shall serve out the remainder of their terms. Additional voting members shall assume their offices on the July 1 following June 24, 2015, and be appointed as follows:
1. The member appointed by the Governor shall be appointed for an initial term of one (1) year;
  2. One (1) member from the county containing the majority of territory encompassing the airport shall be appointed for an initial term of two (2) years;
  3. One (1) member from the county containing the majority of territory encompassing the airport shall be appointed for an initial term of three (3) years;
  4. One (1) member from the county establishing the airport board shall be appointed for an initial term of four (4) years; and
  5. If there are any, the members from the counties that are not otherwise represented on the air board within the prescribed geographic limit shall be appointed for an initial term of four (4) years.

Thereafter, their replacements shall serve a full four (4) year term. All members may be reappointed for subsequent terms. The majority of all air board appointees shall be residents of the county establishing the air board.

~~(8)(6)~~ The members of an air board composed of ten (10) members in a city other than a city of the first class and county jointly other than an urban-county government established pursuant to KRS Chapter 67A shall be appointed as follows:

- (a) Five (5) members shall be appointed by the mayor of the city, without approval of the legislative body;
- (b) Five (5) members shall be appointed by the county judge/executive without approval of the other members of the fiscal court.

~~(9)(7)~~ An air board consisting of eleven (11) members and established jointly by a city of the first class and the county containing the first class city shall be composed of members as follows:

- (a) The mayor of the city of the first class;
- (b) The county judge/executive of the county containing the city of the first class;
- (c) Three (3) members appointed by the mayor of the city of the first class;
- (d) Three (3) members appointed by the county judge/executive of the county, with the approval of the fiscal court;
- (e) Two (2) members, who shall be residents of the county containing a city of the first class or of counties contiguous thereto, appointed by the Governor; and
- (f) One (1) member, who shall be a member of the executive board of an incorporated alliance of incorporated neighborhood associations and cities with a population of less than three thousand (3,000) based upon the most recent federal decennial census which represents citizens living within a five (5) mile radius of airport operations, appointed by the Governor. If more than one (1) incorporated alliance exists, the Governor shall select the appointee from the executive boards of any of the incorporated alliances. If no alliances exist, the Governor shall appoint a citizen of the county who resides within a five (5) mile radius of airport operations.

~~(10)(8)~~ An air board consisting of eleven (11) members and established or maintained by a consolidated local government upon its establishment shall be composed of members as follows:

- (a) The mayor of the consolidated local government;
- (b) Seven (7) members appointed by the mayor of the consolidated local government;

- (c) Two (2) members who shall be residents of the county containing the consolidated local government or residents of counties contiguous to the county containing the consolidated local government, appointed by the Governor; and
- (d) One (1) member who shall be a member of the executive board of an incorporated alliance of incorporated neighborhood associations and cities with a population of less than three thousand (3,000) based upon the most recent federal decennial census which represents citizens living within a five (5) mile radius of airport operations, appointed by the Governor. If more than one (1) incorporated alliance exists, the Governor shall select the appointee from the executive boards of any of the incorporated alliances. If no alliances exist, the Governor shall appoint a citizen of the county who resides within a five (5) mile radius of airport operations.
- ~~(11)(9)~~ The members of an air board composed of ten (10) members established by an urban-county government shall be composed of the mayor of the urban-county government or an officer of the urban-county government designated by the mayor. The remaining nine (9) members shall be appointed by the mayor. Two (2) of the members appointed by the mayor shall live within a three (3) mile radius of the airport.
- ~~(12)(10)~~ Members of the board composed of six (6) members, **or eight (8) members as set out in subsection (3) of this section**, shall serve for a term of four (4) years each and until their successors are appointed and qualified. The initial appointments shall be made so that two (2) members are appointed for two (2) years, two (2) members for three (3) years, and two (2) members for four (4) years. **The initial terms of the members nominated by a state university and jointly appointed by the cities and county comprising the air board under subsection (3) of this section shall be one (1) appointee serving a two (2) year term and one (1) appointee serving a four (4) year term.** Upon expiration of the staggered terms, successors shall be appointed for a term of four (4) years.
- ~~(13)(11)~~ Members of the board composed of ten (10) members in a city other than a city of the first class and county jointly shall serve for a term of four (4) years each and until their successors are appointed and qualified. The initial appointments made by the mayor and the county judge/executive shall be made so that one (1) member is appointed for two (2) years, two (2) members are appointed for three (3) years, and two (2) members are appointed for four (4) years. If an existing six (6) member board is being increased to a ten (10) member board, initial appointments of the four (4) new members shall be made so that the mayor and the county judge/executive, or the mayor if the board is established by an urban-county government, each appoint one (1) member for two (2) years and one (1) member for four (4) years. Upon expiration of the initial terms, successors shall be appointed for a term of four (4) years. In the case of a board established by an urban-county government, the term of the mayor for the urban-county government, or the officer of the urban-county government designated by the mayor, shall be coextensive with the term of the mayor.
- ~~(14)(12)~~ Members of an air board composed of eleven (11) members and established or maintained jointly by a city of the first class and the county containing a city of the first class shall serve for a term of three (3) years each and until their successors are appointed and qualified. The terms of the mayor and the county judge/executive shall be coextensive with their terms of office. The mayor and the county judge/executive shall each make their initial appointments to a board established jointly by a city of the first class and the county containing a city of the first class so that one (1) member is appointed for one (1) year, one (1) member is appointed for two (2) years, and one (1) member is appointed for three (3) years. The Governor shall make the initial appointments so that one (1) member is appointed for two (2) years and one (1) member is appointed for three (3) years. Upon the expiration of the initial terms, successors shall be appointed for a term of four (4) years.
- ~~(15)(13)~~ Members of an air board composed of eleven (11) members in a county that has established a consolidated local government in a county containing a former city of the first class shall serve until their successors are appointed and qualified. The terms of office on the air board of the mayor of the previously existing city of the first class and the county judge/executive of this county shall expire upon the establishment of a consolidated local government. Upon the establishment of a consolidated local government, if the consolidated local government maintains the previously existing air board, the incumbent members, except the mayor of the previously existing city of the first class and the county judge/executive of that county, shall continue to serve as members of the board for the time remaining of their current terms of appointment. The Governor shall appoint members pursuant to subsection ~~(10)(8)~~(c) and (d) of this section. The mayor of the consolidated local government shall serve on the board for a term which shall be coextensive with his or her term of office. Incumbent members shall be eligible for reappointment upon the expiration of their terms. The terms of all other board members shall be for four (4) years. Upon the establishment of a consolidated local government and maintenance of a previously existing air board, any incumbent member whose term had

expired but who had continued to serve because the member's successor had not been appointed, shall continue to serve until a successor is appointed. Successors shall be appointed by the mayor or the Governor as provided by law within sixty (60) days after the establishment of the consolidated local government. As the terms of the previously serving members of an air board being maintained by a consolidated local government expire, the mayor of the consolidated local government and the Governor shall respectively make their new appointments.

- ~~(16)~~~~(14)~~ Members of the board shall serve without compensation but shall be allowed any reasonable expenses incurred by them in the conduct of the affairs of the board. The board shall, upon the appointment of its members, organize and elect officers. The board, except for a board composed of eleven (11) members, shall choose a chairman and vice chairman who shall serve for terms of one (1) year. Where the board is composed of eleven (11) members and established jointly by a city of the first class and the county containing a city of the first class, the mayor of the city of the first class and the county judge/executive shall jointly appoint the chairman from among the membership of the board. Where the board is composed of eleven (11) members and is in a county containing a consolidated local government, the mayor shall appoint the chairman from among the membership of the board. The board shall also choose a secretary-treasurer who may or may not be a member of the board. The board may fix a salary for the secretary-treasurer and the secretary-treasurer shall execute an official bond to be set and approved by the board, and the cost of the bond shall be paid by the board.
- ~~(17)~~~~(15)~~ The board may employ necessary counsel, agents, and employees to carry out its work and functions and prescribe rules and regulations as it deems necessary.
- ~~(18)~~~~(16)~~ The secretary-treasurer shall keep the minutes of all meetings of the board and shall also keep a set of books showing the receipts and expenditures of the board. The secretary-treasurer shall preserve on file duplicate vouchers for all expenditures and shall present to the board, upon request, complete reports of all financial transactions and the financial condition of the board. The books and vouchers shall at all times be subject to examination by the legislative body or bodies by whom the board was created. The secretary-treasurer shall transmit at least once annually a detailed report of all acts and doings of the board to the legislative body or bodies by whom the board was created.
- ~~(19)~~~~(17)~~ In the event that a joint air board is created by cities, counties, or both, **and has authorized an eligible state university to become party to the air board under subsection (3) of this section**, and thereafter a city, ~~or~~ county, **or state university** desires to withdraw from participation, then the remaining participants may jointly choose a successor member or members of the board. A local government **or state university** wanting to withdraw from participation in the board shall not be entitled to return of any moneys or property advanced to the board.
- ~~(20)~~~~(18)~~ A quorum for the transacting of the business of a six (6) member board shall consist of four (4) members, **an eight (8) member board shall consist of five (5) members**, a ten (10) member board shall consist of six (6) members, and an eleven (11) member board shall consist of six (6) members. Meetings of the board may be called by the chairman or by four (4) members. In case of tie voting by the board, the issue shall be deemed to have failed passage.
- ~~(21)~~~~(19)~~ A board member may be replaced by the appointing authority upon a showing to the authority of misconduct as a board member or upon conviction of a felony. A board member shall not hold any official office with the appointing authority, except for the mayor of a city of the first class and the county judge/executive on a board made up of eleven (11) members and established jointly by a city of the first class and the county containing a city of the first class, or the mayor of an urban-county government or a consolidated local government, or an officer of the urban-county government designated by the mayor on a board established by an urban-county government.

Signed by Governor March 18, 2021.

## CHAPTER 39

( SB 135 )

AN ACT relating to the postsecondary education performance fund and declaring an emergency.

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

➔Section 1. KRS 164.092 is amended to read as follows:

(1) For purposes of this section:

- (a) "Category I and Category II square feet" means square footage that falls under space categories as defined by the Postsecondary Education Facilities Inventory and Classification Manual published by the United States Department of Education;
- (b) "Comprehensive university" has the same meaning as in KRS 164.001;
- (c) "Council" means the Council on Postsecondary Education;
- (d) "Equilibrium" means a condition in which every institution has an appropriately proportionate level of resources as determined by the performance funding model established in this section given each institution's level of productivity in achieving student success outcomes, course completion outcomes, and other components included in the model;
- (e) "Formula base amount" means an institution's *enacted* general fund appropriation amount ~~from the previous fiscal year~~ *minus* ~~net of~~ debt service on bonds *and* ~~and~~ appropriations for mandated programs ~~as determined by the council, and any adjustments reflecting the previous fiscal year's performance distribution~~;
- (f) "Hold-harmless provision" means a provision included in the funding formulas as described in subsection (9) of this section that prevents a reduction of a designated portion of funding for an institution through operation of the funding formula;
- (g) "Institution" means a college in the Kentucky Community and Technical College System or a public university;
- (h) "KCTCS" means the Kentucky Community and Technical College System;
- (i) "KCTCS institution allocable resources" means the formula base amount net of any equity adjustment as described in subsection (7)(b) of this section, any amount protected by a hold-harmless provision, and any applicable increase or decrease in general fund appropriations;
- (j) *"Mandated program" means a research or public service activity that is not integral to the instructional mission of the institution and is identified by the General Assembly in the biennial budget;*
- (k) *"Performance fund" means the postsecondary education performance fund established in subsection (13) of this section.*
- (l) "Research universities" means the University of Kentucky and the University of Louisville;
- ~~(m)(4)~~ "Stop-loss provision" means a provision included in the funding formulas as described in subsection (9) of this section to limit reduction of an institution's funding amount to a predetermined percentage, notwithstanding the amounts calculated by operation of the formula; and
- ~~(n)(4)~~ "University allocable resources" means the formula base amount net of any small school adjustment as described in subsection (5)(c) of this section, any amount protected by a hold-harmless provision, and any applicable increase or decrease in general fund appropriations.

(2) The General Assembly hereby finds that improving opportunity for the Commonwealth's citizens and building a stronger economy can be achieved by its public college and university system focusing its efforts and resources on the goals of:

- (a) Increasing the retention and progression of students toward timely credential or degree completion;
- (b) Increasing the number and types of credentials and degrees earned by all types of students;
- (c) Increasing the number of credentials and degrees that garner higher salaries upon graduation, such as science, technology, engineering, math, and health, and in areas of industry demand;
- (d) Closing achievement gaps by increasing the number of credentials and degrees earned by low-income students, underprepared students, and underrepresented minority students; and
- (e) Facilitating credit hour accumulation and transfer of students from KCTCS to four (4) year postsecondary institutions.



- (3) (a) The General Assembly hereby declares these goals can best be accomplished by implementing a comprehensive funding model for the allocation of state general fund appropriations for postsecondary institution operations that aligns the Commonwealth's investments in postsecondary education with the Commonwealth's postsecondary education policy goals and objectives.
- (b) *The General Assembly further recognizes that priority for state general fund appropriations for postsecondary institutions should be given to each institution's funding floor over appropriations to the performance fund. For purposes of this section, "funding floor" means an institution's fiscal year 2020-2021 general fund appropriation included in 2020 Ky. Acts ch. 92, plus any fiscal year 2020-2021 distribution from the performance fund, and minus fiscal year 2020-2021 debt service on bonds and appropriations for mandated programs.*
- (4) This section establishes a comprehensive funding model for the public postsecondary education system to be implemented by the Council on Postsecondary Education. The funding model shall include a public university sector formula and a KCTCS sector formula.
- (5) The funding formula for the public university sector shall:
- (a) Recognize differences in missions and cost structures between research universities and comprehensive universities to ensure that neither are advantaged or disadvantaged during the first full year of implementation;
  - (b) Distribute one hundred percent (100%) of the university allocable resources for all universities in the sector, based on rational criteria, including student success, course completion, and operational support components, regardless of whether state funding for postsecondary institution operations increases, decreases, or remains stable;
  - (c) Include an adjustment to minimize impact on smaller campuses as determined by the council; and
  - (d) Be constructed to achieve equilibrium, at which point the funding formula rewards rates of improvement above the sector average rate.
- (6) Funding for the public university sector shall be distributed as follows:
- (a) Thirty-five percent (35%) of total university allocable resources shall be distributed based on each university's share of total student success outcomes produced, including but not limited to:
    1. Bachelor's degree production;
    2. Bachelor's degrees awarded per one hundred (100) undergraduate full-time equivalent students;
    3. Numbers of students progressing beyond thirty (30), sixty (60), and ninety (90) credit hour thresholds;
    4. Science, technology, engineering, math, and health bachelor's degree production; and
    5. Bachelor's degrees earned by low-income students and underrepresented minority students;
  - (b) Thirty-five percent (35%) of total university allocable resources shall be distributed based on each university's share of sector total student credit hours earned, excluding dual credit enrollment, weighted to account for cost differences by academic discipline and course level, such as lower and upper division baccalaureate, master's, doctoral research, and doctoral professional; and
  - (c) Thirty percent (30%) of total university allocable resources shall be distributed in support of vital campus operations as follows:
    1. Ten percent (10%) shall be distributed based on each university's share of Category I and Category II square feet, net of research, nonclass laboratory, and open laboratory space, to support maintenance and operation of campus facilities and may include a space utilization factor as determined by the council in collaboration with the working group established in subsection (11) of this section;
    2. Ten percent (10%) shall be distributed based on each university's share of total instruction and student services spending, net of maintenance and operation, to support campus administrative functions; and

3. Ten percent (10%) shall be distributed based on each university's share of total full-time equivalent student enrollment to support academic support services such as libraries and academic computing.
- (7) The funding formula for the KCTCS sector:
    - (a) Shall distribute one hundred percent (100%) of KCTCS institution allocable resources for all KCTCS colleges based on rational criteria, including student success, course completion, and operational support components, regardless of whether state funding for postsecondary institution operations increases, decreases, or remains stable;
    - (b) May include an adjustment to account for declining enrollment in some regions of the Commonwealth as determined by the council; and
    - (c) Shall be constructed to achieve equilibrium, at which point the funding formula rewards rates of improvement above the sector average rate.
  - (8) Funding for the KCTCS sector shall be distributed as follows:
    - (a) Thirty-five percent (35%) of total KCTCS institution allocable resources shall be distributed based on each college's share of total student success outcomes produced, including but not limited to:
      1. Certificate, diploma, and associate degree production;
      2. Numbers of students progressing beyond fifteen (15), thirty (30), and forty-five (45) credit hour thresholds;
      3. Science, technology, engineering, math, and health credentials production;
      4. Production of high-wage, high-demand, industry credentials as determined using occupational outlook data and employment statistics wage data provided by the Department of Workforce Investment in the Education and Workforce Development Cabinet;
      5. Production of industry credentials designated as targeted industries by the Education and Workforce Development Cabinet;
      6. Credentials earned by low-income students, underprepared students, and underrepresented minority students; and
      7. Transfers to four (4) year institutions;
    - (b) Thirty-five percent (35%) of total KCTCS institution allocable resources shall be distributed based on each college's share of total student credit hours earned, weighted to account for cost differences by academic discipline; and
    - (c) Thirty percent (30%) of total KCTCS institution allocable resources shall be distributed in support of vital campus operations as follows:
      1. Ten percent (10%) shall be distributed based on each college's share of Category I and Category II square feet, net of research, nonclass laboratory, and open laboratory space, to support maintenance and operation of campus facilities and may include a space utilization factor as determined by the council in collaboration with the postsecondary education working group established in subsection (11) of this section;
      2. Ten percent (10%) shall be distributed based on each college's share of total instruction and student services spending, net of maintenance and operation, to support campus administrative functions; and
      3. Ten percent (10%) shall be distributed based on each college's share of total full-time equivalent student enrollment to support academic support services such as libraries and academic computing.
  - (9) (a) The funding formula for both sectors shall include:
    1. A hold-harmless provision for fiscal year 2018-2019 preventing a reduction in an institution's funding amount based solely on the formula calculation, and allowing a hold-harmless amount determined by the formula in fiscal year 2018-2019 to be deducted from an institution's formula base amount in whole or in part in fiscal years 2019-2020 and 2020-2021, as determined by the council;

2. *A hold-harmless provision for fiscal year 2021-2022, and every fiscal year thereafter, preventing a reduction in an institution's funding amount based solely on the formula calculation;*
  3. A stop-loss provision for fiscal year 2019-2020 limiting the reduction in funding to any institution to one percent (1%) of that institution's formula base amount; ~~and~~
  - ~~4.3.~~ A stop-loss provision for fiscal year 2020-2021 limiting the reduction in funding to any institution to two percent (2%) of that institution's formula base amount; *and*
  5. *A stop-loss provision for fiscal year 2021-2022, and every fiscal year thereafter, limiting the reduction in funding to any institution to zero percent (0%) of that institution's formula base amount.*
- (b) ~~For fiscal year 2021-2022 and thereafter, hold harmless and stop-loss provisions shall not be included in the funding formulas except by enactment of the General Assembly.~~
- ~~(e)~~ Paragraph (a) of this subsection shall not be construed to limit the level of a budget reduction that may be enacted by the General Assembly or implemented by the Governor.
- (10) (a) By *May 1 each year* ~~[April 1, 2017, and each April 1 thereafter]~~, the council shall certify to the Office of the State Budget Director the amount to be distributed to each of the public universities and KCTCS as determined by the comprehensive funding model created in this section, not to exceed the available balance in the ~~[postsecondary education]~~ performance fund ~~[created in subsection (13) of this section]~~.
- (b) The Office of the State Budget Director shall distribute the appropriations in the ~~[postsecondary education]~~ performance fund for that fiscal year to the institutions in the amounts the council has certified. The adjusted appropriations to each institution shall be allotted as provided in KRS 48.600, 48.605, 48.610, 48.620, and 48.630.
- (c) 1. *The certified amounts distributed from the performance fund to the institutions are nonrecurring funds that shall not be included in the institutions' base budget amounts submitted in their biennial budget requests.*
2. *The certified amounts distributed from the performance fund in the previous fiscal year shall be included in the performance fund's base budget amount submitted by the council in the biennial budget request.*
- (d) For fiscal year 2017-2018, the Office of the State Budget Director shall distribute to the public postsecondary education institutions, except for Kentucky State University, those funds appropriated to the ~~[postsecondary education]~~ performance fund by the General Assembly in 2016 Ky. Acts ch. 149, Part I, K., 12., in accordance with the comprehensive funding model created in this section.
- (11) (a) The Council on Postsecondary Education is hereby directed to establish a postsecondary education working group composed of the following:
1. The president of the council;
  2. The president or designee of each public postsecondary institution, including the president of KCTCS;
  3. The Governor or designee;
  4. The Speaker of the House or designee; and
  5. The President of the Senate or designee.
- (b) Beginning in fiscal year 2020-2021 and every three (3) fiscal years thereafter, the postsecondary education working group shall convene to determine if the comprehensive funding model is functioning as expected, identify any unintended consequences of the model, and recommend any adjustments to the model. *The council may call the working group to convene prior to the start of the required fiscal year to allow sufficient time for the group to complete its work.*
- (c) The results of the review and recommendations of the working group shall be reported by the council to the Governor, the Interim Joint Committee on Appropriations and Revenue, and the Interim Joint Committee on Education *by December 1 of each fiscal year the working group convenes.*

- (12) The council shall promulgate administrative regulations under KRS Chapter 13A to implement the provisions of this section.
- (13) (a) The postsecondary education performance fund is hereby established as an appropriation unit to support improvement in the operations of the public postsecondary institutions and achievement of the Commonwealth's education policy goals and workforce development priorities. General fund moneys may be appropriated by the General Assembly to this fund for distribution to the public postsecondary institutions in amounts determined through the comprehensive funding model created in this section.
- (b) Any balance in the ~~postsecondary education~~ performance fund at the close of any fiscal year shall not lapse but shall be carried forward to the next fiscal year and be continuously appropriated for the purposes specified in this section. A general statement that all continuing appropriations are repealed, discontinued, or suspended shall not operate to repeal, discontinue, or suspend this fund or to repeal this action.

→Section 2. Whereas the provisions of this bill impact the process of determining base amounts, distributions, and other elements related to the postsecondary education performance fund, which have implications related to the fiscal year 2021-2022 budget that begins July 1, 2021, 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 18, 2021.**

## CHAPTER 40

### ( SB 101 )

AN ACT relating to career and technical education and declaring an emergency.

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

→Section 1. KRS 157.069 is amended to read as follows:

- (1) As used in this section:
- (a) "Secondary area technology center" or "secondary area center" means a school facility dedicated to the primary purpose of offering five (5) or more technical preparation programs that lead to skill development focused on specific occupational areas. An area center may be called a "magnet technology center" or "career center" or may be assigned another working title by the parent agency. An area center may be either state or locally operated; and
- (b) "Vocational department" means a portion of a school facility that has five (5) or more technical preparation programs that lead to skill development focused on specific occupational areas.
- (2) **Except as described in subsection (5) of this section**, the Kentucky Department of Education shall distribute all general funds designated for locally operated secondary area centers and vocational departments ~~that~~ which ~~received~~ ~~have been receiving~~ state supplemental funds **in fiscal year 2020-2021** ~~prior to June 21, 2001,~~ by a weighted formula ~~that~~ specified in an administrative regulation promulgated by the Kentucky Board of Education. The formula shall take into account the differences in cost of operating specific programs. The commissioner of education shall determine programs to be assigned to categories based on the descriptions found in paragraphs (a) to (c) of this subsection. Programs in Categories III and II shall be eligible for funding.
- (a) **Category III--High-cost technical programs:** Programs in which students develop highly technical skills in specific occupational areas and that require high-cost equipment, materials, and facilities. This category may include selected industrial technology Level III programs as defined by the Department of Education and programs in other occupational areas as deemed appropriate.
- (b) **Category II--Technical skill programs:** Programs in which students develop technical skills focused in occupational areas and that require technical equipment but high-cost equipment, facilities, or materials are not necessary to operate the programs. This category may include selected industrial technology Level III programs as defined by the Department of Education and programs in other occupational areas as deemed appropriate.

- (c) Category I--Orientation and career exploration programs: Programs that provide orientation and exploration of broad-based industries by giving students knowledge and experience regarding careers within these industries and develop some exploratory or hands-on skills used in the industry.

Notwithstanding paragraphs (a) and (b) of subsection (1) of this section, the Department of Education shall approve the combining of eligible secondary vocational programs into a single vocational department for purposes of funding for a school district that has been receiving state supplemental funds and has distributed its vocational programs, previously located in area centers, among magnet career academies.

- (3) For calculation purposes and after categorizing the programs as described in subsection (2) of this section, a weight shall be applied as a percentage of the base guarantee per pupil in average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky Program, which shall be applied to full-time equivalent students in Categories II and III. Category I programs shall receive no weight. The full-time equivalent students shall be calculated on the basis of the total program enrollment ~~multiplied~~ ~~divided~~ by the length of the class period divided by six (6).
- (4) (a) If a school district has a locally operated secondary area center that has been receiving state supplemental funds, and the district moves the center as part of a collaborative project agreement between two (2) or more school districts, then the Kentucky Department of Education may, subject to approval by the commissioner of education, distribute the general funds designated for the district's locally operated secondary area center to the district for the purpose of supporting the collaborative project for the district's full-time equivalent students in Category II and III programs.
- (b) If the commissioner of education approves the distribution of funds under paragraph (a) of this subsection:
1. For the first year of the collaborative project agreement, the department shall distribute an amount equal to the final allotted amount of general funds from the prior fiscal year designated for the district's locally operated secondary area center; and
  2. For any successive year of the collaborative project agreement, the department shall calculate the amount of general funds to distribute pursuant to subsections (2) and (3) of this section. The amount distributed shall not exceed the amount distributed under subparagraph 1. of this paragraph.
- (5) *If a local board of education assumes authority for the management and control of a state-operated secondary vocational education and technology center for the 2020-2021, 2021-2022, or 2022-2023 academic year and notifies the Kentucky Department of Education of the planned transfer on or before December 31, 2021:*
- (a) *For the first year under the management and control of the local board of education, the locally operated center shall receive funding in an amount equal to one hundred percent (100%) of the annual state general fund appropriation allocated to the center for on-site direct costs for the most recent fiscal year under state management and control, including any amount allocated directly to the local district for use of district-owned facilities;*
  - (b) *For each fiscal year thereafter, the center shall receive seventy-five percent (75%) of the amount allocated to it under paragraph (a) of this subsection;*
  - (c) *The remaining twenty-five percent (25%) of funds previously allocated to a center as described in paragraph (b) of this subsection shall annually be allocated, in accordance with the formula described in subsection (2) of this section, to locally operated secondary area centers and vocational departments that did not receive state supplemental funds under subsection (2) of this section and were not otherwise appropriated funds by the General Assembly for the current fiscal year;*
  - (d) *If no locally operated secondary area centers and vocational departments are eligible for funding under paragraph (c) of this subsection, the remaining twenty-five percent (25%) of funds shall be allocated, in accordance with the formula described in subsection (2) of this section, to all locally operated secondary area centers and vocational departments that received funds for the current fiscal year; and.*
  - (e) *Locally operated centers described in paragraph (a) or (b) of this subsection shall not receive additional funds under paragraph (d) of this subsection.*

➔Section 2. KRS 156.844 is amended to read as follows:

- (1) (a) A local board of education may submit a request to the commissioner of education to assume authority for the management and control of a state-operated secondary vocational education and technology center. Upon agreement between the commissioner of education and the local board of education for the transfer of a state-operated secondary vocational education and technology center, all personnel, equipment, and supplies shall be transferred to the local board of education and shall be utilized for the operation of the locally operated vocational center.

(b) *Beginning with the effective date of this Act, if a state-operated secondary vocational education and technology center serves more than one (1) school district, any agreement under paragraph (a) of this subsection shall require the local board to continue to serve the additional school district or districts through a memorandum of understanding. The executed memorandum of understanding shall be submitted to the commissioner of education at the same time as the request to assume authority for management and control of the state-operated secondary vocational education and technology center.*
- (2) A certified employee who is affected by a transfer to the local board of education under subsection (1) of this section shall be granted a one (1) year limited contract by the local board of education, *except as provided in subsection (5) of this section*, and shall be employed on the local district salary schedule. A classified employee shall be guaranteed employment equal to his or her present status for at least one (1) complete school term, *except as provided in subsection (5) of this section*. A transferred employee shall be provided the benefits of comparable employees in the district and shall be subject to all rules and policies of the local board of education, including but not limited to disciplinary and personnel actions that are the same as those that may be exercised by the district for any other employee in the district during a contract period.
- (3) A transferred employee who has accrued annual leave and compensatory time shall be paid a lump sum for the accrued time at the effective date of the transfer by the Department of Education. The employee shall be granted credit for accrued sick leave up to the maximum allowed for transfers of teachers between school districts. Sick leave credit shall be awarded to a classified employee based on the local board policy. Any excess sick leave that a classified or certified employee has earned that the district will not accept in the transfer may be requested to be held in escrow by the appropriate state personnel system under KRS Chapter 18A or KRS 156.800 to 156.860, and the sick leave balance shall be restored to the employee if the employee returns to a state government position.
- (4) An employee who is to be transferred to a local board of education under provisions of this section but who chooses not to accept a one (1) year limited contract with the board shall be separated from the state system and the employee's position shall be abolished. The employee may apply for any state position for which the employee is qualified but shall not be granted priority over other applicants for a position because the employee's position was abolished due to a transfer of the vocational education and technology center. An employee who refuses a contract with the local board shall be provided a lump-sum payment for accrued annual leave and compensatory time, and the employee's sick leave balance shall be placed in escrow by the appropriate state personnel system under KRS Chapter 18A or KRS 156.800 to 156.860. The sick leave balance shall be restored to the employee if the employee returns to a state government position.
- (5) A certified employee ~~[other than a principal]~~ who has earned continuing status in the state certified personnel system under KRS 156.800 to 156.860 ~~shall~~ *may* be granted *a continuing service contract as defined in KRS 161.720 upon transfer to a local board of education under subsection (1) of this section* ~~[tenure under the provisions of KRS 161.740(1)(c)]~~. A principal *who has earned continuing status prior to transfer shall* ~~may~~ be granted *a continuing service contract* ~~[tenure as a teacher]~~, but the provisions relating to demotion of the principal under KRS 161.765 shall apply. *A classified employee who has four (4) years of continuous active service in the state certified personnel system under KRS 156.800 to 156.860 at the time of transfer shall be offered an employment contract at the time of transfer that shall be considered a continuing service contract as defined in KRS 161.720 for a minimum of five (5) complete school terms.*
- (6) An employee of the Office of Career and Technical Education who is transferred to the local school district and who occupies a position covered by the Kentucky Teachers' Retirement System shall remain in the Kentucky Teachers' Retirement System.
- (7) After the effective date of the transfer, the local board of education shall receive funding for the support of the local board of education center operations pursuant to KRS 157.069. In addition, the local board of education shall receive one hundred percent (100%) of the Support Education Excellence in Kentucky program funds from the Department of Education that are generated from students enrolled in the center.

➔Section 3. Whereas Section 1(5) of this Act codifies previously non-codified actions of the General Assembly set forth in Ky. Acts ch. 92, Section 1(5) of this Act shall be retroactive to April 15, 2020.

➔Section 4. Whereas the provisions of this Act require timely enactment to provide for the administration of and budgeting for locally operated secondary area centers, 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 18, 2021.**

## CHAPTER 41

( SB 88 )

AN ACT relating to city annexation filings.

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 ***of a city's boundaries, the city shall cause to be recorded***, ~~], 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.;~~

(a) ***A duly certified paper or electronic copy of the final ordinance that changed the city's boundaries;***

(b) ~~A~~~~[The]~~ map and ***a description*** ~~[shall be ]~~prepared by a professional land surveyor ***depicting***~~[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, ***in paper or electronic form; and***

(c) ***An electronic file containing a closed geometric figure depicting the territory being added or removed that is referenced to a Kentucky State Plane Coordinate System zone in any one (1) of the following formats:***

1. ***AutoDesk AutoCAD DWG or DXF;***
2. ***Bentley MicroStation DGN; or***
3. ***ESRI ArcGIS Shapefile.***

***If the electronic file is attached to an e-mail communication, the e-mail and all files attached to that e-mail communication cumulatively shall not exceed fifteen (15) megabytes in size.***

(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 81A.475 is amended to read as follows:

If any city annexes any unincorporated area, accepts the transfer of incorporated territory, or reduces the boundaries of the city, it shall be the duty of the legislative body of the city to provide within sixty (60) days, to the county clerk of the county in which the city is located, ***a duly certified paper or electronic copy of the final ordinance that changed the city's boundaries and a map and description meeting the requirements of subsection (1)(b) of Section 1 of this Act***~~[clearly delineating the boundaries of the area affected]~~ along with a list of properties included in the annexation, transfer, or reduction. The list of properties required by this section shall include the name and address of each property owner.

➔Section 3. KRS 116.200 is amended to read as follows:

- (1) (a) On or before January 1, 2011, each city clerk, except in consolidated local governments and urban-county governments, shall provide the clerk of the county or counties in which the city is located with a list of all properties within the city and a map of the city boundaries for the county clerk to maintain a roster of voters who are eligible to vote in city elections. A county clerk may accept the list of city properties in an electronic format and the city clerk may provide a copy of the city's boundary map maintained by the Kentucky Commonwealth Office of Technology, Division of Enterprise Portfolios; and
  - (b) Documentation of any change to the boundaries of a city shall be reported to the county clerk in accordance with KRS ~~181A.470~~ and ~~181A.475~~.
- (2) (a) On or before January 1, 2011, each school district board shall provide the clerk of the county in which the school district is located with maps and written descriptions of the boundaries of each school board district located in the county for the county clerk to maintain a roster of voters who are eligible to vote in school board elections.
  - (b) Documentation of any change to a school district's boundaries shall be reported to the county clerk within sixty (60) days of the change, or immediately if the change is within sixty (60) days of the August 1 deadline established in KRS 160.210(4)(d).
- (3) Each county clerk shall code all registered voters in that county in such a manner that precinct election officers may determine the voter's eligibility to vote in city and school board elections prior to each primary and regular election for city officers in that county, each regular election for school board members in that county, and each special election in which a ballot question is presented to the residents of a city or a school board district.
- (4) Notwithstanding KRS 64.012, the county clerk shall not charge a fee to a city or school district providing any information required by subsections (1)(a) and (2)(a) of this section.
- (5) Nothing in this section shall prohibit a county clerk from requesting additional information from the city, school district board, or any other reliable source to ascertain whether a registered voter resides within a city or a school district boundary.

**Signed by Governor March 18, 2021.**

## CHAPTER 42

### ( HB 190 )

AN ACT relating to the sale of grocery items by food service establishments and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS 217.280 TO 217.390 IS CREATED TO READ AS FOLLOWS:

- (1) *Legally permitted food service establishments shall be exempt from any state or local laws and administrative regulations that prohibit the sale of grocery items such as bread, milk, and other grocery staples to any customer.*
- (2) *Sales permitted under subsection (1) of this section shall be limited to no more than twenty-five percent (25%) of the food service establishment's gross annual sales for the federal tax year.*
- (3) *Notwithstanding KRS 217.125, no additional permit or permit fee shall be required for the sale of grocery items by legally permitted food service establishments unless the food service establishment violates subsection (2) of this section.*

➔Section 2. Whereas the economic impact of the state emergency declared in response to COVID-19 on Kentucky's food service establishments has been devastating and the sale of grocery items can be one path for the survival of restaurant industry, 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 18, 2021.**



**CHAPTER 43****( HB 393 )**

AN ACT relating to water district commissioners and declaring an emergency.

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

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

- (1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:
  - (a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court;
  - (b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in one (1) or more adjacent counties, as provided by KRS 74.115, the board of commissioners shall be appointed by the appropriate county judges/executive, with the approval of the respective fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the respective fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner; and
  - (c) If a district acquires an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into one (1) or more additional counties, or if a district extends its area to include territory in one (1) or more adjacent counties as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, without adding additional board members, if the new area to be served shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within any particular county included in the territorial boundaries of the district, it shall be conclusively presumed, with respect to that particular county, that the district comes within the terms of this subsection.
- (2) A commissioner may be removed from office as provided by KRS 65.007 or 74.025.
- (3) A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007 or 74.025.
- (4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.
- (5) The commission shall elect a chairman, vice chairman, secretary, treasurer, and any other officers and assistant officers as the commission may deem necessary, each of whom shall be members of the commission. Any two (2) or more offices may be held by the same person, except that the chairman may not hold any other office. Each commissioner shall execute a bond for the faithful performance of the duties of his position.

- (6) Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars (\$3,600), which shall be paid out of the water district fund, except that beginning January 1, 1999, **and subject to subsection (9) of this section**, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of the water district fund. An educational year shall begin on January 1 and end on the following December 31. In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.
- (7) (a) **Except as provided in subsection (9) of this section**, in order to receive an increase in salary as specified in subsection (6) of this section, commissioners shall successfully complete six (6) instructional hours of water district management training annually. The training shall be approved and paid for by the water district of the county the commissioner represents. Those commissioners not required to complete the six (6) instructional hours shall be reimbursed for the cost of instruction if they choose to complete the water district training.
- (b) The Public Service Commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions.
- (c) The Public Service Commission shall encourage and promote the offering of high quality water district management training programs that enhance a water district commissioner's understanding of his or her responsibilities and duties. The commission shall, no later than January 1, 1999, establish standards and procedures to evaluate, accredit, and approve water district management training programs.
- (8) (a) At least once annually, the Public Service Commission shall provide or cause to be conducted a program of instruction, consisting of at least twelve (12) hours of instruction, that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate. The commission may charge a reasonable registration fee to recover the cost of the programs and may accredit programs of instruction that are conducted by other persons or entities and that the commission deems equivalent to its program of instruction.
- (b) Within twelve (12) months of his or her initial appointment, each commissioner shall complete the program of instruction described in paragraph (a) of this subsection. **Except as provided in subsection (9) of this section**, any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office. A commissioner required to attend a program under this subsection shall be reimbursed for the cost of instruction by his or her water district.
- (9) **The Public Service Commission may grant a reasonable extension of time, not to exceed six (6) months, for completing the training requirements of subsections (6), (7), and (8) of this section for good cause shown.**
- (10) (a) Within thirty (30) days of the occurrence of a vacancy on its board of commissioners resulting from the expiration of a term or the death, resignation, or removal of the incumbent, a water district shall notify in writing the Public Service Commission of the existence of the vacancy. The notice shall include the name of the commissioner who last held the position and the date on which the unexpired term will end.
- (b) Within thirty (30) days of the appointment of a commissioner and the appropriate fiscal court's approval of that appointment, a water district shall notify the Public Service Commission of the appointment. The notice shall include the appointed person's name and the date of the expiration of his or her term.
- ~~(11)~~(10) The Public Service Commission may promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.
- ➔Section 2. KRS 74.363 is amended to read as follows:
- (1) Boards of commissioners of any two (2) or more water districts may by concurrent action and by approval of a majority of the membership of the board of each merge their districts into one (1).

- (2) The members of the boards of commissioners of the merged water districts shall serve as members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commission. Thereafter, the board shall be composed as follows:
- (a) If the boundaries of the resulting district lie wholly within a single county, the board of commissioners shall be composed of between three (3) and seven (7) members as agreed upon by the merged water districts in their merger documents; and
  - (b) If the boundaries of the resulting district lie within two (2) or more counties, the board of commissioners shall be composed of six (6) or more members as agreed upon by the merged water districts in their merger documents.
- (3) Each appointment to the board of commissioners of the resulting district shall be made by the appropriate county judge/executive with the approval of the fiscal court. Each member of the board shall be a resident of the county from which he or she is appointed. The initial terms of the board of commissioners after the merger shall be as follows: approximately one-third (1/3) of the commissioners shall be appointed for a term of two (2) years; approximately one-third (1/3) of the commissioners shall be appointed for a term of three (3) years; and the remaining commissioners shall be appointed for a term of four (4) years. Thereafter, all commissioners shall be appointed for a term of four (4) years. KRS 74.020(2) to ~~(11)~~~~(10)~~ shall apply to all commissioners and vacancies on the board of commissioners.
- (4) The resulting district shall have all the assets and legal liabilities of the water districts joining in the merger. The separate existences of the water districts joining in the merger, except the resulting district, shall cease, and the title to all real estate and other property owned by the water districts joining in the merger shall be vested in the resulting district without reversion or impairment. Bonded obligations of any district secured by the right to levy an assessment as provided by KRS 74.130 through 74.230 or secured by the revenue of the systems operated by the district shall continue to be retired or a sinking fund for such purpose created from the tax assessments or revenue from the system operated by the district from funds collected over the same area by the new board of commissioners in accordance with the laws under which the bonds were issued until all bonded obligations of the old district have been retired.

➔Section 3. Whereas the cancellation of training programs due to COVID-19 has made it difficult or impossible for many water district commissioners to comply with their statutory training requirements, and temporary waivers of those requirements by the Public Service Commission will be necessary, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by Governor March 18, 2021.**

## CHAPTER 44

( HB 328 )

AN ACT relating to advertising devices and declaring an emergency.

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

➔Section 1. KRS 177.830 is repealed, reenacted, and amended to read as follows:

As used in KRS 177.830 to 177.890, unless the context requires otherwise:

- (1) "Limited-access highway" means a road or highway or bridge constructed pursuant to the provisions of KRS 177.220 to 177.310;
- (2) "Interstate highway" means any highway, road, street, access facility, bridge, or overpass which is designated as a portion of the national system of interstate and defense highways as may be established by law, or as may be so designated by the Transportation Cabinet in the joint construction of the system by the Transportation Cabinet and the United States Department of Transportation, Bureau of Public Roads;

- (3) "Federal-aid primary highway" means any highway, road, street, appurtenant facility, bridge, or overpass which is designated as a portion of the federal-aid primary highway system as may be established by law or as may be so designated by the Transportation Cabinet and the United States Department of Transportation;
- (4) "Turnpike" means any road or highway or appurtenant facility constructed pursuant to the provisions of KRS 177.390 to 177.570, or pursuant to the provisions of any other definition of "turnpike" in the Kentucky Revised Statutes, or any other highway, road, parkway, bridge, or street upon which a toll or fee is charged for the use of motor vehicular traffic;
- (5) "Advertising device" means any billboard, sign, notice, poster, display, or other device, *including the structure erected or used in connection with the display or device and all lighting or other attachments used in connection with the display or device, that is:*
- (a) *Operated or owned by a person or entity who is earning compensation directly or indirectly from a third party or parties for the placement of a message on the device; and*
  - (b) ~~Intended to attract the attention of operators of motor vehicles on the highways [ , and shall include a structure erected or used in connection with the display of any device and all lighting or other attachments used in connection therewith. However, it does not include directional or other official signs or signals erected by the state or other public agency having jurisdiction];~~
- (6) "Highway or highways" as used in KRS 177.830 to 177.890 means limited access highway, interstate highway, federal-aid primary highway, or turnpike as defined in KRS 177.830 to 177.890;
- (7) "Commercial or industrial zone" adjacent to a federal-aid primary highway means an area zoned to permit business, commerce or trade pursuant to lawful ordinance or regulation;
- (8) "Unzoned commercial or industrial area" adjacent to a federal-aid primary highway means an area which is not zoned by state or local law, regulation, or ordinance and on which either a commercial or industrial activity is conducted or a permanent structure therefor is located together with the area extending along the highway for such distances as may be determined by regulation promulgated by the secretary of the Transportation Cabinet. Each side of the highway will be considered separately in applying this definition--all measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the activities, not from the property lines of the activities, and shall be along or parallel the edge of the pavement of the highway;
- (9) "Commercial or industrial activities" for purposes of unzoned industrial and commercial areas means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:
- (a) Outdoor advertising structures;
  - (b) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;
  - (c) Activities normally or regularly in operation less than three (3) months of the year;
  - (d) Transient or temporary activities;
  - (e) Activities not visible from the main traveled way;
  - (f) Activities more than 300 feet from the nearest edge of the right-of-way;
  - (g) Activities conducted in a building principally used as a residence;
  - (h) Railroad tracks and minor sidings;{ }
- (10) "Urban areas" means those areas having a population of five thousand (5,000) or more which have been designated by the United States Department of Commerce, Bureau of the Census, as an urban area. A list of cities which have designated urban areas shall be maintained by the Transportation Cabinet, Division of Planning, Frankfort, Kentucky 40622. The Transportation Cabinet shall maintain maps indicating the boundaries of the designated areas. The maps shall be available from the Transportation Cabinet for a fee not to exceed five dollars (\$5.00); *and*
- (11) *"Compensation" means the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promises of future payments, or forbearance of debt.*

➔Section 2. KRS 177.841 is repealed, reenacted, and amended to read as follows:

- (1) Except as otherwise provided in KRS 177.830 to 177.890, the erection or maintenance of any advertising device upon or within six hundred sixty (660) feet of the right-of-way of any interstate highway or federal-aid primary highway is prohibited.
- (2) The erection or maintenance of any advertising device located outside of an urban area and beyond six hundred sixty (660) feet of the right-of-way which is legible and/or identifiable from the main traveled way of any interstate highway or federal-aid primary highway is prohibited~~[with the exception of:~~
  - ~~(a) Directional and official signs and notices;~~
  - ~~(b) Signs advertising the sale or lease of property upon which they are located; or~~
  - ~~(c) Signs advertising activities conducted on the property on which they are located].~~
- (3) ***This section shall not apply to directional or other official signs or signals erected by the state or any other public agency having jurisdiction.***

➔Section 3. KRS 177.860 is repealed, reenacted, and amended to read as follows:

***The Transportation Cabinet***~~[The commissioner of the Department of Highways]~~ shall ***promulgate administrative regulations in accordance with KRS Chapter 13A, no later than August 1, 2021, to establish:*** ~~[prescribe by regulations]~~

- (1) ***Permit fees for advertising devices not to exceed:***
  - (a) ***Two hundred fifty dollars (\$250) for the initial permit application review, site and compliance inspection, and permit issuance; and***
  - (b) ***One hundred dollars (\$100) for an annual permit renewal; and***
- (2) Reasonable standards for the advertising devices hereinafter enumerated, designed to protect the safety of and to guide the users of the highways and otherwise to achieve the objectives set forth in KRS 177.850, and the erection and maintenance of any of the following advertising devices, if they comply with the regulations, shall not be deemed a violation of KRS 177.830 to 177.890:
  - (a) ***Signs, notices, posters, displays, or other devices that do not meet the definition of advertising device as set forth in Section 1 of this Act***~~[(1) An advertising device which is to be erected or maintained on property for the purpose of setting forth or indicating:~~
    - ~~(a) The name and address of the owner, lessee, or occupant of the property; or~~
    - ~~(b) The name or type of business or profession conducted on the property; or~~
    - ~~(c) Information required or authorized by law to be posted or displayed on the advertising device];~~
    - ~~(b)[(2)] An advertising device which is not visible from any traveled portion of the highway; and~~
    - ~~(c)[(3)] An advertising device indicating the sale or leasing of the property upon which it is placed;~~
  - ~~(4)] Advertising devices which otherwise comply with the applicable zoning ordinances and regulations of any county or city, and which are to be located in a commercially or industrially developed area, in which the commissioner of highways determines, in exercise of his sound discretion, that the location of the advertising devices is compatible with the safety and convenience of the traveling public.~~

➔Section 4. KRS 177.863 is repealed, reenacted, and amended to read as follows:

Within any commercial or industrial zone or unzoned commercial or industrial area adjacent to a federal-aid primary highway, advertising devices shall be subject to the following standards:

- (1) Prohibited advertising devices:
  - (a) Advertising devices that are not clean and in good repair.
  - (b) Advertising devices that are not securely affixed to a substantial structure.
  - (c) Advertising devices which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device.
  - (d) Advertising devices which obstruct the view of official signs, or approaching and merging traffic.

- (e) Advertising devices on trees, or painted upon natural features.
  - (f) Advertising devices exceeding one thousand two hundred fifty (1,250) square feet on each face including border and trim, but excluding supports.
  - (g) Advertising devices advertising an activity that is illegal under state or federal law.
  - (h) Obsolete advertising devices.
- (2) Spacing of advertising devices:
- (a) No advertising device structure designed to be primarily viewed from a non-limited access federal-aid primary highway shall be erected within three hundred (300) feet of any other such advertising device structure on the same side of the highway, unless separated by a building, natural obstruction or roadway. Provided, however, that in an incorporated municipality such required distance shall be reduced to one hundred (100) feet.
  - (b) Double-faced -- V-type and/or back-to-back advertising device structures shall be one advertising device for spacing purposes.
  - (c) The minimum distance between advertising devices shall be measured along the nearest edge of the pavement between points directly opposite the advertising devices.
  - ~~(d) Advertising devices advertising the sale or lease of the property on which they are located, or advertising the activity conducted thereon, are permitted, and shall not cause any other advertising device to be in violation of this chapter, notwithstanding any contrary provision.~~
- (3) Size of advertising devices:
- (a) The maximum area for any advertising device shall be one thousand two hundred fifty (1,250) square feet, including border and trim but excluding supports.
  - (b) An advertising device structure may contain one (1) or two (2) advertisements per facing, not to exceed the maximum area.
  - (c) Double faced structures will be permitted with the maximum area being allowed for each facing.
- (4) Lighting of advertising devices:
- Advertising devices may be illuminated, subject to the following restrictions:
- (a) Advertising devices which contain, include or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.
  - (b) Advertising devices which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled way of the highway which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
  - (c) No advertising device shall be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device or signal.

➔Section 5. KRS 177.842 is repealed and reenacted to read as follows:

KRS 177.830(10) in conjunction with the prohibition of KRS 177.841(2) shall extend to all applicable outdoor advertising devices erected after January 1, 1976, unless previously determined by a court of competent jurisdiction to be in compliance with the laws, regulations, and rules governing outdoor advertising devices or were situated in an area which was authorized by an existing or previous statute.

➔Section 6. KRS 177.850 is repealed and reenacted to read as follows:

The general purposes of KRS 177.830 to 177.890 and its specific objectives and standards are:

- (1) To provide for maximum visibility along interstate highways, limited-access highways, federal-aid primary highways, turnpikes, and connecting roads or highways;
- (2) To prevent unreasonable distraction of operators of motor vehicles;
- (3) To prevent confusion with regard to traffic lights, signs or signals or otherwise interfere with the effectiveness of traffic regulations;

- (4) To preserve and enhance the natural scenic beauty or the aesthetic features of the aforementioned interstate highways, limited-access highways, federal-aid primary highways, turnpikes, and adjacent areas;
- (5) To promote maximum safety, comfort and well-being of the users of said highways.

➔Section 7. KRS 177.867 is repealed and reenacted to read as follows:

- (1) The commissioner of the Department of Highways is authorized to acquire by purchase, gift, or condemnation pursuant to the Eminent Domain Act of Kentucky and shall pay just compensation upon the removal of the following advertising devices:
  - (a) Those lawfully in existence on October 22, 1965;
  - (b) Those lawfully on any highway designated a part of the interstate or federal-aid primary system on or after October 22, 1965, and before January 1, 1968;
  - (c) Those lawfully erected on or after January 1, 1968;
  - (d) Those lawfully in existence on January 1, 1976; and
  - (e) Those lawfully erected or maintained, or both, between January 1, 1976, and December 31, 1989.
- (2) Compensation shall be paid for the following:
  - (a) The taking from the owner of any such advertising device of all right, title, leasehold, and interest in such advertising device; and
  - (b) The taking from the owner of the real property on which the advertising device is located, of the right to erect and maintain such advertising devices thereon.

➔Section 8. KRS 177.870 is repealed and reenacted to read as follows:

Any advertising device erected, maintained, replaced, relocated, repaired or restored in violation of KRS 177.830 to 177.890 is hereby declared to be, and is, a public nuisance and such device may without notice be abated and removed by any officer or employee of the state Department of Highways or upon request of the commissioner by any peace officer.

➔Section 9. KRS 177.880 is repealed and reenacted to read as follows:

Nothing in KRS 177.830 to 177.890 shall be construed to abrogate or affect the provisions of any municipal ordinance, regulation or resolution which is more restrictive concerning advertising devices than the provisions of KRS 177.830 to 177.890 or of the regulations adopted hereunder; provided that no city, county or urban-county government and no commission, agency or department of any of the foregoing, or any person acting under authority directly or indirectly conferred by any municipal ordinance, regulation or resolution shall have any authority to require any sign or other advertising device which is within its jurisdiction, which was lawfully erected or installed and which is maintained in good repair to be removed without payment of just compensation as provided under KRS 177.867(2).

➔Section 10. KRS 177.890 is repealed and reenacted to read as follows:

The commissioner of highways is hereby authorized to enter into agreements with the United States Secretary of Transportation for the purpose of carrying out the national policy of promoting the safety, convenience and enjoyment of public travel and the free flow of interstate commerce and the protection of the public investment in the national system of interstate and defense highways and federal-aid primary highways within the Commonwealth.

➔Section 11. Whereas ensuring that Kentucky advertising devices are regulated for the safety of the traveling public is a compelling and immediate need and a recent court ruling has questioned the Commonwealth's regulatory authority to do so under existing law, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon it otherwise becoming law.

**Signed by Governor March 18, 2021.**

AN ACT relating to audiology and speech-language pathology.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

**SECTION 1: PURPOSE**

*The purpose of this Compact is to facilitate interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services. The practice of audiology and speech-language pathology occurs in the state where the patient/client/student is located at the time of the patient/client/student encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.*

*This Compact is designed to achieve the following objectives:*

1. *Increase public access to audiology and speech-language pathology services by providing for the mutual recognition of other member state licenses;*
2. *Enhance the states' ability to protect the public's health and safety;*
3. *Encourage the cooperation of member states in regulating multistate audiology and speech-language pathology practice;*
4. *Support spouses of relocating active duty military personnel;*
5. *Enhance the exchange of licensure, investigative and disciplinary information between member states;*
6. *Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and*
7. *Allow for the use of telehealth technology to facilitate increased access to audiology and speech-language pathology services.*

**SECTION 2: DEFINITIONS**

*As used in this Compact, and except as otherwise provided, the following definitions shall apply:*

- A. *"Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. secs. 1209 and 1211;*
- B. *"Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an audiologist or speech-language pathologist, including actions against an individual's license or privilege to practice such as revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.*
- C. *"Alternative program" means a non-disciplinary monitoring process approved by an audiology or speech-language pathology licensing board to address impaired practitioners.*
- D. *"Audiologist" means an individual who is licensed by a state to practice audiology.*
- E. *"Audiology" means the care and services provided by a licensed audiologist as set forth in the member state's statutes and rules.*
- F. *"Audiology and Speech-Language Pathology Compact Commission" or "Commission" means the national administrative body whose membership consists of all states that have enacted the Compact.*
- G. *"Audiology and speech-language pathology licensing board," "audiology licensing board," "speech-language pathology licensing board," or "licensing board" means the agency of a state that is responsible for the licensing and regulation of audiologists and/or speech-language pathologists.*
- H. *"Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as an audiologist or speech-language pathologist in the remote state under its laws and rules. The practice of audiology or speech-language pathology occurs in the member state where the patient/client/student is located at the time of the patient/client/student encounter.*
- I. *"Current significant investigative information" means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the audiologist or speech-*



*language pathologist to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.*

- J. *"Data system" means a repository of information about licensees, including, but not limited to, continuing education, examination, licensure, investigative, compact privilege and adverse action.*
- K. *"Encumbered license" means a license in which an adverse action restricts the practice of audiology or speech-language pathology by the licensee and said adverse action has been reported to the National Practitioners Data Bank (NPDB).*
- L. *"Executive Committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.*
- M. *"Home state" means the member state that is the licensee's primary state of residence.*
- N. *"Impaired practitioner" means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.*
- O. *"Licensee" means an individual who currently holds an authorization from the state licensing board to practice as an audiologist or speech-language pathologist.*
- P. *"Member state" means a state that has enacted the Compact.*
- Q. *"Privilege to practice" means a legal authorization permitting the practice of audiology or speech-language pathology in a remote state.*
- R. *"Remote state" means a member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege.*
- S. *"Rule" means a regulation, principle or directive promulgated by the Commission that has the force of law.*
- T. *"Single-state license" means an audiology or speech-language pathology license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.*
- U. *"Speech-language pathologist" means an individual who is licensed by a state to practice speech-language pathology.*
- V. *"Speech-language pathology means the care and services provided by a licensed speech-language pathologist as set forth in the member state's statutes and rules.*
- W. *"State" means any state, commonwealth, district or territory of the United States of America that regulates the practice of audiology and speech-language pathology.*
- X. *"State practice laws" means a member state's laws, rules and regulations that govern the practice of audiology or speech-language pathology, define the scope of audiology or speech-language pathology practice, and create the methods and grounds for imposing discipline.*
- Y. *"Telehealth" means the application of telecommunication technologies that meets the applicable standard of care to deliver audiology or speech-language pathology services at a distance for assessment, intervention and/or consultation.*

### **SECTION 3: STATE PARTICIPATION IN THE COMPACT**

- A. *A license issued to an audiologist or speech-language pathologist by a home state to a resident in that state shall be recognized by each member state as authorizing an audiologist or speech-language pathologist to practice audiology or speech-language pathology, under a privilege to practice, in each member state.*
- B. *A state must implement or utilize procedures for considering the criminal history records of applicants for initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.*
  - I. *A member state must fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.*

2. *Communication between a member state, the Commission and among member states regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.*
- C. *Upon application for a privilege to practice, the licensing board in the issuing remote state shall ascertain, through the data system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or privilege to practice held by the applicant, whether any adverse action has been taken against any license or privilege to practice held by the applicant.*
- D. *Each member state shall require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws.*
- E. *For an audiologist:*
  1. *Must meet one (1) of the following educational requirements:*
    - a. *On or before, December 31, 2007, has graduated with a master's degree or doctorate in audiology, or equivalent degree regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board;*
    - b. *On or after, January 1, 2008, has graduated with a Doctoral degree in audiology, or equivalent degree, regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or*
    - c. *Has graduated from an audiology program that is housed in an institution of higher education outside of the United States (a) for which the program and institution have been approved by the authorized accrediting body in the applicable country and (b) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;*
  2. *Has completed a supervised clinical practicum experience from an accredited educational institution or its cooperating programs as required by the Commission;*
  3. *Has successfully passed a national examination approved by the Commission;*
  4. *Holds an active, unencumbered license;*
  5. *Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of audiology, under applicable state or federal criminal law; and*
  6. *Has a valid United States Social Security or National Practitioner Identification number.*
- F. *For a speech-language pathologist:*
  1. *Must meet one (1) of the following educational requirements:*
    - a. *Has graduated with a master's degree from a speech-language pathology program that is accredited by an organization recognized by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or*
    - b. *Has graduated from a speech-language pathology program that is housed in an institution of higher education outside of the United States (a) for which the program and institution have been approved by the authorized accrediting body in the applicable country and (b) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;*
  2. *Has completed a supervised clinical practicum experience from an educational institution or its cooperating programs as required by the Commission;*

3. *Has completed a supervised postgraduate professional experience as required by the Commission;*
  4. *Has successfully passed a national examination approved by the Commission;*
  5. *Holds an active, unencumbered license;*
  6. *Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of speech-language pathology, under applicable state or federal criminal law; and*
  7. *Has a valid United States Social Security or National Practitioner Identification number.*
- G. *The privilege to practice is derived from the home state license.*
- H. *An audiologist or speech-language pathologist practicing in a member state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of audiology and speech-language pathology shall include all audiology and speech-language pathology practice as defined by the state practice laws of the member state in which the client is located. The practice of audiology and speech-language pathology in a member state under a privilege to practice shall subject an audiologist or speech-language pathologist to the jurisdiction of the licensing board, the courts and the laws of the member state in which the client is located at the time service is provided.*
- I. *Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting the privilege to practice audiology or speech-language pathology in any other member state. Nothing in this Compact shall affect the requirements established by a member state for the issuance of a single-state license.*
- J. *Member states may charge a fee for granting a compact privilege.*
- K. *Member states must comply with the bylaws and rules and regulations of the Commission.*

#### **SECTION 4: COMPACT PRIVILEGE**

- A. *To exercise the compact privilege under the terms and provisions of the Compact, the audiologist or speech-language pathologist shall:*
1. *Hold an active license in the home state;*
  2. *Have no encumbrance on any state license;*
  3. *Be eligible for a compact privilege in any member state in accordance with Section 3;*
  4. *Have not had any adverse action against any license or compact privilege within the previous two (2) years from date of application;*
  5. *Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);*
  6. *Pay any applicable fees, including any state fee, for the compact privilege; and*
  7. *Report to the Commission adverse action taken by any non-member state within thirty (30) days from the date the adverse action is taken.*
- B. *For the purposes of the compact privilege, an audiologist or speech-language pathologist shall only hold one (1) home state license at a time.*
- C. *Except as provided in Section 6, if an audiologist or speech-language pathologist changes primary state of residence by moving between two-member states, the audiologist or speech-language pathologist must apply for licensure in the new home state, and the license issued by the prior home state shall be deactivated in accordance with applicable rules adopted by the Commission.*
- D. *The audiologist or speech-language pathologist may apply for licensure in advance of a change in primary state of residence.*
- E. *A license shall not be issued by the new home state until the audiologist or speech-language pathologist provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a license from the new home state.*
- F. *If an audiologist or speech-language pathologist changes primary state of residence by moving from a member state to a non-member state, the license issued by the prior home state shall convert to a single-*

*state license, valid only in the former home state and the privilege to practice in any member state is deactivated in accordance with the rules promulgated by the Commission.*

- G. *The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of Section 4A to maintain the compact privilege in the remote state.*
- H. *A licensee providing audiology or speech-language pathology services in a remote state under the compact privilege shall function within the laws and regulations of the remote state.*
- I. *A licensee providing audiology or speech-language pathology services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens.*
- J. *If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:*
  - 1. *The home state license is no longer encumbered; and*
  - 2. *Two (2) years have elapsed from the date of the adverse action.*
- K. *Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4A to obtain a compact privilege in any remote state.*
- L. *Once the requirements of Section 4J have been met, the licensee must meet the requirements in Section 4A to obtain a compact privilege in a remote state.*

#### **SECTION 5: COMPACT PRIVILEGE TO PRACTICE TELEHEALTH**

*Member states shall recognize the right of an audiologist or speech-language pathologist, licensed by a home state in accordance with Section 3 and under rules promulgated by the Commission, to practice audiology or speech-language pathology in any member state via telehealth under a privilege to practice as provided in the Compact and rules promulgated by the Commission. A licensee providing audiology or speech-language pathology services in a remote state under the compact privilege shall function within the laws and regulations of the state where the patient/client/student is located.*

#### **SECTION 6: ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES**

*Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change their home state through application for licensure in the new state.*

#### **SECTION 7: ADVERSE ACTIONS**

- A. *In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to:*
  - 1. *Take adverse action against an audiologist's or speech-language pathologist's privilege to practice within that member state.*
  - 2. *Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.*
  - 3. *Only the home state shall have the power to take adverse action against a audiologist's or speech-language pathologist's license issued by the home state.*
- B. *For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.*
- C. *The home state shall complete any pending investigations of an audiologist or speech-language pathologist who changes primary state of residence during the course of the investigations. The home state shall also*

*have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the data system shall promptly notify the new home state of any adverse actions.*

- D. *If otherwise permitted by state law, the member state may recover from the affected audiologist or speech-language pathologist the costs of investigations and disposition of cases resulting from any adverse action taken against that audiologist or speech-language pathologist.*
- E. *The member state may take adverse action based on the factual findings of the remote state, provided that the member state follows the member state's own procedures for taking the adverse action.*
- F. **Joint Investigations**
  - 1. *In addition to the authority granted to a member state by its respective audiology or speech-language pathology practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.*
  - 2. *Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.*
- G. *If adverse action is taken by the home state against an audiologist's or speech language pathologist's license, the audiologist's or speech-language pathologist's privilege to practice in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an audiologist's or speech language pathologist's license shall include a statement that the audiologist's or speech-language pathologist's privilege to practice is deactivated in all member states during the pendency of the order.*
- H. *If a member state takes adverse action against a licensee, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state and any remote states in which the licensee has a privilege to practice of any adverse actions by the home state or remote states.*
- I. *Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.*

#### **SECTION 8: ESTABLISHMENT OF THE AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY COMPACT COMMISSION**

- A. *The Compact member states hereby create and establish a joint public agency known as the Audiology and Speech-Language Pathology Compact Commission:*
  - 1. *The Commission is an instrumentality of the Compact states.*
  - 2. *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.*
  - 3. *Nothing in this Compact shall be construed to be a waiver of sovereign immunity.*
- B. **Membership, Voting and Meetings**
  - 1. *Each member state shall have two (2) delegates selected by that member state's licensing board. The delegates shall be current members of the licensing board. One (1) shall be an audiologist and one (1) shall be a speech-language pathologist.*
  - 2. *An additional five (5) delegates, who are either a public member or board administrator from a state licensing board, shall be chosen by the Executive Committee from a pool of nominees provided by the Commission at Large.*
  - 3. *Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.*
  - 4. *The member state board shall fill any vacancy occurring on the Commission, within ninety (90) days.*
  - 5. *Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.*

6. *A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.*
7. *The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.*

**C. *The Commission shall have the following powers and duties:***

1. *Establish the fiscal year of the Commission;*
2. *Establish bylaws;*
3. *Establish a Code of Ethics;*
4. *Maintain its financial records in accordance with the bylaws;*
5. *Meet and take actions as are consistent with the provisions of this Compact and the bylaws;*
6. *Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states to the extent and in the manner provided for in the Compact;*
7. *Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state audiology or speech-language pathology licensing board to sue or be sued under applicable law shall not be affected;*
8. *Purchase and maintain insurance and bonds;*
9. *Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;*
10. *Hire employees, elect or appoint officers, fix compensation, define duties, grant individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;*
11. *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;*
12. *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;*
13. *Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;*
14. *Establish a budget and make expenditures;*
15. *Borrow money;*
16. *Appoint committees, including standing committees composed of members, and other interested persons as may be designated in this Compact and the bylaws;*
17. *Provide and receive information from, and cooperate with, law enforcement agencies;*
18. *Establish and elect an Executive Committee; and*
19. *Perform other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of audiology and speech-language pathology licensure and practice.*

**D. *The Commission shall have no authority to change or modify the laws of the member states which define the practice of audiology and speech-language pathology in the respective states.***

**E. *The Executive Committee***

*The Executive Committee shall have the power to act on behalf of the Commission, within the powers of the Commission, according to the terms of this Compact:*

1. *The Executive Committee shall be composed of ten (10) members:*

- a. *Seven (7) voting members who are elected by the Commission from the current membership of the Commission;*
  - b. *Two (2) ex officios, consisting of one (1) nonvoting member from a recognized national audiology professional association and one (1) nonvoting member from a recognized national speech-language pathology association; and*
  - c. *One (1) ex officio, nonvoting member from the recognized membership organization of the audiology and speech-language pathology licensing boards.*
- F. *The ex officio members shall be selected by their respective organizations.*
- 1. *The Commission may remove any member of the Executive Committee as provided in bylaws.*
  - 2. *The Executive Committee shall meet at least annually.*
  - 3. *The Executive Committee shall have the following duties and responsibilities:*
    - a. *Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;*
    - b. *Ensure Compact administration services are appropriately provided, contractual or otherwise;*
    - c. *Prepare and recommend the budget;*
    - d. *Maintain financial records on behalf of the Commission;*
    - e. *Monitor Compact compliance of member states and provide compliance reports to the Commission;*
    - f. *Establish additional committees as necessary; and*
    - g. *Other duties as provided in rules or bylaws.*
  - 4. *Meetings of the Commission or Executive Committee*  
*All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 10.*
  - 5. *The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Committee or other committees of the Commission must discuss:*
    - a. *Non-compliance of a member state with its obligations under the Compact;*
    - b. *The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;*
    - c. *Current, threatened, or reasonably anticipated litigation;*
    - d. *Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;*
    - e. *Accusing any person of a crime or formally censuring any person;*
    - f. *Disclosure of trade secrets or commercial or financial information that is privileged or confidential;*
    - g. *Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;*
    - h. *Disclosure of investigative records compiled for law enforcement purposes;*
    - i. *Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or*
    - j. *Matters specifically exempted from disclosure by federal or member state statute.*

6. *If a meeting, or portion of a meeting, is 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 exempting provision.*
7. *The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in minutes. All minutes and documents of meetings other than closed meetings shall be made available to members of the public upon request at the requesting person's expense. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.*
8. *Financing of the Commission*
  - a. *The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.*
  - b. *The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.*
  - c. *The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.*
9. *The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.*
10. *The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.*

G. *Qualified Immunity, Defense, and Indemnification*

1. *The members, officers, executive director, employees and representatives 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 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.*
2. *The Commission shall defend any member, officer, executive director, employee or representative 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.*
3. *The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative 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 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.*

#### **SECTION 9: DATA SYSTEM**

- A. *The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.*
- B. *Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:*
  - 1. *Identifying information;*
  - 2. *Licensure data;*
  - 3. *Adverse actions against a license or compact privilege;*
  - 4. *Non-confidential information related to alternative program participation;*
  - 5. *Any denial of application for licensure, and the reason(s) for denial; and*
  - 6. *Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.*
- C. *Investigative information pertaining to a licensee in any member state shall only be available to other member states.*
- D. *The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state shall be available to any other member state.*
- E. *Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.*
- F. *Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.*

#### **SECTION 10: RULEMAKING**

- A. *The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.*
- B. *If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four (4) years of the date of adoption of the rule, the rule shall have no further force and effect in any member state.*
- C. *Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.*
- D. *Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty (30) days in advance of the meeting at which the rule shall be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:*
  - 1. *On the website of the Commission or other publicly accessible platform; and*
  - 2. *On the website of each member state audiology or speech-language pathology licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.*
- E. *The Notice of Proposed Rulemaking shall include:*
  - 1. *The proposed time, date, and location of the meeting in which the rule shall be considered and voted upon;*
  - 2. *The text of the proposed rule or amendment and the reason for the proposed rule;*
  - 3. *A request for comments on the proposed rule from any interested person; and*

4. *The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.*
- F. *Prior to the adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.*
  - G. *The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:*
    1. *At least twenty-five (25) persons;*
    2. *A state or federal governmental subdivision or agency; or*
    3. *An association having at least twenty-five (25) members.*
  - H. *If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.*
    1. *All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.*
    2. *Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.*
    3. *All hearings shall be recorded. A copy of the recording shall be made available to any person upon request and at the requesting person's expense.*
    4. *Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.*
  - I. *Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.*
  - J. *If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.*
  - K. *The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.*
  - L. *Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:*
    1. *Meet an imminent threat to public health, safety, or welfare;*
    2. *Prevent a loss of Commission or member state funds; or*
    3. *Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.*
  - M. *The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision shall take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.*

#### **SECTION 11: OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT**

- A. *Dispute Resolution*
  1. *Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.*

2. *The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.*

**B. Enforcement**

1. *The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.*
2. *By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of litigation, including reasonable attorney's fees.*
3. *The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.*

**SECTION 12: DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT**

- A. *The Compact shall come into effect on the date on which the Compact statute is enacted into law in the 10th member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.*
- B. *Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.*
- C. *Any member state may withdraw from this Compact by enacting a statute repealing the same.*
  1. *A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.*
  2. *Withdrawal shall not affect the continuing requirement of the withdrawing state's audiology or speech-language pathology licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.*
- D. *Nothing contained in this Compact shall be construed to invalidate or prevent any audiology or speech-language pathology licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.*
- E. *This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.*

**SECTION 13: CONSTRUCTION AND SEVERABILITY**

*This Compact shall be liberally construed so as to effectuate the purposes thereof. 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 any member state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held 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 member state affected as to all severable matters.*

**SECTION 14: BINDING EFFECT OF COMPACT AND OTHER LAWS**

- A. *Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.*
- B. *All laws in a member state in conflict with the Compact are superseded to the extent of the conflict.*
- C. *All lawful actions of the Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states.*

- D. All agreements between the Commission and the member states are binding in accordance with their terms.*
- E. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.*

**SECTION 15: APPLICABILITY TO KENTUCKY STATE GOVERNMENT**

*In order to clarify the effect of certain provisions of this Compact and to ensure that the rights and responsibilities of the various branches of government are maintained, the following shall be in effect in this state:*

- A. By entering into this Compact, this state authorizes the licensing board as defined in Section 2.G. of this Compact and as created by KRS Chapter 334A to implement the provisions of this Compact.*
- B. Notwithstanding any provision of this Compact to the contrary:*
- 1. When a rule is adopted pursuant to Section 10 of this Compact, the licensing board of this state as defined by Section 2.G. of this Compact shall have sixty (60) days to review the rule for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. Failure by the licensing board of this state as defined by Section 2.G. of this Compact to promulgate a rule adopted by the Audiology and Speech-Language Pathology Compact Commission as an administrative regulation pursuant to KRS Chapter 13A shall result in the initiation of the process for withdrawal as set forth in Section 12 of this Compact. Nothing in these provisions shall negate the applicability and effect of Section 10 of this Compact to this state.*
  - 2. If the proposed administrative regulation is found deficient and the deficiency is not resolved pursuant to KRS 13A.330 or 13A.335, the provisions of Section 11 of this Compact shall apply. If the procedures under Section 11 of this Compact fail to resolve an issue, the provisions of Section 12 of this Compact shall apply.*
  - 3. If the Audiology and Speech-Language Pathology Compact Commission created by Section 8 of this Compact exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Compact, or the powers granted under this Compact, then such an action by the commission shall be invalid and have no force or effect.*
- C. Section 8.F.8. of this Compact pertaining to the financing of the commission shall not be interpreted to obligate the general fund of this state. Any funds used to finance this Compact shall be from money collected pursuant to KRS 334A.120.*
- D. This Compact shall apply only to those audiologists or speech-language pathologists who practice or work under a compact privilege.*

Signed by Governor March 18, 2021.

**CHAPTER 46**

**( HB 38 )**

AN ACT relating to the Psychology Interjurisdictional Compact.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 319 IS CREATED TO READ AS FOLLOWS:

**ARTICLE I**

**PURPOSE**

*Whereas, states license psychologists, in order to protect the public through verification of education, training and experience and ensure accountability for professional practice;*

*Whereas, this Compact is intended to regulate the day to day practice of telepsychology (i.e. the provision of psychological services using telecommunication technologies) by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority;*

*Whereas, this Compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for thirty (30) days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority;*

*Whereas, this Compact is intended to authorize State Psychology Regulatory Authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state;*

*Whereas, this Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety;*

*Whereas, this Compact does not apply when a psychologist is licensed in both the Home and Receiving States; and*

*Whereas, this Compact does not apply to permanent in-person, face-to-face practice, and it does allow for authorization of temporary psychological practice;*

*Consistent with these principles, this Compact is designed to achieve the following purposes and objectives:*

- 1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state in which the psychologist is not licensed to practice psychology;*
- 2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;*
- 3. Encourage the cooperation of Compact States in the areas of psychology licensure and regulation;*
- 4. Facilitate the exchange of information between Compact States regarding psychologist licensure, adverse actions and disciplinary history;*
- 5. Promote compliance with the laws governing psychological practice in each Compact State; and*
- 6. Invest all Compact States with the authority to hold licensed psychologists accountable through the mutual recognition of Compact State licenses.*

## **ARTICLE II**

### **DEFINITIONS**

- A. "Adverse Action" means: any action taken by a State Psychology Regulatory Authority which finds a violation of a statute or regulation that is identified by the State Psychology Regulatory Authority as discipline and is a matter of public record.*
- B. "Association of State and Provincial Psychology Boards (ASPPB)" means: the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.*
- C. "Authority to Practice Interjurisdictional Telepsychology" means: a licensed psychologist's authority to practice telepsychology, within the limits authorized under this Compact, in another Compact State.*
- D. "Bylaws" means: those Bylaws established by the Psychology Interjurisdictional Compact Commission pursuant to Article X for its governance, or for directing and controlling its actions and conduct.*
- E. "Client/Patient" means: the recipient of psychological services, whether psychological services are delivered in the context of healthcare, corporate, supervision, and/or consulting services.*
- F. "Commissioner" means: the voting representative appointed by each State Psychology Regulatory Authority pursuant to Article X.*
- G. "Compact State" means: a state, the District of Columbia, or United States territory that has enacted this Compact legislation and which has not withdrawn pursuant to Article XIII, Section C or been terminated pursuant to Article XII, Section B.*
- H. "Coordinated Licensure Information System" also referred to as "Coordinated Database" means: an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.*

- I. *"Confidentiality" means: the principle that data or information is not made available or disclosed to unauthorized persons and/or processes.*
- J. *"Day" means: any part of a day in which psychological work is performed.*
- K. *"Distant State" means: the Compact State where a psychologist is physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services.*
- L. *"E.Passport" means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.*
- M. *"Executive Board" means: a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.*
- N. *"Home State" means: a Compact State where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one Compact State and is practicing under the Authorization to Practice Interjurisdictional Telepsychology, the Home State is the Compact State where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to Practice, the Home State is any Compact State where the psychologist is licensed.*
- O. *"Identity History Summary" means: a summary of information retained by the Federal Bureau of Investigation, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.*
- P. *"In-Person, Face-to-Face" means: interactions in which the psychologist and the client/patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.*
- Q. *"Interjurisdictional Practice Certificate (IPC)" means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that grants temporary authority to practice based on notification to the State Psychology Regulatory Authority of intention to practice temporarily, and verification of one's qualifications for such practice.*
- R. *"License" means: authorization by a State Psychology Regulatory Authority to engage in the independent practice of psychology, which would be unlawful without the authorization.*
- S. *"Non-Compact State" means: any State which is not at the time a Compact State.*
- T. *"Psychologist" means: an individual licensed for the independent practice of psychology.*
- U. *"Psychology Interjurisdictional Compact Commission" also referred to as "Commission" means: the national administration of which all Compact States are members.*
- V. *"Receiving State" means: a Compact State where the client/patient is physically located when the telepsychological services are delivered.*
- W. *"Rule" means: a written statement by the Psychology Interjurisdictional Compact Commission promulgated pursuant to Article XI of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a Compact State, and includes the amendment, repeal or suspension of an existing rule.*
- X. *"Significant Investigatory Information" means:*
1. *Investigative information that a State Psychology Regulatory Authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or*
  2. *Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified and/or had an opportunity to respond.*
- Y. *"State" means: a state, commonwealth, territory, or possession of the United States, and the District of Columbia.*

- Z. *"State Psychology Regulatory Authority" means: the Board, office or other agency with the legislative mandate to license and regulate the practice of psychology.*
- AA. *"Telepsychology" means: the provision of psychological services using telecommunication technologies.*
- BB. *"Temporary Authorization to Practice" means: a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this Compact, in another Compact State.*
- CC. *"Temporary In-Person, Face-to-Face Practice" means: where a psychologist is physically present (not through the use of telecommunications technologies), in the Distant State to provide for the practice of psychology for thirty (30) days within a calendar year and based on notification to the Distant State.*

### ARTICLE III

#### HOME STATE LICENSURE

- A. *The Home State shall be a Compact State where a psychologist is licensed to practice psychology.*
- B. *A psychologist may hold one or more Compact State licenses at a time. If the psychologist is licensed in more than one Compact State, the Home State is the Compact State where the psychologist is physically present when the services are delivered as authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.*
- C. *Any Compact State may require a psychologist not previously licensed in a Compact State to obtain and retain a license to be authorized to practice in the Compact State under circumstances not authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.*
- D. *Any Compact State may require a psychologist to obtain and retain a license to be authorized to practice in a Compact State under circumstances not authorized by Temporary Authorization to Practice under the terms of this Compact.*
- E. *A Home State's license authorizes a psychologist to practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only if the Compact State:*
  - 1. *Currently requires the psychologist to hold an active E.Passport;*
  - 2. *Has a mechanism in place for receiving and investigating complaints about licensed individuals;*
  - 3. *Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;*
  - 4. *Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten (10) years after activation of the Compact; and*
  - 5. *Complies with the Bylaws and Rules of the Commission.*
- F. *A Home State's license grants Temporary Authorization to Practice to a psychologist in a Distant State only if the Compact State:*
  - 1. *Currently requires the psychologist to hold an active IPC;*
  - 2. *Has a mechanism in place for receiving and investigating complaints about licensed individuals;*
  - 3. *Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;*
  - 4. *Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten (10) years after activation of the Compact; and*
  - 5. *Complies with the Bylaws and Rules of the Commission.*

### ARTICLE IV

#### COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

- A. *Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice telepsychology in other Compact States (Receiving States) in which the psychologist*

*is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.*

- B.** *To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:*
- 1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:*
    - a. Regionally accredited by an accrediting body recognized by the United States Department of Education to grant graduate degrees, OR authorized by Provincial Statute or Royal Charter to grant doctoral degrees; OR*
    - b. A foreign college or university deemed to be equivalent to 1.a. above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; AND*
  - 2. Hold a graduate degree in psychology that meets the following criteria:*
    - a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;*
    - b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;*
    - c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;*
    - d. The program must consist of an integrated, organized sequence of study;*
    - e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;*
    - f. The designated director of the program must be a psychologist and a member of the core faculty;*
    - g. The program must have an identifiable body of students who are matriculated in that program for a degree;*
    - h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;*
    - i. The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study for doctoral degree and a minimum of one (1) academic year of full-time graduate study for master's degree; and*
    - j. The program includes an acceptable residency as defined by the Rules of the Commission;*
  - 3. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;*
  - 4. Have no history of adverse action that violates the Rules of the Commission;*
  - 5. Have no criminal record history reported on an Identity History Summary that violates the Rules of the Commission;*
  - 6. Possess a current, active E.Passport;*
  - 7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and*
  - 8. Meet other criteria as defined by the Rules of the Commission.*
- C.** *The Home State maintains authority over the license of any psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology.*



- D. A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's scope of practice. A Receiving State may, in accordance with that state's due process law, limit or revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the Receiving State and may take any other necessary actions under the Receiving State's applicable law to protect the health and safety of the Receiving State's citizens. If a Receiving State takes action, the state shall promptly notify the Home State and the Commission.*
- E. If a psychologist's license in any Home State, another Compact State, or any Authority to Practice Interjurisdictional Telepsychology in any Receiving State, is restricted, suspended or otherwise limited, the E.Passport shall be revoked and therefore the psychologist shall not be eligible to practice telepsychology in a Compact State under the Authority to Practice Interjurisdictional Telepsychology.*

#### ARTICLE V

##### COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

- A. Compact States shall also recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice temporarily in other Compact States (Distant States) in which the psychologist is not licensed, as provided in the Compact.*
- B. To exercise the Temporary Authorization to Practice under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:*
- 1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:*
    - a. Regionally accredited by an accrediting body recognized by the United States Department of Education to grant graduate degrees, OR authorized by Provincial Statute or Royal Charter to grant doctoral degrees; OR*
    - b. A foreign college or university deemed to be equivalent to 1.a. above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; AND*
  - 2. Hold a graduate degree in psychology that meets the following criteria:*
    - a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;*
    - b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;*
    - c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;*
    - d. The program must consist of an integrated, organized sequence of study;*
    - e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;*
    - f. The designated director of the program must be a psychologist and a member of the core faculty;*
    - g. The program must have an identifiable body of students who are matriculated in that program for a degree;*
    - h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;*
    - i. The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study for doctoral degrees and a minimum of one (1) academic year of full-time graduate study for master's degree;*
    - j. The program includes an acceptable residency as defined by the Rules of the Commission;*
  - 3. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;*

4. *Have no history of adverse action that violate the Rules of the Commission;*
  5. *Have no criminal record history that violates the Rules of the Commission;*
  6. *Possess a current, active IPC;*
  7. *Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and*
  8. *Meet other criteria as defined by the Rules of the Commission.*
- C. *A psychologist practicing into a Distant State under the Temporary Authorization to Practice shall practice within the scope of practice authorized by the Distant State.*
- D. *A psychologist practicing into a Distant State under the Temporary Authorization to Practice will be subject to the Distant State's authority and law. A Distant State may, in accordance with that state's due process law, limit or revoke a psychologist's Temporary Authorization to Practice in the Distant State and may take any other necessary actions under the Distant State's applicable law to protect the health and safety of the Distant State's citizens. If a Distant State takes action, the state shall promptly notify the Home State and the Commission.*
- E. *If a psychologist's license in any Home State, another Compact State, or any Temporary Authorization to Practice in any Distant State, is restricted, suspended or otherwise limited, the IPC shall be revoked and therefore the psychologist shall not be eligible to practice in a Compact State under the Temporary Authorization to Practice.*

#### ARTICLE VI

##### CONDITIONS OF TELEPSYCHOLOGY PRACTICE IN A RECEIVING STATE

- A. *A psychologist may practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate State Psychology Regulatory Authority, as defined in the Rules of the Commission, and under the following circumstances:*
1. *The psychologist initiates a client/patient contact in a Home State via telecommunications technologies with a client/patient in a Receiving State;*
  2. *Other conditions regarding telepsychology as determined by Rules promulgated by the Commission.*

#### ARTICLE VII

##### ADVERSE ACTIONS

- A. *A Home State shall have the power to impose adverse action against a psychologist's license issued by the Home State. A Distant State shall have the power to take adverse action on a psychologist's Temporary Authorization to Practice within that Distant State.*
- B. *A Receiving State may take adverse action on a psychologist's Authority to Practice Interjurisdictional Telepsychology within that Receiving State. A Home State may take adverse action against a psychologist based on an adverse action taken by a Distant State regarding temporary in-person, face-to-face practice.*
- C. *If a Home State takes adverse action against a psychologist's license, that psychologist's Authority to Practice Interjurisdictional Telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's Temporary Authorization to Practice is terminated and the IPC is revoked.*
1. *All Home State disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the Rules promulgated by the Commission. A Compact State shall report adverse actions in accordance with the Rules of the Commission.*
  2. *In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the Rules of the Commission.*
  3. *Other actions may be imposed as determined by the Rules promulgated by the Commission.*
- D. *A Home State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a Receiving State as it would*

*if such conduct had occurred by a licensee within the Home State. In such cases, the Home State's law shall control in determining any adverse action against a psychologist's license.*

- E. A Distant State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under Temporary Authorization Practice which occurred in that Distant State as it would if such conduct had occurred by a licensee within the Home State. In such cases, Distant State's law shall control in determining any adverse action against a psychologist's Temporary Authorization to Practice.*
- F. Nothing in this Compact shall override a Compact State's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the Compact State's law. Compact States must require psychologists who enter any alternative programs to not provide telepsychology services under the Authority to Practice Interjurisdictional Telepsychology or provide temporary psychological services under the Temporary Authorization to Practice in any other Compact State during the term of the alternative program.*
- G. No other judicial or administrative remedies shall be available to a psychologist in the event a Compact State imposes an adverse action pursuant to subsection C, above.*

#### ARTICLE VIII

##### ADDITIONAL AUTHORITIES INVESTED IN A COMPACT STATE'S PSYCHOLOGY REGULATORY AUTHORITY

- A. In addition to any other powers granted under state law, a Compact State's Psychology Regulatory Authority shall have the authority under this Compact to:*
  - 1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a Compact State's Psychology Regulatory Authority for the attendance and testimony of witnesses, and/or the production of evidence from another Compact State shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing State Psychology Regulatory Authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and*
  - 2. Issue cease and desist and/or injunctive relief orders to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice.*
  - 3. During the course of any investigation, a psychologist may not change his/her Home State licensure. A Home State Psychology Regulatory Authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The Home State Psychology Regulatory Authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her Home State licensure. The Commission shall promptly notify the new Home State of any such decisions as provided in the Rules of the Commission. All information provided to the Commission or distributed by Compact States pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by Compact States.*

#### ARTICLE IX

##### COORDINATED LICENSURE INFORMATION SYSTEM

- A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists individuals to whom this Compact is applicable in all Compact States as defined by the Rules of the Commission.*
- B. Notwithstanding any other provision of state law to the contrary, a Compact State shall submit a uniform data set to the Coordinated Database on all licensees as required by the Rules of the Commission, including:*
  - 1. Identifying information;*
  - 2. Licensure data;*

3. *Significant investigatory information;*
  4. *Adverse actions against a psychologist's license;*
  5. *An indicator that a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice is revoked;*
  6. *Non-confidential information related to alternative program participation information;*
  7. *Any denial of application for licensure, and the reasons for such denial; and*
  8. *Other information which may facilitate the administration of this Compact, as determined by the Rules of the Commission.*
- C. *The Coordinated Database administrator shall promptly notify all Compact States of any adverse action taken against, or significant investigative information on, any licensee in a Compact State.*
- D. *Compact States reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the Compact State reporting the information.*
- E. *Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the Compact State reporting the information shall be removed from the Coordinated Database.*

#### ARTICLE X

#### ESTABLISHMENT OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION

- A. *The Compact States hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.*
1. *The Commission is a body politic and an instrumentality of the Compact States.*
  2. *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.*
  3. *Nothing in this Compact shall be construed to be a waiver of sovereign immunity.*
- B. *Membership, Voting, and Meetings*
1. *The Commission shall consist of one voting representative appointed by each Compact State who shall serve as that state's Commissioner. The State Psychology Regulatory Authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the Compact State. This delegate shall be limited to:*
    - a. *Executive Director, Executive Secretary or similar executive;*
    - b. *Current member of the State Psychology Regulatory Authority of a Compact State; OR*
    - c. *Designee empowered with the appropriate delegate authority to act on behalf of the Compact State.*
  2. *Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compact State in which the vacancy exists.*
  3. *Each Commissioner shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of Bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.*
  4. *The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.*
  5. *All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article XI.*

6. *The Commission may convene in a closed, non-public meeting if the Commission must discuss:*
    - a. *Non-compliance of a Compact State with its obligations under the Compact;*
    - b. *The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;*
    - c. *Current, threatened, or reasonably anticipated litigation against the Commission;*
    - d. *Negotiation of contracts for the purchase or sale of goods, services or real estate;*
    - e. *Accusation against any person of a crime or formally censuring any person;*
    - f. *Disclosure of trade secrets or commercial or financial information which is privileged or confidential;*
    - g. *Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;*
    - h. *Disclosure of investigatory records compiled for law enforcement purposes;*
    - i. *Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or*
    - j. *Matters specifically exempted from disclosure by federal and state statute.*
  7. *If a meeting, or portion of a meeting, is 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 exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefor, including a description of the views expressed. 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 only by a majority vote of the Commission or order of a court of competent jurisdiction.*
- C. *The Commission shall, by a majority vote of the Commissioners, prescribe Bylaws and/or Rules 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:*
1. *Establishing the fiscal year of the Commission;*
  2. *Providing reasonable standards and procedures:*
    - a. *For the establishment and meetings of other committees; and*
    - b. *Governing any general or specific delegation of any authority or function of the Commission;*
  3. *Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;*
  4. *Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;*
  5. *Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any Compact State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;*
  6. *Promulgating a Code of Ethics to address permissible and prohibited activities of Commission members and employees;*

7. *Providing a mechanism for concluding 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;*
8. *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 Compact States;*
9. *The Commission shall maintain its financial records in accordance with the Bylaws; and*
10. *The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.*

**D. *The Commission shall have the following powers:***

1. *The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rule shall have the force and effect of law and shall be binding in all Compact States;*
2. *To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Psychology Regulatory Authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;*
3. *To purchase and maintain insurance and bonds;*
4. *To borrow, accept or contract for services of personnel, including but not limited to employees of a Compact State;*
5. *To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;*
6. *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 strive to avoid any appearance of impropriety and/or conflict of interest;*
7. *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 strive to avoid any appearance of impropriety;*
8. *To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed;*
9. *To establish a budget and make expenditures;*
10. *To borrow money;*
11. *To appoint committees, including advisory committees composed of Members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the Bylaws;*
12. *To provide and receive information from, and to cooperate with, law enforcement agencies;*
13. *To adopt and use an official seal; and*
14. *To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice and telepsychology practice.*

**E. *The Executive Board***

*The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of this Compact.*

1. *The Executive Board shall be composed of six (6) members:*
  - a. *Five (5) voting members who are elected from the current membership of the Commission by the Commission;*

- b. *One ex officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.*
2. *The ex officio member must have served as staff or member on a State Psychology Regulatory Authority and will be selected by its respective organization.*
3. *The Commission may remove any member of the Executive Board as provided in Bylaws.*
4. *The Executive Board shall meet at least annually.*
5. *The Executive Board shall have the following duties and responsibilities:*
  - a. *Recommend to the entire Commission changes to the Rules or Bylaws, changes to this Compact legislation, fees paid by Compact States such as annual dues, and any other applicable fees;*
  - b. *Ensure Compact administration services are appropriately provided, contractual or otherwise;*
  - c. *Prepare and recommend the budget;*
  - d. *Maintain financial records on behalf of the Commission;*
  - e. *Monitor Compact compliance of member states and provide compliance reports to the Commission;*
  - f. *Establish additional committees as necessary; and*
  - g. *Other duties as provided in Rules or Bylaws.*

**F. *Financing of the Commission***

1. *The Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.*
2. *The Commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.*
3. *The Commission may levy on and collect an annual assessment from each Compact State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all Compact States.*
4. *The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Compact States, except by and with the authority of the Compact State.*
5. *The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its Bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.*

**G. *Qualified Immunity, Defense, and Indemnification***

1. *The members, officers, Executive Director, employees and representatives 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.*
2. *The Commission shall defend any member, officer, Executive Director, employee or representative 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.*

3. *The Commission shall indemnify and hold harmless any member, officer, Executive Director, employee or representative 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 XI  
RULEMAKING**

- A. *The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.*
- B. *If a majority of the legislatures of the Compact States rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any Compact State.*
- C. *Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.*
- D. *Prior to promulgation and adoption of a final rule or Rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:*
  1. *On the website of the Commission; and*
  2. *On the website of each Compact States' Psychology Regulatory Authority or the publication in which each state would otherwise publish proposed rules.*
- E. *The Notice of Proposed Rulemaking shall include:*
  1. *The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;*
  2. *The text of the proposed rule or amendment and the reason for the proposed rule;*
  3. *A request for comments on the proposed rule from any interested person; and*
  4. *The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.*
- F. *Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.*
- G. *The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:*
  1. *At least twenty-five (25) persons who submit comments independently of each other;*
  2. *A governmental subdivision or agency; or*
  3. *A duly appointed person in an association that has at least twenty-five (25) members.*
- H. *If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.*
  1. *All persons wishing to be heard at the hearing shall notify the Executive Director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.*
  2. *Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.*



3. *No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.*
4. *Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.*
- I. *Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.*
- J. *The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.*
- K. *If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.*
- L. *Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:*
  1. *Meet an imminent threat to public health, safety, or welfare;*
  2. *Prevent a loss of Commission or Compact State funds;*
  3. *Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or*
  4. *Protect public health and safety.*
- M. *The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.*

## ARTICLE XII

### OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

- A. *Oversight*
  1. *The Executive, Legislative and Judicial branches of state government in each Compact State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.*
  2. *All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a Compact State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.*
  3. *The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.*
- B. *Default, Technical Assistance, and Termination*
  1. *If the Commission determines that a Compact State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:*

- a. *Provide written notice to the defaulting state and other Compact States of the nature of the default, the proposed means of remedying the default and/or any other action to be taken by the Commission; and*
    - b. *Provide remedial training and specific technical assistance regarding the default.*
  2. *If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the Compact States, and all rights, privileges and benefits conferred by this Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.*
  3. *Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the Compact States.*
  4. *A Compact State which has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.*
  5. *The Commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.*
  6. *The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the state of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.*
- C. *Dispute Resolution*
1. *Upon request by a Compact State, the Commission shall attempt to resolve disputes related to the Compact which arise among Compact States and between Compact and Non-Compact States.*
  2. *The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.*
- D. *Enforcement*
1. *The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.*
  2. *By majority vote, the Commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a Compact State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and Bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.*
  3. *The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.*

### ARTICLE XIII

#### DATE OF IMPLEMENTATION OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENTS

- A. *The Compact shall come into effect on the date on which the Compact is enacted into law in the seventh Compact State. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.*
- B. *Any state which joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.*

- C. *Any Compact State may withdraw from this Compact by enacting a statute repealing the same.*
1. *A Compact State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.*
  2. *Withdrawal shall not affect the continuing requirement of the withdrawing State's Psychology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.*
- D. *Nothing contained in this Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a Compact State and a Non-Compact State which does not conflict with the provisions of this Compact.*
- E. *This Compact may be amended by the Compact States. No amendment to this Compact shall become effective and binding upon any Compact State until it is enacted into the law of all Compact States.*

#### ARTICLE XIV

##### CONSTRUCTION AND SEVERABILITY

*This Compact shall be liberally construed so as to effectuate the purposes thereof. If this Compact shall be held contrary to the constitution of any state member thereto, the Compact shall remain in full force and effect as to the remaining Compact States.*

#### ARTICLE XV

##### APPLICABILITY OF KENTUCKY STATE GOVERNMENT

*In order to clarify the effect of certain provisions of this Compact and to ensure that the rights and responsibilities of the various branches of government are maintained, the following shall be in effect in this state:*

- A. *By entering into this Compact, this state authorizes the licensing board as defined in Article II. Z. of this Compact and as created by KRS Chapter 319 to implement the provisions of this Compact.*
- B. *Notwithstanding any provision of this Compact to the contrary:*
1. *When a rule is adopted pursuant to Article XI of this Compact, the licensing board of this state as defined by Article II. Z. of this Compact shall have sixty (60) days to review the rule for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. Failure by the licensing board of this state as defined by Article II. Z. of this Compact to promulgate a rule adopted by the Psychology Interjurisdictional Compact Commission as an administrative regulation pursuant to KRS Chapter 13A shall result in withdrawal as set forth in Article XIII of this Compact. Nothing in these provisions shall negate the applicability of a Commission rule or Article XI of this Compact to this state.*
  2. *If the proposed administrative regulation is found deficient and the deficiency is not resolved pursuant to KRS 13A.330 or 13A.335, the provisions of Article XII of this Compact shall apply. If the deficiency is resolved in a manner determined by the Commission to be inconsistent with this Compact or its rules, or if the procedures under Article XII of this Compact fail to resolve an issue, the withdrawal provisions of Article XIII of this Compact shall apply.*
  3. *If a court of competent jurisdiction determines that the Psychology Interjurisdictional Compact Commission created by Article X of this Compact exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Compact, or the powers granted under this Compact, then such an action by the commission shall be invalid and have no force or effect.*
- C. *Article X. F. of this Compact pertaining to the financing of the commission shall not be interpreted to obligate the general fund of this state. Any funds used to finance this Compact shall be from money collected pursuant to KRS 319.131.*
- D. *This Compact shall apply only to those psychologists who practice or work under a compact privilege.*

Signed by Governor March 18, 2021.

## CHAPTER 47

## ( HB 404 )

AN ACT relating to child support.

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

➔Section 1. KRS 403.211 is amended to read as follows:

- (1) An action to establish or enforce child support may be initiated by the parent, custodian, or agency substantially contributing to the support of the child. The action may be brought in the county in which the child resides or where the defendant resides.
- (2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.
- (3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:
  - (a) A child's extraordinary medical or dental needs;
  - (b) A child's extraordinary educational, job training, or special needs;
  - (c) Either parent's own extraordinary needs, such as medical expenses;
  - (d) The independent financial resources, if any, of the child or children;
  - (e) Combined monthly adjusted parental gross income in excess of the Kentucky child support guidelines;
  - (f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. However, no such agreement shall be the basis of any deviation if public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act; and
  - (g) Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.
- (4) "Extraordinary" as used in this section shall be determined by the court in its discretion.
- (5) When a party has defaulted or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs of the child or the previous standard of living of the child, whichever is greater. An order entered by default or due to insufficient evidence to determine gross income may be modified upward and arrearages awarded from the date of the original order if evidence of gross income is presented within two (2) years which would have established a higher amount of child support pursuant to the child support guidelines set forth in KRS 403.212.
- (6) The court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.
- (7)
  - (a) Pursuant to 45 C.F.R. sec. 303.31(a)(2), for the purposes of this section, "health care coverage" includes fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to a dependent child. If health care coverage is reasonable in cost and accessible to either parent at the time the request for coverage is made, the court shall order the parent to obtain or maintain coverage, and the court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, the cost of health care coverage for the child, in addition to the support ordered under the child support guidelines.
  - (b) A parent, who has one hundred percent (100%) of the combined monthly adjusted parental gross income, shall be entitled to a reduction in gross income of the entire amount of premiums incurred and paid.

- (c) The court shall order the cost of health care coverage of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:
1. A judicial directive designating which parent shall have financial responsibility for providing health care coverage for the dependent child, which shall include but not be limited to health care coverage, payments of necessary health care deductibles or copayments;
  2. If appropriate, cash medical support. "Cash medical support" means an amount to be paid toward the cost of health care coverage, fixed payments for ongoing medical costs, extraordinary medical expenses, or any combination thereof; and
  3. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.
- (d) If health care coverage is not reasonable in cost and accessible at the time the request for the coverage is made, the court order shall provide for cash medical support until health care coverage becomes reasonable in cost and accessible.
- (8) (a) For purposes of this section, "reasonable in cost" means that the cost of coverage to the responsible parent does not exceed five percent (5%) of his or her gross income. The five percent (5%) standard shall apply to the cost of adding the child to an existing policy, the difference in the cost between a single and a family policy, or the cost of acquiring a separate policy to cover the child. If the parties agree or the court finds good cause exists, the court may order health care coverage in excess of five percent (5%) of the parent's gross income.
- (b) For purposes of this section, "accessible" means that there are providers who meet the health care needs of the child and who are located no more than sixty (60) minutes or sixty (60) miles from the child's primary residence, except that nothing shall prohibit use of a provider located more than sixty (60) minutes or sixty (60) miles from the child's primary residence.
- (9) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their combined monthly adjusted parental gross incomes. "Extraordinary medical expenses" means uninsured expenses in excess of **two hundred fifty dollars (\$250)**~~one hundred dollars (\$100)~~ per child per calendar year. "Extraordinary medical expenses" includes but is not limited to the costs that are reasonably necessary for medical, surgical, dental, orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.
- (10) The court order shall include the Social Security numbers, provided in accordance with KRS 403.135, of all parties subject to a support order.
- (11) In any case administered by the Cabinet for Health and Family Services, if the parent ordered to provide health care coverage is enrolled through an insurer but fails to enroll the child under family coverage, the other parent or the Cabinet for Health and Family Services may, upon application, enroll the child.
- (12) In any case administered by the cabinet, information received or transmitted shall not be published or be open for public inspection, including reasonable evidence of domestic violence or child abuse if the disclosure of the information could be harmful to the custodial parent or the child of the parent. Necessary information and records may be furnished as specified by KRS 205.175.
- (13) In the case in which a parent is obligated to provide health care coverage, and changes employment, and the new employer provides health care coverage, the Cabinet for Health and Family Services shall transfer notice of the provision for coverage for the child to the employer, which shall operate to enroll this child in the obligated parent's health plan, unless the obligated parent contests the notice as specified by KRS Chapter 13B.
- (14) Notwithstanding any other provision of this section, any wage or income shall not be exempt from attachment or assignment for the payment of current child support or owed or to-be-owed child support.
- (15) A payment of money received by a child as a result of a parental disability shall be credited against the child support obligation of the parent. A payment shall not be counted as income to either parent when calculating a child support obligation. An amount received in excess of the child support obligation shall be credited against

a child support arrearage owed by the parent that accrued subsequent to the date of the parental disability, but shall not be applied to an arrearage that accrued prior to the date of disability. The date of disability shall be as determined by the paying agency.

➔Section 2. KRS 403.212 is amended to read as follows:

- (1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.
- (2) For the purposes of the child support guidelines:
  - (a) "Income" means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed;~~;~~
  - (b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps;~~;~~
  - (c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight-line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues;~~;~~
  - (d) *"Self-support reserve" means a low-income adjustment amount to the obligated parent of nine hundred fifteen dollars (\$915) per month that considers the subsistence needs of the parent with a limited ability to pay in accordance with 45 C.F.R. sec. 302.56(c)(1)(ii), and as applied under subsection (3) of this section;*
  - ~~(e)(4)~~
    1. *If there is a finding that a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a **finding of voluntary unemployment or underemployment and a** determination of potential income shall not be made for a parent who is incarcerated, physically or mentally incapacitated, or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility;*
    2. *A court may find a parent is voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation; and*
    3. *Imputation of potential income, when applicable, shall include consideration of the following circumstances of the parents, to the extent known:*
      - a. *Assets and residence;*
      - b. *Employment, earning history, and job skills;*
      - c. *Educational level, literacy, age, health, and criminal record that could impair the ability to gain or continue employment;*
      - d. *Record of seeking work;*

- e. *Local labor market, including availability of employment for which the parent may be qualified and employable;*
- f. *Prevailing earnings in the local labor market; and*
- g. *Other relevant background factors, including employment barriers;* ~~[- Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.]~~

~~(f)(e)~~ "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines; ~~[-]~~

~~(g)(f)~~ Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include, but shall not be limited to, income tax returns, paystubs, employer statements, or receipts and expenses if self-employed; ~~[-]~~

~~(h)(g)~~ "Combined monthly adjusted parental gross income" means the combined monthly gross incomes of both parents, less any of the following payments made by the parent:

1. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the court;
2. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and
3. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children; ~~and~~ ~~[-]~~

~~(i)(h)~~ "Split custody arrangement" means a situation where each parent is the residential custodian for one (1) or more children for whom the parents share a joint legal responsibility.

(3) (a) *Except as provided in paragraph (b) of this subsection*, the child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their combined monthly adjusted parental gross income.

(b) *If the monthly adjusted gross income of the obligated parent and the number of children for whom support is being determined fall within the following defined areas, which represent the self-support reserve, the basic child support obligation shall be calculated by using the monthly adjusted gross income of the obligated parent only to provide the obligated parent with the self-support reserve:*

1. *Equal to or less than one thousand one hundred dollars (\$1,100) with one (1) or more children;*
2. *Equal to or less than one thousand three hundred dollars (\$1,300) with two (2) or more children;*
3. *Equal to or less than one thousand four hundred dollars (\$1,400) with three (3) or more children;*
4. *Equal to or less than one thousand five hundred dollars (\$1,500) with four (4) or more children; or*
5. *Equal to or less than one thousand six hundred dollars (\$1,600) with six (6) or more children.*

(4) The child support obligation shall be the appropriate amount for the number of children in the table for whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty dollars (\$60) per month.

(5) The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.

- (6) The child support obligation in a split custody arrangement shall be calculated in the following manner:
  - (a) Two (2) separate child support obligation worksheets shall be prepared, one (1) for each household, using the number of children born of the relationship in each separate household, rather than the total number of children born of the relationship.
  - (b) The ~~parent~~~~[nonresidential custodian]~~ with the greater monthly obligation amount shall pay the difference between the obligation amounts, as determined by the worksheets, to the other parent.
- (7) The child support guidelines table is as follows:

COMBINED  
MONTHLY  
ADJUSTED  
PARENTAL  
GROSS

INCOME	ONE CHILD	TWO CHILDREN	THREE	FOUR	FIVE	SIX OR MORE
\$0	\$60	\$60	\$60	\$60	\$60	\$60
100	60	60	60	60	60	60
200	60	60	60	60	60	60
300	60	60	60	60	60	60
400	60	60	60	60	60	60
500	60	60	60	60	60	60
600	60	60	60	60	60	60
700	60	60	60	60	60	60
800	60	60	60	60	60	60
900	60	60	60	60	60	60
1,000	85	85	85	85	85	85
1,100	148	150	152	154	155	157
1,200	200	231	234	237	239	242
1,300	216	312	316	320	323	327
1,400	231	339	398	403	407	412
1,500	247	362	437	486	491	497
1,600	262	384	464	518	570	582
1,700	277	406	491	548	603	655
1,800	292	428	517	578	635	691
1,900	307	450	544	607	668	726
2,000	322	472	570	637	701	762
2,100	337	494	597	667	734	797
2,200	352	516	624	697	766	833
2,300	367	538	650	726	799	869
2,400	382	560	677	756	832	904
2,500	397	582	704	786	865	940



2,600	412	604	730	816	897	975
2,700	427	626	757	845	930	1,011
2,800	442	648	783	875	963	1,046
2,900	457	670	810	905	995	1,082
3,000	472	692	837	935	1,028	1,118
3,100	487	714	863	964	1,061	1,153
3,200	502	737	890	994	1,094	1,189
3,300	517	759	917	1,024	1,126	1,224
3,400	532	781	943	1,054	1,159	1,260
3,500	547	803	970	1,083	1,192	1,295
3,600	562	825	997	1,113	1,224	1,331
3,700	577	847	1,023	1,143	1,257	1,367
3,800	592	869	1,050	1,173	1,290	1,402
3,900	607	891	1,076	1,202	1,323	1,438
4,000	621	912	1,102	1,230	1,353	1,471
4,100	634	931	1,125	1,256	1,382	1,502
4,200	647	950	1,148	1,282	1,410	1,533
4,300	660	969	1,171	1,308	1,439	1,564
4,400	673	988	1,194	1,334	1,467	1,595
4,500	686	1,007	1,217	1,359	1,495	1,625
4,600	699	1,026	1,240	1,385	1,524	1,656
4,700	712	1,045	1,263	1,411	1,552	1,687
4,800	725	1,064	1,286	1,437	1,580	1,718
4,900	738	1,084	1,309	1,463	1,609	1,749
5,000	751	1,103	1,332	1,488	1,637	1,780
5,100	764	1,122	1,356	1,514	1,666	1,810
5,200	777	1,141	1,379	1,540	1,694	1,841
5,300	790	1,160	1,402	1,566	1,722	1,872
5,400	799	1,172	1,415	1,581	1,739	1,890
5,500	805	1,177	1,419	1,585	1,744	1,896
5,600	810	1,181	1,423	1,590	1,749	1,901
5,700	815	1,186	1,427	1,594	1,753	1,906
5,800	820	1,191	1,431	1,598	1,758	1,911
5,900	825	1,195	1,435	1,603	1,763	1,916
6,000	831	1,200	1,439	1,607	1,768	1,922
6,100	837	1,208	1,449	1,618	1,780	1,935
6,200	844	1,217	1,459	1,629	1,792	1,948
6,300	851	1,226	1,469	1,641	1,805	1,962
6,400	858	1,234	1,479	1,652	1,817	1,975

## ACTS OF THE GENERAL ASSEMBLY

6,500	865	1,243	1,489	1,663	1,829	1,988
6,600	871	1,251	1,499	1,674	1,841	2,002
6,700	881	1,263	1,513	1,690	1,859	2,021
6,800	892	1,278	1,530	1,709	1,880	2,044
6,900	903	1,292	1,548	1,729	1,902	2,067
7,000	914	1,306	1,565	1,748	1,923	2,090
7,100	925	1,320	1,582	1,767	1,944	2,113
7,200	935	1,335	1,600	1,787	1,965	2,136
7,300	946	1,348	1,616	1,805	1,986	2,159
7,400	954	1,360	1,630	1,820	2,003	2,177
7,500	962	1,372	1,643	1,836	2,019	2,195
7,600	969	1,384	1,657	1,851	2,036	2,213
7,700	977	1,396	1,670	1,866	2,052	2,231
7,800	984	1,407	1,683	1,880	2,068	2,248
7,900	991	1,419	1,696	1,895	2,084	2,266
8,000	996	1,426	1,704	1,903	2,094	2,276
8,100	1,000	1,429	1,709	1,908	2,099	2,282
8,200	1,004	1,433	1,713	1,914	2,105	2,288
8,300	1,008	1,437	1,718	1,919	2,110	2,294
8,400	1,012	1,441	1,722	1,924	2,116	2,300
8,500	1,016	1,444	1,727	1,929	2,122	2,306
8,600	1,020	1,448	1,731	1,934	2,127	2,312
8,700	1,026	1,456	1,740	1,944	2,138	2,324
8,800	1,033	1,464	1,749	1,953	2,149	2,336
8,900	1,039	1,472	1,758	1,963	2,160	2,347
9,000	1,046	1,480	1,766	1,973	2,170	2,359
9,100	1,052	1,488	1,775	1,983	2,181	2,371
9,200	1,059	1,496	1,784	1,993	2,192	2,382
9,300	1,065	1,502	1,792	2,002	2,202	2,393
9,400	1,070	1,507	1,799	2,010	2,211	2,403
9,500	1,075	1,511	1,807	2,018	2,220	2,413
9,600	1,080	1,516	1,814	2,026	2,229	2,423
9,700	1,085	1,520	1,822	2,035	2,238	2,433
9,800	1,090	1,524	1,829	2,043	2,247	2,443
9,900	1,094	1,529	1,836	2,051	2,256	2,453
10,000	1,099	1,533	1,844	2,059	2,265	2,463
10,100	1,104	1,538	1,851	2,068	2,275	2,472
10,200	1,109	1,542	1,859	2,076	2,284	2,482
10,300	1,115	1,549	1,867	2,086	2,294	2,494

<i>10,400 1,123</i>	<i>1,560</i>	<i>1,878</i>	<i>2,098</i>	<i>2,308</i>	<i>2,509</i>
<i>10,500 1,130</i>	<i>1,571</i>	<i>1,889</i>	<i>2,110</i>	<i>2,321</i>	<i>2,523</i>
<i>10,600 1,137</i>	<i>1,582</i>	<i>1,900</i>	<i>2,123</i>	<i>2,335</i>	<i>2,538</i>
<i>10,700 1,145</i>	<i>1,593</i>	<i>1,911</i>	<i>2,135</i>	<i>2,349</i>	<i>2,553</i>
<i>10,800 1,152</i>	<i>1,604</i>	<i>1,922</i>	<i>2,147</i>	<i>2,362</i>	<i>2,568</i>
<i>10,900 1,159</i>	<i>1,615</i>	<i>1,933</i>	<i>2,160</i>	<i>2,376</i>	<i>2,582</i>
<i>11,000 1,167</i>	<i>1,626</i>	<i>1,944</i>	<i>2,172</i>	<i>2,389</i>	<i>2,597</i>
<i>11,100 1,174</i>	<i>1,637</i>	<i>1,956</i>	<i>2,185</i>	<i>2,403</i>	<i>2,612</i>
<i>11,200 1,182</i>	<i>1,649</i>	<i>1,968</i>	<i>2,198</i>	<i>2,418</i>	<i>2,628</i>
<i>11,300 1,191</i>	<i>1,661</i>	<i>1,980</i>	<i>2,212</i>	<i>2,433</i>	<i>2,644</i>
<i>11,400 1,199</i>	<i>1,673</i>	<i>1,992</i>	<i>2,225</i>	<i>2,448</i>	<i>2,660</i>
<i>11,500 1,207</i>	<i>1,685</i>	<i>2,004</i>	<i>2,239</i>	<i>2,462</i>	<i>2,677</i>
<i>11,600 1,215</i>	<i>1,695</i>	<i>2,016</i>	<i>2,252</i>	<i>2,477</i>	<i>2,693</i>
<i>11,700 1,222</i>	<i>1,705</i>	<i>2,029</i>	<i>2,266</i>	<i>2,493</i>	<i>2,710</i>
<i>11,800 1,229</i>	<i>1,714</i>	<i>2,041</i>	<i>2,280</i>	<i>2,508</i>	<i>2,726</i>
<i>11,900 1,237</i>	<i>1,723</i>	<i>2,054</i>	<i>2,294</i>	<i>2,523</i>	<i>2,743</i>
<i>12,000 1,244</i>	<i>1,732</i>	<i>2,066</i>	<i>2,308</i>	<i>2,539</i>	<i>2,759</i>
<i>12,100 1,252</i>	<i>1,742</i>	<i>2,078</i>	<i>2,322</i>	<i>2,554</i>	<i>2,776</i>
<i>12,200 1,259</i>	<i>1,751</i>	<i>2,091</i>	<i>2,336</i>	<i>2,569</i>	<i>2,793</i>
<i>12,300 1,267</i>	<i>1,760</i>	<i>2,103</i>	<i>2,349</i>	<i>2,584</i>	<i>2,809</i>
<i>12,400 1,274</i>	<i>1,769</i>	<i>2,116</i>	<i>2,363</i>	<i>2,600</i>	<i>2,826</i>
<i>12,500 1,282</i>	<i>1,778</i>	<i>2,128</i>	<i>2,377</i>	<i>2,615</i>	<i>2,842</i>
<i>12,600 1,289</i>	<i>1,788</i>	<i>2,141</i>	<i>2,391</i>	<i>2,630</i>	<i>2,859</i>
<i>12,700 1,296</i>	<i>1,797</i>	<i>2,153</i>	<i>2,405</i>	<i>2,645</i>	<i>2,876</i>
<i>12,800 1,304</i>	<i>1,806</i>	<i>2,165</i>	<i>2,419</i>	<i>2,661</i>	<i>2,892</i>
<i>12,900 1,311</i>	<i>1,815</i>	<i>2,178</i>	<i>2,433</i>	<i>2,676</i>	<i>2,909</i>
<i>13,000 1,319</i>	<i>1,825</i>	<i>2,190</i>	<i>2,447</i>	<i>2,691</i>	<i>2,925</i>
<i>13,100 1,326</i>	<i>1,834</i>	<i>2,203</i>	<i>2,461</i>	<i>2,707</i>	<i>2,942</i>
<i>13,200 1,334</i>	<i>1,843</i>	<i>2,215</i>	<i>2,474</i>	<i>2,722</i>	<i>2,959</i>
<i>13,300 1,341</i>	<i>1,852</i>	<i>2,228</i>	<i>2,488</i>	<i>2,737</i>	<i>2,975</i>
<i>13,400 1,348</i>	<i>1,861</i>	<i>2,238</i>	<i>2,500</i>	<i>2,750</i>	<i>2,990</i>
<i>13,500 1,353</i>	<i>1,868</i>	<i>2,247</i>	<i>2,510</i>	<i>2,761</i>	<i>3,001</i>
<i>13,600 1,359</i>	<i>1,875</i>	<i>2,255</i>	<i>2,519</i>	<i>2,771</i>	<i>3,012</i>
<i>13,700 1,364</i>	<i>1,882</i>	<i>2,264</i>	<i>2,529</i>	<i>2,781</i>	<i>3,023</i>
<i>13,800 1,370</i>	<i>1,889</i>	<i>2,272</i>	<i>2,538</i>	<i>2,792</i>	<i>3,035</i>
<i>13,900 1,375</i>	<i>1,896</i>	<i>2,281</i>	<i>2,547</i>	<i>2,802</i>	<i>3,046</i>
<i>14,000 1,381</i>	<i>1,903</i>	<i>2,289</i>	<i>2,557</i>	<i>2,812</i>	<i>3,057</i>
<i>14,100 1,386</i>	<i>1,910</i>	<i>2,297</i>	<i>2,566</i>	<i>2,822</i>	<i>3,068</i>
<i>14,200 1,391</i>	<i>1,916</i>	<i>2,304</i>	<i>2,574</i>	<i>2,831</i>	<i>3,078</i>

## ACTS OF THE GENERAL ASSEMBLY

<i>14,300 1,396</i>	<i>1,922</i>	<i>2,312</i>	<i>2,582</i>	<i>2,841</i>	<i>3,088</i>
<i>14,400 1,401</i>	<i>1,929</i>	<i>2,319</i>	<i>2,591</i>	<i>2,850</i>	<i>3,098</i>
<i>14,500 1,406</i>	<i>1,935</i>	<i>2,327</i>	<i>2,599</i>	<i>2,859</i>	<i>3,108</i>
<i>14,600 1,410</i>	<i>1,941</i>	<i>2,334</i>	<i>2,607</i>	<i>2,868</i>	<i>3,118</i>
<i>14,700 1,415</i>	<i>1,947</i>	<i>2,342</i>	<i>2,616</i>	<i>2,877</i>	<i>3,128</i>
<i>14,800 1,420</i>	<i>1,954</i>	<i>2,349</i>	<i>2,624</i>	<i>2,886</i>	<i>3,138</i>
<i>14,900 1,425</i>	<i>1,960</i>	<i>2,357</i>	<i>2,632</i>	<i>2,896</i>	<i>3,147</i>
<i>15,000 1,430</i>	<i>1,966</i>	<i>2,364</i>	<i>2,641</i>	<i>2,905</i>	<i>3,157</i>
<i>15,100 1,435</i>	<i>1,972</i>	<i>2,371</i>	<i>2,649</i>	<i>2,914</i>	<i>3,167</i>
<i>15,200 1,440</i>	<i>1,978</i>	<i>2,379</i>	<i>2,657</i>	<i>2,923</i>	<i>3,177</i>
<i>15,300 1,444</i>	<i>1,985</i>	<i>2,386</i>	<i>2,666</i>	<i>2,932</i>	<i>3,187</i>
<i>15,400 1,449</i>	<i>1,991</i>	<i>2,394</i>	<i>2,674</i>	<i>2,941</i>	<i>3,197</i>
<i>15,500 1,454</i>	<i>1,997</i>	<i>2,401</i>	<i>2,682</i>	<i>2,950</i>	<i>3,207</i>
<i>15,600 1,459</i>	<i>2,003</i>	<i>2,409</i>	<i>2,691</i>	<i>2,960</i>	<i>3,217</i>
<i>15,700 1,464</i>	<i>2,010</i>	<i>2,416</i>	<i>2,699</i>	<i>2,969</i>	<i>3,227</i>
<i>15,800 1,469</i>	<i>2,016</i>	<i>2,424</i>	<i>2,707</i>	<i>2,978</i>	<i>3,237</i>
<i>15,900 1,474</i>	<i>2,022</i>	<i>2,431</i>	<i>2,715</i>	<i>2,987</i>	<i>3,247</i>
<i>16,000 1,478</i>	<i>2,028</i>	<i>2,439</i>	<i>2,724</i>	<i>2,996</i>	<i>3,257</i>
<i>16,100 1,484</i>	<i>2,035</i>	<i>2,445</i>	<i>2,732</i>	<i>3,005</i>	<i>3,266</i>
<i>16,200 1,490</i>	<i>2,041</i>	<i>2,452</i>	<i>2,739</i>	<i>3,013</i>	<i>3,275</i>
<i>16,300 1,495</i>	<i>2,047</i>	<i>2,459</i>	<i>2,747</i>	<i>3,022</i>	<i>3,285</i>
<i>16,400 1,501</i>	<i>2,053</i>	<i>2,466</i>	<i>2,755</i>	<i>3,030</i>	<i>3,294</i>
<i>16,500 1,506</i>	<i>2,059</i>	<i>2,473</i>	<i>2,763</i>	<i>3,039</i>	<i>3,303</i>
<i>16,600 1,512</i>	<i>2,065</i>	<i>2,480</i>	<i>2,770</i>	<i>3,047</i>	<i>3,313</i>
<i>16,700 1,518</i>	<i>2,071</i>	<i>2,487</i>	<i>2,778</i>	<i>3,056</i>	<i>3,322</i>
<i>16,800 1,523</i>	<i>2,077</i>	<i>2,494</i>	<i>2,786</i>	<i>3,065</i>	<i>3,331</i>
<i>16,900 1,529</i>	<i>2,083</i>	<i>2,501</i>	<i>2,794</i>	<i>3,073</i>	<i>3,340</i>
<i>17,000 1,534</i>	<i>2,089</i>	<i>2,508</i>	<i>2,801</i>	<i>3,082</i>	<i>3,350</i>
<i>17,100 1,540</i>	<i>2,095</i>	<i>2,515</i>	<i>2,809</i>	<i>3,090</i>	<i>3,359</i>
<i>17,200 1,545</i>	<i>2,102</i>	<i>2,522</i>	<i>2,817</i>	<i>3,099</i>	<i>3,368</i>
<i>17,300 1,551</i>	<i>2,108</i>	<i>2,529</i>	<i>2,825</i>	<i>3,107</i>	<i>3,378</i>
<i>17,400 1,557</i>	<i>2,114</i>	<i>2,536</i>	<i>2,832</i>	<i>3,116</i>	<i>3,387</i>
<i>17,500 1,562</i>	<i>2,120</i>	<i>2,543</i>	<i>2,840</i>	<i>3,124</i>	<i>3,396</i>
<i>17,600 1,568</i>	<i>2,126</i>	<i>2,550</i>	<i>2,848</i>	<i>3,133</i>	<i>3,405</i>
<i>17,700 1,573</i>	<i>2,132</i>	<i>2,557</i>	<i>2,856</i>	<i>3,141</i>	<i>3,415</i>
<i>17,800 1,579</i>	<i>2,138</i>	<i>2,563</i>	<i>2,863</i>	<i>3,149</i>	<i>3,423</i>
<i>17,900 1,584</i>	<i>2,144</i>	<i>2,570</i>	<i>2,870</i>	<i>3,157</i>	<i>3,432</i>
<i>18,000 1,589</i>	<i>2,149</i>	<i>2,576</i>	<i>2,878</i>	<i>3,166</i>	<i>3,441</i>
<i>18,100 1,595</i>	<i>2,155</i>	<i>2,583</i>	<i>2,885</i>	<i>3,174</i>	<i>3,450</i>

<i>18,200 1,600</i>	<i>2,161</i>	<i>2,590</i>	<i>2,893</i>	<i>3,182</i>	<i>3,459</i>
<i>18,300 1,605</i>	<i>2,167</i>	<i>2,596</i>	<i>2,900</i>	<i>3,190</i>	<i>3,467</i>
<i>18,400 1,611</i>	<i>2,173</i>	<i>2,603</i>	<i>2,907</i>	<i>3,198</i>	<i>3,476</i>
<i>18,500 1,616</i>	<i>2,178</i>	<i>2,609</i>	<i>2,915</i>	<i>3,206</i>	<i>3,485</i>
<i>18,600 1,621</i>	<i>2,184</i>	<i>2,616</i>	<i>2,922</i>	<i>3,214</i>	<i>3,494</i>
<i>18,700 1,627</i>	<i>2,190</i>	<i>2,623</i>	<i>2,929</i>	<i>3,222</i>	<i>3,503</i>
<i>18,800 1,632</i>	<i>2,196</i>	<i>2,629</i>	<i>2,937</i>	<i>3,231</i>	<i>3,512</i>
<i>18,900 1,637</i>	<i>2,202</i>	<i>2,636</i>	<i>2,944</i>	<i>3,239</i>	<i>3,520</i>
<i>19,000 1,642</i>	<i>2,207</i>	<i>2,642</i>	<i>2,952</i>	<i>3,247</i>	<i>3,529</i>
<i>19,100 1,648</i>	<i>2,213</i>	<i>2,649</i>	<i>2,959</i>	<i>3,255</i>	<i>3,538</i>
<i>19,200 1,653</i>	<i>2,219</i>	<i>2,656</i>	<i>2,966</i>	<i>3,263</i>	<i>3,547</i>
<i>19,300 1,658</i>	<i>2,225</i>	<i>2,662</i>	<i>2,974</i>	<i>3,271</i>	<i>3,556</i>
<i>19,400 1,664</i>	<i>2,231</i>	<i>2,669</i>	<i>2,981</i>	<i>3,279</i>	<i>3,565</i>
<i>19,500 1,669</i>	<i>2,236</i>	<i>2,675</i>	<i>2,989</i>	<i>3,287</i>	<i>3,573</i>
<i>19,600 1,674</i>	<i>2,242</i>	<i>2,682</i>	<i>2,996</i>	<i>3,295</i>	<i>3,582</i>
<i>19,700 1,680</i>	<i>2,248</i>	<i>2,689</i>	<i>3,003</i>	<i>3,304</i>	<i>3,591</i>
<i>19,800 1,685</i>	<i>2,254</i>	<i>2,695</i>	<i>3,011</i>	<i>3,312</i>	<i>3,600</i>
<i>19,900 1,690</i>	<i>2,260</i>	<i>2,702</i>	<i>3,018</i>	<i>3,320</i>	<i>3,609</i>
<i>20,000 1,696</i>	<i>2,265</i>	<i>2,709</i>	<i>3,025</i>	<i>3,328</i>	<i>3,617</i>
<i>20,100 1,701</i>	<i>2,271</i>	<i>2,715</i>	<i>3,033</i>	<i>3,336</i>	<i>3,626</i>
<i>20,200 1,706</i>	<i>2,277</i>	<i>2,722</i>	<i>3,040</i>	<i>3,344</i>	<i>3,635</i>
<i>20,300 1,710</i>	<i>2,282</i>	<i>2,728</i>	<i>3,047</i>	<i>3,352</i>	<i>3,643</i>
<i>20,400 1,713</i>	<i>2,287</i>	<i>2,733</i>	<i>3,053</i>	<i>3,358</i>	<i>3,651</i>
<i>20,500 1,717</i>	<i>2,292</i>	<i>2,739</i>	<i>3,059</i>	<i>3,365</i>	<i>3,658</i>
<i>20,600 1,720</i>	<i>2,297</i>	<i>2,745</i>	<i>3,066</i>	<i>3,372</i>	<i>3,666</i>
<i>20,700 1,723</i>	<i>2,302</i>	<i>2,750</i>	<i>3,072</i>	<i>3,379</i>	<i>3,673</i>
<i>20,800 1,726</i>	<i>2,307</i>	<i>2,756</i>	<i>3,078</i>	<i>3,386</i>	<i>3,681</i>
<i>20,900 1,730</i>	<i>2,313</i>	<i>2,761</i>	<i>3,084</i>	<i>3,393</i>	<i>3,688</i>
<i>21,000 1,733</i>	<i>2,318</i>	<i>2,767</i>	<i>3,091</i>	<i>3,400</i>	<i>3,695</i>
<i>21,100 1,736</i>	<i>2,323</i>	<i>2,773</i>	<i>3,097</i>	<i>3,407</i>	<i>3,703</i>
<i>21,200 1,739</i>	<i>2,328</i>	<i>2,778</i>	<i>3,103</i>	<i>3,413</i>	<i>3,710</i>
<i>21,300 1,743</i>	<i>2,333</i>	<i>2,784</i>	<i>3,109</i>	<i>3,420</i>	<i>3,718</i>
<i>21,400 1,746</i>	<i>2,338</i>	<i>2,789</i>	<i>3,116</i>	<i>3,427</i>	<i>3,725</i>
<i>21,500 1,749</i>	<i>2,343</i>	<i>2,795</i>	<i>3,122</i>	<i>3,434</i>	<i>3,733</i>
<i>21,600 1,752</i>	<i>2,348</i>	<i>2,801</i>	<i>3,128</i>	<i>3,441</i>	<i>3,740</i>
<i>21,700 1,756</i>	<i>2,353</i>	<i>2,806</i>	<i>3,134</i>	<i>3,448</i>	<i>3,748</i>
<i>21,800 1,759</i>	<i>2,358</i>	<i>2,812</i>	<i>3,141</i>	<i>3,455</i>	<i>3,755</i>
<i>21,900 1,762</i>	<i>2,363</i>	<i>2,817</i>	<i>3,147</i>	<i>3,462</i>	<i>3,763</i>
<i>22,000 1,765</i>	<i>2,368</i>	<i>2,823</i>	<i>3,153</i>	<i>3,469</i>	<i>3,770</i>

## ACTS OF THE GENERAL ASSEMBLY

<i>22,100 1,769</i>	<i>2,373</i>	<i>2,829</i>	<i>3,160</i>	<i>3,475</i>	<i>3,778</i>
<i>22,200 1,772</i>	<i>2,378</i>	<i>2,834</i>	<i>3,166</i>	<i>3,482</i>	<i>3,785</i>
<i>22,300 1,775</i>	<i>2,383</i>	<i>2,840</i>	<i>3,172</i>	<i>3,489</i>	<i>3,793</i>
<i>22,400 1,778</i>	<i>2,388</i>	<i>2,845</i>	<i>3,178</i>	<i>3,496</i>	<i>3,800</i>
<i>22,500 1,782</i>	<i>2,393</i>	<i>2,851</i>	<i>3,185</i>	<i>3,503</i>	<i>3,808</i>
<i>22,600 1,785</i>	<i>2,398</i>	<i>2,857</i>	<i>3,191</i>	<i>3,510</i>	<i>3,815</i>
<i>22,700 1,788</i>	<i>2,403</i>	<i>2,862</i>	<i>3,197</i>	<i>3,517</i>	<i>3,823</i>
<i>22,800 1,791</i>	<i>2,408</i>	<i>2,868</i>	<i>3,203</i>	<i>3,524</i>	<i>3,830</i>
<i>22,900 1,795</i>	<i>2,413</i>	<i>2,873</i>	<i>3,210</i>	<i>3,531</i>	<i>3,838</i>
<i>23,000 1,798</i>	<i>2,418</i>	<i>2,879</i>	<i>3,216</i>	<i>3,537</i>	<i>3,845</i>
<i>23,100 1,801</i>	<i>2,423</i>	<i>2,885</i>	<i>3,222</i>	<i>3,544</i>	<i>3,853</i>
<i>23,200 1,804</i>	<i>2,429</i>	<i>2,890</i>	<i>3,228</i>	<i>3,551</i>	<i>3,860</i>
<i>23,300 1,808</i>	<i>2,434</i>	<i>2,896</i>	<i>3,235</i>	<i>3,558</i>	<i>3,868</i>
<i>23,400 1,811</i>	<i>2,439</i>	<i>2,901</i>	<i>3,241</i>	<i>3,565</i>	<i>3,875</i>
<i>23,500 1,814</i>	<i>2,444</i>	<i>2,907</i>	<i>3,247</i>	<i>3,572</i>	<i>3,883</i>
<i>23,600 1,817</i>	<i>2,449</i>	<i>2,913</i>	<i>3,253</i>	<i>3,579</i>	<i>3,890</i>
<i>23,700 1,821</i>	<i>2,454</i>	<i>2,918</i>	<i>3,260</i>	<i>3,586</i>	<i>3,898</i>
<i>23,800 1,824</i>	<i>2,459</i>	<i>2,924</i>	<i>3,266</i>	<i>3,593</i>	<i>3,905</i>
<i>23,900 1,827</i>	<i>2,464</i>	<i>2,929</i>	<i>3,272</i>	<i>3,599</i>	<i>3,913</i>
<i>24,000 1,830</i>	<i>2,469</i>	<i>2,935</i>	<i>3,278</i>	<i>3,606</i>	<i>3,920</i>
<i>24,100 1,834</i>	<i>2,474</i>	<i>2,941</i>	<i>3,285</i>	<i>3,613</i>	<i>3,928</i>
<i>24,200 1,837</i>	<i>2,479</i>	<i>2,946</i>	<i>3,291</i>	<i>3,620</i>	<i>3,935</i>
<i>24,300 1,840</i>	<i>2,484</i>	<i>2,952</i>	<i>3,297</i>	<i>3,627</i>	<i>3,943</i>
<i>24,400 1,843</i>	<i>2,489</i>	<i>2,957</i>	<i>3,304</i>	<i>3,634</i>	<i>3,950</i>
<i>24,500 1,847</i>	<i>2,494</i>	<i>2,963</i>	<i>3,310</i>	<i>3,641</i>	<i>3,957</i>
<i>24,600 1,850</i>	<i>2,499</i>	<i>2,969</i>	<i>3,316</i>	<i>3,648</i>	<i>3,965</i>
<i>24,700 1,853</i>	<i>2,504</i>	<i>2,974</i>	<i>3,322</i>	<i>3,655</i>	<i>3,972</i>
<i>24,800 1,856</i>	<i>2,509</i>	<i>2,980</i>	<i>3,329</i>	<i>3,661</i>	<i>3,980</i>
<i>24,900 1,860</i>	<i>2,514</i>	<i>2,986</i>	<i>3,335</i>	<i>3,668</i>	<i>3,987</i>
<i>25,000 1,863</i>	<i>2,519</i>	<i>2,991</i>	<i>3,341</i>	<i>3,675</i>	<i>3,995</i>
<i>25,100 1,866</i>	<i>2,524</i>	<i>2,997</i>	<i>3,347</i>	<i>3,682</i>	<i>4,002</i>
<i>25,200 1,869</i>	<i>2,529</i>	<i>3,002</i>	<i>3,354</i>	<i>3,689</i>	<i>4,010</i>
<i>25,300 1,873</i>	<i>2,534</i>	<i>3,008</i>	<i>3,360</i>	<i>3,696</i>	<i>4,017</i>
<i>25,400 1,876</i>	<i>2,540</i>	<i>3,014</i>	<i>3,366</i>	<i>3,703</i>	<i>4,025</i>
<i>25,500 1,879</i>	<i>2,545</i>	<i>3,019</i>	<i>3,372</i>	<i>3,710</i>	<i>4,032</i>
<i>25,600 1,882</i>	<i>2,550</i>	<i>3,025</i>	<i>3,379</i>	<i>3,716</i>	<i>4,040</i>
<i>25,700 1,886</i>	<i>2,555</i>	<i>3,030</i>	<i>3,385</i>	<i>3,723</i>	<i>4,047</i>
<i>25,800 1,889</i>	<i>2,560</i>	<i>3,036</i>	<i>3,391</i>	<i>3,730</i>	<i>4,055</i>
<i>25,900 1,892</i>	<i>2,565</i>	<i>3,042</i>	<i>3,397</i>	<i>3,737</i>	<i>4,062</i>

<i>26,000 1,895</i>	<i>2,570</i>	<i>3,047</i>	<i>3,404</i>	<i>3,744</i>	<i>4,070</i>
<i>26,100 1,899</i>	<i>2,575</i>	<i>3,053</i>	<i>3,410</i>	<i>3,751</i>	<i>4,077</i>
<i>26,200 1,902</i>	<i>2,580</i>	<i>3,058</i>	<i>3,416</i>	<i>3,758</i>	<i>4,085</i>
<i>26,300 1,905</i>	<i>2,585</i>	<i>3,064</i>	<i>3,422</i>	<i>3,765</i>	<i>4,092</i>
<i>26,400 1,908</i>	<i>2,590</i>	<i>3,070</i>	<i>3,429</i>	<i>3,772</i>	<i>4,100</i>
<i>26,500 1,912</i>	<i>2,595</i>	<i>3,075</i>	<i>3,435</i>	<i>3,778</i>	<i>4,107</i>
<i>26,600 1,915</i>	<i>2,600</i>	<i>3,081</i>	<i>3,441</i>	<i>3,785</i>	<i>4,115</i>
<i>26,700 1,918</i>	<i>2,605</i>	<i>3,086</i>	<i>3,447</i>	<i>3,792</i>	<i>4,122</i>
<i>26,800 1,921</i>	<i>2,610</i>	<i>3,092</i>	<i>3,454</i>	<i>3,799</i>	<i>4,130</i>
<i>26,900 1,925</i>	<i>2,615</i>	<i>3,098</i>	<i>3,460</i>	<i>3,806</i>	<i>4,137</i>
<i>27,000 1,928</i>	<i>2,620</i>	<i>3,103</i>	<i>3,466</i>	<i>3,813</i>	<i>4,145</i>
<i>27,100 1,931</i>	<i>2,625</i>	<i>3,109</i>	<i>3,473</i>	<i>3,820</i>	<i>4,152</i>
<i>27,200 1,934</i>	<i>2,630</i>	<i>3,114</i>	<i>3,479</i>	<i>3,827</i>	<i>4,160</i>
<i>27,300 1,938</i>	<i>2,635</i>	<i>3,120</i>	<i>3,485</i>	<i>3,834</i>	<i>4,167</i>
<i>27,400 1,941</i>	<i>2,640</i>	<i>3,126</i>	<i>3,491</i>	<i>3,840</i>	<i>4,175</i>
<i>27,500 1,944</i>	<i>2,645</i>	<i>3,131</i>	<i>3,498</i>	<i>3,847</i>	<i>4,182</i>
<i>27,600 1,948</i>	<i>2,650</i>	<i>3,137</i>	<i>3,504</i>	<i>3,854</i>	<i>4,190</i>
<i>27,700 1,951</i>	<i>2,656</i>	<i>3,142</i>	<i>3,510</i>	<i>3,861</i>	<i>4,197</i>
<i>27,800 1,954</i>	<i>2,661</i>	<i>3,148</i>	<i>3,516</i>	<i>3,868</i>	<i>4,205</i>
<i>27,900 1,957</i>	<i>2,666</i>	<i>3,154</i>	<i>3,523</i>	<i>3,875</i>	<i>4,212</i>
<i>28,000 1,961</i>	<i>2,671</i>	<i>3,159</i>	<i>3,529</i>	<i>3,882</i>	<i>4,219</i>
<i>28,100 1,964</i>	<i>2,676</i>	<i>3,165</i>	<i>3,535</i>	<i>3,889</i>	<i>4,227</i>
<i>28,200 1,967</i>	<i>2,681</i>	<i>3,170</i>	<i>3,541</i>	<i>3,896</i>	<i>4,234</i>
<i>28,300 1,970</i>	<i>2,686</i>	<i>3,176</i>	<i>3,548</i>	<i>3,902</i>	<i>4,242</i>
<i>28,400 1,972</i>	<i>2,689</i>	<i>3,179</i>	<i>3,551</i>	<i>3,907</i>	<i>4,247</i>
<i>28,500 1,974</i>	<i>2,691</i>	<i>3,182</i>	<i>3,555</i>	<i>3,911</i>	<i>4,251</i>
<i>28,600 1,976</i>	<i>2,694</i>	<i>3,185</i>	<i>3,558</i>	<i>3,914</i>	<i>4,255</i>
<i>28,700 1,978</i>	<i>2,696</i>	<i>3,188</i>	<i>3,561</i>	<i>3,918</i>	<i>4,259</i>
<i>28,800 1,980</i>	<i>2,699</i>	<i>3,191</i>	<i>3,565</i>	<i>3,922</i>	<i>4,263</i>
<i>28,900 1,982</i>	<i>2,701</i>	<i>3,194</i>	<i>3,568</i>	<i>3,926</i>	<i>4,268</i>
<i>29,000 1,984</i>	<i>2,704</i>	<i>3,197</i>	<i>3,571</i>	<i>3,930</i>	<i>4,272</i>
<i>29,100 1,986</i>	<i>2,707</i>	<i>3,200</i>	<i>3,575</i>	<i>3,934</i>	<i>4,276</i>
<i>29,200 1,988</i>	<i>2,709</i>	<i>3,203</i>	<i>3,578</i>	<i>3,938</i>	<i>4,280</i>
<i>29,300 1,990</i>	<i>2,712</i>	<i>3,206</i>	<i>3,581</i>	<i>3,941</i>	<i>4,284</i>
<i>29,400 1,992</i>	<i>2,714</i>	<i>3,209</i>	<i>3,584</i>	<i>3,945</i>	<i>4,289</i>
<i>29,500 1,993</i>	<i>2,717</i>	<i>3,212</i>	<i>3,588</i>	<i>3,949</i>	<i>4,293</i>
<i>29,600 1,995</i>	<i>2,719</i>	<i>3,215</i>	<i>3,591</i>	<i>3,953</i>	<i>4,297</i>
<i>29,700 1,997</i>	<i>2,722</i>	<i>3,218</i>	<i>3,594</i>	<i>3,957</i>	<i>4,301</i>
<i>29,800 1,999</i>	<i>2,724</i>	<i>3,221</i>	<i>3,598</i>	<i>3,961</i>	<i>4,305</i>

## ACTS OF THE GENERAL ASSEMBLY

	<b>29,900</b>	<b>2,001</b>	<b>2,727</b>	<b>3,224</b>	<b>3,601</b>	<b>3,965</b>	<b>4,310</b>
	<b>30,000</b>	<b>2,003</b>	<b>2,730</b>	<b>3,227</b>	<b>3,604</b>	<b>3,968</b>	<b>4,314</b>
—	200	70	70	70	70	70	70
—	300	80	80	80	80	80	80
—	400	90	90	90	90	90	90
—	500	100	105	110	115	120	125
—	600	120	125	130	135	140	145
—	700	140	156	161	166	171	176
—	800	160	203	208	213	218	223
—	900	180	261	266	271	276	281
—	1,000	195	303	325	330	335	340
—	1,100	212	324	384	389	394	399
—	1,200	229	346	433	446	451	456
—	1,300	246	367	460	504	510	515
—	1,400	262	392	491	554	576	582
—	1,500	277	417	522	588	642	650
—	1,600	293	437	548	618	674	717
—	1,700	308	458	574	647	706	755
—	1,800	322	478	599	675	736	788
—	1,900	336	495	620	699	763	816
—	2,000	350	512	642	723	789	844
—	2,100	364	529	663	747	815	872
—	2,200	376	546	684	771	841	900
—	2,300	389	563	706	795	868	928
—	2,400	401	580	727	819	894	956
—	2,500	413	597	749	843	920	984
—	2,600	424	614	770	867	946	1,012
—	2,700	435	630	790	889	970	1,038
—	2,800	445	646	809	911	994	1,064
—	2,900	455	662	829	934	1,019	1,090
—	3,000	465	677	849	956	1,043	1,116
—	3,100	475	693	868	978	1,067	1,142
—	3,200	485	709	888	1,001	1,092	1,168
—	3,300	495	725	908	1,023	1,116	1,194
—	3,400	506	741	928	1,045	1,140	1,220
—	3,500	516	757	947	1,067	1,164	1,246
—	3,600	526	773	967	1,090	1,189	1,272
—	3,700	536	790	988	1,113	1,215	1,299
—	3,800	548	808	1,011	1,139	1,243	1,329



3,900	559	826	1,033	1,164	1,270	1,359
4,000	571	844	1,056	1,190	1,298	1,388
4,100	580	862	1,078	1,215	1,326	1,418
4,200	592	880	1,101	1,240	1,353	1,448
4,300	603	898	1,123	1,266	1,381	1,477
4,400	615	916	1,146	1,291	1,409	1,507
4,500	626	933	1,161	1,316	1,435	1,535
4,600	636	949	1,181	1,338	1,459	1,561
4,700	647	964	1,200	1,360	1,483	1,586
4,800	657	980	1,220	1,381	1,507	1,612
4,900	667	995	1,239	1,403	1,531	1,637
5,000	676	1,010	1,257	1,424	1,554	1,661
5,100	686	1,025	1,275	1,444	1,576	1,685
5,200	695	1,039	1,294	1,465	1,599	1,709
5,300	705	1,054	1,312	1,486	1,621	1,733
5,400	714	1,069	1,330	1,506	1,644	1,757
5,500	724	1,083	1,348	1,527	1,666	1,781
5,600	733	1,098	1,367	1,548	1,689	1,805
5,700	743	1,113	1,385	1,568	1,712	1,829
5,800	753	1,127	1,403	1,589	1,734	1,853
5,900	762	1,142	1,421	1,610	1,757	1,877
6,000	772	1,157	1,440	1,630	1,779	1,901
6,100	781	1,171	1,458	1,651	1,802	1,926
6,200	791	1,186	1,476	1,672	1,824	1,950
6,300	800	1,198	1,498	1,690	1,844	1,970
6,400	808	1,209	1,511	1,705	1,860	1,988
6,500	816	1,219	1,524	1,720	1,876	2,005
6,600	823	1,230	1,538	1,735	1,893	2,023
6,700	830	1,240	1,551	1,750	1,909	2,040
6,800	837	1,251	1,564	1,764	1,925	2,058
6,900	844	1,261	1,577	1,779	1,942	2,075
7,000	851	1,272	1,591	1,794	1,958	2,093
7,100	858	1,282	1,604	1,809	1,975	2,110
7,200	865	1,293	1,617	1,824	1,991	2,127
7,300	872	1,303	1,630	1,839	2,007	2,145
7,400	879	1,313	1,644	1,854	2,024	2,162
7,500	885	1,324	1,657	1,869	2,040	2,179
7,600	891	1,333	1,668	1,881	2,053	2,194
7,700	896	1,342	1,679	1,893	2,066	2,208

## ACTS OF THE GENERAL ASSEMBLY

7,800	901	1,350	1,691	1,905	2,079	2,223
7,900	907	1,359	1,702	1,917	2,093	2,238
8,000	912	1,368	1,713	1,929	2,106	2,252
8,100	917	1,377	1,724	1,941	2,119	2,267
8,200	922	1,386	1,736	1,953	2,133	2,281
8,300	928	1,395	1,747	1,965	2,146	2,296
8,400	933	1,404	1,758	1,977	2,159	2,311
8,500	938	1,413	1,769	1,989	2,173	2,325
8,600	944	1,421	1,780	2,002	2,186	2,340
8,700	949	1,430	1,792	2,014	2,199	2,354
8,800	954	1,437	1,800	2,024	2,210	2,366
8,900	958	1,444	1,809	2,033	2,220	2,376
9,000	962	1,450	1,817	2,042	2,230	2,387
9,100	966	1,457	1,825	2,052	2,241	2,398
9,200	971	1,463	1,833	2,061	2,251	2,408
9,300	975	1,470	1,842	2,070	2,261	2,419
9,400	979	1,476	1,850	2,079	2,271	2,430
9,500	983	1,483	1,858	2,089	2,281	2,440
9,600	988	1,489	1,866	2,098	2,291	2,451
9,700	992	1,496	1,874	2,107	2,301	2,461
9,800	996	1,502	1,883	2,117	2,311	2,472
9,900	1,000	1,508	1,891	2,126	2,321	2,483
10,000	1,005	1,515	1,899	2,165	2,331	2,493
10,400	1,022	1,541	1,932	2,202	2,372	2,536
10,500	1,027	1,548	1,940	2,212	2,382	2,546
10,600	1,032	1,554	1,948	2,221	2,392	2,557
10,700	1,036	1,561	1,956	2,230	2,402	2,567
10,800	1,040	1,567	1,965	2,240	2,412	2,578
10,900	1,044	1,573	1,973	2,249	2,422	2,589
11,000	1,049	1,580	1,981	2,258	2,432	2,599
11,100	1,053	1,587	1,989	2,268	2,443	2,610
11,200	1,058	1,593	1,997	2,277	2,453	2,620
11,300	1,062	1,600	2,005	2,286	2,463	2,631
11,400	1,066	1,606	2,013	2,295	2,473	2,642
11,500	1,070	1,613	2,021	2,305	2,483	2,652
11,600	1,075	1,619	2,029	2,314	2,493	2,663
11,700	1,079	1,626	2,037	2,323	2,503	2,673
11,800	1,084	1,633	2,046	2,333	2,513	2,684
11,900	1,088	1,639	2,054	2,342	2,523	2,695

12,000	1,093	1,646	2,062	2,351	2,533	2,705
12,100	1,097	1,653	2,070	2,361	2,544	2,716
12,200	1,102	1,659	2,078	2,370	2,554	2,726
12,300	1,106	1,666	2,086	2,379	2,564	2,737
12,400	1,110	1,672	2,094	2,388	2,574	2,748
12,500	1,114	1,679	2,102	2,398	2,584	2,758
12,600	1,119	1,685	2,110	2,407	2,594	2,769
12,700	1,123	1,692	2,118	2,416	2,604	2,779
12,800	1,128	1,699	2,127	2,426	2,614	2,790
12,900	1,132	1,705	2,135	2,435	2,624	2,801
13,000	1,137	1,712	2,143	2,444	2,634	2,811
13,100	1,141	1,719	2,151	2,454	2,645	2,822
13,200	1,146	1,725	2,159	2,463	2,665	2,832
13,300	1,150	1,732	2,167	2,472	2,665	2,843
13,400	1,154	1,738	2,175	2,481	2,675	2,854
13,500	1,158	1,745	2,183	2,491	2,685	2,864
13,600	1,163	1,751	2,191	2,500	2,695	2,875
13,700	1,167	1,758	2,199	2,509	2,705	2,885
13,800	1,172	1,765	2,208	2,519	2,715	2,896
13,900	1,176	1,771	2,216	2,528	2,725	2,907
14,000	1,181	1,778	2,224	2,537	2,735	2,917
14,100	1,185	1,785	2,232	2,547	2,746	2,928
14,200	1,190	1,791	2,240	2,556	2,756	2,938
14,300	1,194	1,798	2,248	2,565	2,766	2,949
14,400	1,198	1,804	2,256	2,574	2,776	2,960
14,500	1,202	1,811	2,264	2,584	2,786	2,970
14,600	1,207	1,817	2,272	2,593	2,796	2,981
14,700	1,211	1,824	2,280	2,602	2,806	2,991
14,800	1,216	1,831	2,289	2,612	2,816	3,002
14,900	1,220	1,837	2,297	2,621	2,826	3,013
15,000	1,225	1,844	2,305	2,630	2,836	3,023

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (4) of this section or otherwise provided in this chapter, the child support obligation determined under Section 2 of this Act shall be subject to further adjustment as follows:*
- (a) *If the parents share equal parenting time, the child support obligation determined under Section 2 of this Act shall be divided between the parents in proportion to their combined monthly adjusted parental gross income, and the parent with the greater proportional child support obligation shall pay the parent with the lesser proportional obligation the difference in the value of each parent's proportional obligation; and*
  - (b) *If the parents share unequal parenting time under either a court-ordered time-sharing schedule or a time-sharing schedule exercised by agreement of the parties, the court shall:*

1. *Calculate the child support obligation set forth in the child support guidelines table in accordance with Section 2 of this Act;*
  2. *Determine the percentage of overnight stays the child spends with each parent on an annual basis based upon the time-sharing order or agreement;*
  3. *Multiply each parent's support obligation as calculated under Section 2 of this Act by the percentage of the other parent's overnight stays as calculated in subparagraph 2. of this paragraph;*
  4. *Set the difference between the amounts calculated in subparagraph 3. of this paragraph as the monetary transfer or credit necessary between the parents for the care of the child; and*
  5. *Use its discretion in adjusting each parent's child support obligation under this paragraph in accordance with the factors under Section 2 of this Act, and the following:*
    - a. *The obligated parent's low income and ability to maintain the basic necessities of the home for the child;*
    - b. *The likelihood that either parent will actually exercise the time-sharing schedule set forth in the court-ordered time-sharing schedule or time-sharing agreement between the parents;*
    - c. *Whether all of the children are exercising the same time-sharing schedule; and*
    - d. *Whether the time-sharing plan results in fewer overnights due to a significant geographical distance between the parties that may affect the child support obligation.*
- (2) *As used in this section, unless the context requires otherwise, an "overnight stay" shall include the costs associated with feeding and transporting the child, entertainment, attending to school work, athletic events, extracurricular activities, or other expenses that transfer with the child as they move from one parent to the other. Merely providing a child with a place to sleep in order to obtain an adjustment in a child support obligation shall not constitute an overnight stay under this section.*
- (3) *The child support calculations required under this section shall be on a worksheet prescribed by the Cabinet for Health and Family Services in administrative regulations promulgated under KRS Chapter 13A.*
- (4) *This section shall not apply if the child or children subject to the child support award receive public assistance, including KCHIP, K-TAP, food stamps, or Medicaid.*

➔Section 4. KRS 406.031 is amended to read as follows:

- (1) The determination of paternity under the provisions of KRS 406.021(1) shall be commenced within eighteen (18) years after the birth, miscarriage or stillbirth of a child. However, in such cases, liability for child support shall not predate the initiation of action taken to determine paternity as set forth in KRS 406.021 if the action is taken ~~two (2)~~~~four (4)~~ years or more from the date of birth.
- (2) Any person for whom paternity has not yet been established and who had not reached eighteen (18) years of age as of August 16, 1984, including those persons for whom a paternity action was brought but dismissed because a statute of limitations of less than eighteen (18) years was then in effect, may bring an action to establish paternity.

➔Section 5. KRS 620.090 is amended to read as follows:

- (1) If, after completion of the temporary removal hearing, the court finds there are reasonable grounds to believe the child is dependent, neglected or abused, the court shall issue an order for temporary removal and shall grant temporary custody to the cabinet or other appropriate person or agency. Preference shall be given to available and qualified relatives of the child considering the wishes of the parent or other person exercising custodial control or supervision, if known. The order shall state the specific reasons for removal and show that alternative less restrictive placements and services have been considered. The court may recommend a placement for the child.
- (2) In placing a child under an order of temporary custody, the cabinet or its designee shall use the least restrictive appropriate placement available. Preference shall be given to available and qualified relatives of the child considering the wishes of the parent or other person exercising custodial control or supervision, if known. The child may also be placed in a facility or program operated or approved by the cabinet, including a foster home,

or any other appropriate available placement. However, under no circumstance shall the child be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime as that term is defined in KRS 17.500, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime.

- (3) If the court finds there are not reasonable grounds to believe the child is dependent, neglected or abused, or if no action is taken within seventy-two (72) hours, the emergency custody order shall be dissolved automatically and the cabinet or its designee shall return the child to the parent or other person exercising custodial control or supervision. A request for a continuance of the hearing by the parent or other person exercising custodial control or supervision shall constitute action precluding automatic dissolution of the emergency custody order.
- (4) ***When the court issues a temporary order for the custody of a child, the order shall initiate an action to establish child support in accordance with Section 1 of this Act. The court shall establish a child support order, or modify an existing order, within seven (7) days of the issuance of the order of temporary removal.***
- (5) When the court issues a temporary order for the custody of a child, the court may order that, within two (2) weeks, arrangements be made for the child to receive a thorough medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. The costs of the examination shall be paid by the cabinet.
- ~~(6)(5)~~ The child shall remain in temporary custody with the cabinet for a period of time not to exceed forty-five (45) days from the date of the removal from his home. The court shall conduct the adjudicatory hearing and shall make a final disposition within forty-five (45) days of the removal of the child. The court may extend such time after making written findings establishing the need for the extension and after finding that the extension is in the child's best interest.
- ~~(7)(6)~~ If custody is granted to a grandparent of the child pursuant to this section, the court shall consider granting reasonable visitation rights to any other grandparent of the child if the court determines the grandparent has a significant and viable relationship with the child as established in KRS 405.021(1)(c).

➔Section 6. KRS 403.160 is amended to read as follows:

- (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (2) (a) In a proceeding for dissolution of marriage, legal separation, or child support, either party, with notice to the opposing party, may move for temporary child support. The motion shall be accompanied by an affidavit setting forth the number of children of the marriage and the information required to calculate the combined adjusted parental gross income set forth in KRS 403.212(2)(~~h~~)(~~g~~), and the Social Security numbers, provided in accordance with KRS 403.135, of all parties subject to the motion. The court shall, within fourteen (14) days from the filing of said motion, order an amount of temporary child support based upon the child support guidelines as provided by law, and the ordered child support shall be retroactive to the date of the filing of the motion unless otherwise ordered by the court.
- (b) Upon a showing of good cause, either party may move the court to enter an order for temporary child support without written or oral notice to the adverse party. After reviewing the affidavit required by paragraph (a) of this subsection, the court may issue a temporary child support order based upon the child support guidelines. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by paragraph (a) of this subsection. Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.
- (3) As part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction or restraining order pursuant to the Rules of Civil Procedure.
- (4) If the court or agent of the court is made aware that there is reasonable evidence of domestic violence or child abuse, the court shall determine whether disclosure to any other person of the information could be harmful to

the parent or child, and if the court determines that disclosure to any person could be harmful, the court and its agents shall not make the disclosure.

- (5) On the basis of the showing made and in conformity with KRS 403.200, the court may issue a temporary injunction or restraining order and an order for temporary maintenance in amounts and on terms just and proper in the circumstances.
- (6) A temporary order or temporary injunction:
  - (a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;
  - (b) May be revoked or modified before final decree on a showing of the facts necessary to revocation or modification under the circumstances; and
  - (c) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

➔Section 7. KRS 620.230 is amended to read as follows:

- (1) For each child placed in the custody of the cabinet by an order of commitment, the cabinet shall file a case permanency plan for the child with the court and send a copy to the Administrative Office of the Courts Citizen Foster Care Review Board Program as soon as the plan is prepared but no later than thirty (30) days after the effective date of the order. Notwithstanding the provisions of KRS 620.090(6)(5), if a child remains in the temporary custody of the cabinet for longer than forty-five (45) days and if a request is submitted by the Administrative Office of the Courts Citizen Foster Care Review Board Program, the cabinet shall provide a copy of the case permanency plan for the child.
- (2) The case permanency plan shall include, but need not be limited to:
  - (a) A concise statement of the reasons why the child is in the custody of the cabinet;
  - (b) A statement of the actions which have been taken with regard to the child to the date of the plan;
  - (c) A statement of the proposed actions which may be taken or are contemplated with regard to the child during the next six (6) months and during the entire duration of the time the child is in the custody of the cabinet;
  - (d) Contemplated placements for the child;
  - (e) If the child is placed outside the home, reasons why the child cannot be protected adequately in the home, the harms the child may suffer if left in the home, factors which may indicate when the child can be returned to the home, and efforts the cabinet or others are making to return the child to the home;
  - (f) If the child is placed outside the home, the steps that the cabinet will take to minimize the harm to the child as a result of the action, both at the time of removal and on a long-term basis;
  - (g) A description of the type of home, child-caring facility, child-placing agency or facility in which the child is to be placed or has been placed, and a statement why the placement is appropriate for the child, including but not limited to:
    1. Age;
    2. Educational needs;
    3. Medical needs;
    4. Emotional needs;
    5. Relationship with parents; and
    6. Number of children the home is authorized to care for and the number of children currently residing in the home;
  - (h) If the placement is outside the child's original county of residence, documentation that no closer placement is appropriate or available, and the reasons why the placement made was chosen;
  - (i) A description of the services for the child and his family to be provided or arranged by the cabinet to facilitate the return of the child to his own home or to another permanent placement;

- (j) A list of objectives and specific tasks, together with specific time frames for each task, for which the parents have agreed to assume responsibility, including a schedule of regular visits with the child;
  - (k) A projected schedule of time intervals by which each of the services, objectives, and tasks outlined in the case permanency plan should be accomplished and a schedule of time intervals which have already been accomplished or are in the process of accomplishment;
  - (l) If the child is to remain at home, a description of the potential harm which could befall the child and measures that are being taken to prevent or minimize such harm; and
  - (m) If the child is to remain at home, reasons why he cannot be placed in foster care or why such care is not needed.
- (3) Under no circumstance shall a child be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime as defined in KRS 17.500, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime.

→Section 8. Section 3 of this Act takes effect March 1, 2022.

**Signed by Governor March 19, 2021.**

## CHAPTER 48

( HB 179 )

AN ACT relating to regulatory licensing fees.

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

→Section 1. KRS 243.075 is amended to read as follows:

- (1) (a) A city with a population of less than twenty thousand (20,000) based upon the most recent federal decennial census, ~~or~~ a county that does not contain a city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census, ***or a county that contains a city authorized to impose a fee under subsection (9) of this section***, that is wet through a local option election held under KRS Chapter 242 is authorized to impose a regulatory license fee not to exceed five percent (5%) upon the gross receipts of the sale of alcoholic beverages of each establishment located in the city or county licensed to sell alcoholic beverages.
  - (b) The regulatory license fee may be levied at the beginning of each budget period at a percentage rate that is reasonably estimated to fully reimburse the local government for the estimated costs of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the city and county.
  - (c) The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, except:
    - 1. A credit against a regulatory license fee shall be allowed in an amount equal to any licenses or fees imposed by the city or county pursuant to KRS 243.060 or 243.070; and
    - 2. In a county in which the city and county both levy a regulatory license fee, the county license fee shall only be applicable outside the jurisdictional boundaries of those cities which levy a license fee.
- (2) (a) A city or county that is moist through a local option election held under KRS 242.1244 may by ordinance impose a regulatory license fee upon the gross receipts of the sale of alcoholic beverages of each establishment located in the city or county and licensed to sell alcoholic beverages by the drink for consumption on the premises.
  - (b) The regulatory license fee may be levied annually at a rate that is reasonably estimated to fully reimburse the city or county for the estimated costs for any additional policing, regulatory, or administrative related expenses.

- (c) The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, but a credit against the fee shall be allowed in an amount equal to any licenses or fees imposed by the city or county pursuant to KRS 243.060 or 243.070.
- (d) In a county in which the city and county both levy a regulatory license fee, the county license fee shall only be applicable outside the jurisdictional boundaries of those cities which levy a license fee.
- (3) (a) For any election held after July 15, 2014, any new fee authorized under subsection (1) or (2) of this section shall be enacted by the city or county no later than two (2) years from the date of the local option election held under KRS Chapter 242.
- (b) ***Notwithstanding paragraph (a) of this subsection, any city or county that held a local option election between July 15, 2014, and July 15, 2018, may enact a regulatory licensing fee in accordance with subsection (1) of this section within two (2) years of the effective date of this Act.***
- (4) After July 15, 2014, any fee authorized under subsections (1) and (2) of this section shall be established at a rate that will generate revenue that does not exceed the total of the reasonable expenses actually incurred by the city or county in the immediately previous fiscal year for the additional cost, as demonstrated by reasonable evidence, of:
  - (a) Policing;
  - (b) Regulation; and
  - (c) Administration;
 as a result of the sale of alcoholic beverages within the city or county.
- (5) (a) The Alcoholic Beverage Control Board shall promulgate administrative regulations which set forth the process by which a city or county, in the first year following the discontinuance of prohibition, may estimate any additional policing, regulation, and administrative expenses by a city or county directly and solely related to the discontinuance of prohibition. This subsection shall apply to any discontinuance of prohibition occurring after the promulgation of administrative regulations required by this subsection.
- (b) After the first year, the regulatory license fee for each subsequent year shall conform to the requirements of subsection (4) of this section.
- (6) The revenue received from the imposition of the regulatory license fee authorized under subsections (1) and (2) of this section shall be:
  - (a) Deposited into a segregated fund of the city or county;
  - (b) Spent only in accordance with the requirements of subsections (1) and (2) of this section; and
  - (c) Audited under an annual audit performed pursuant to KRS 43.070, 64.810, and 91A.040.
- (7) Any city or county found by a court to have violated the provisions of this section shall:
  - (a) Provide a refund as determined by the court to any licensee that has been harmed in an amount equal to its prorated portion of the excess revenues collected by the city or county that are directly attributable to a violation occurring after July 15, 2014;
  - (b) Be responsible for the payment of the reasonable attorney fees directly incurred by a party to a litigation in an amount ordered by the court upon its finding of an intentional and willful violation of this section by a city or county occurring after July 15, 2014; and
  - (c) Upon the finding by a court of a second intentional and willful violation of the provisions of this section, lose the ability to impose the regulatory fee provided by this section for a period of five (5) years and, upon the finding by a court of a third intentional and willful violation, forfeit the right to impose the regulatory license fee authorized by this section.
- (8) Any party bringing suit against a city or county for an alleged violation of this section occurring after July 15, 2014, shall be responsible for the payment of the reasonable attorney fees of the city or county in an amount determined by the court upon a finding by the court that the city or county did not violate this section.
- (9) (a) Any city that does not meet the population requirements of subsection (1) of this section, and any county that has a city exceeding the population requirements of subsection (1) of this section, that imposed a regulatory license fee pursuant to this section as of January 1, 2019, shall be deemed to meet



the requirements for doing so set out in this section and may continue to impose the regulatory license fee previously established pursuant to this section.

- (b) Any city or county that is authorized to impose the regulatory license fee under subsection (1) of this section, or under paragraph (a) of this subsection, that imposed the regulatory license fee at a rate higher than five percent (5%) prior to June 27, 2019, may continue to impose the regulatory license fee at a rate that exceeds five percent (5%). The rate shall continue to be calculated annually pursuant to the requirements of this section and shall not exceed the rate that was imposed by the city or county on January 1, 2019.
- (10) A direct shipper licensee shall collect and remit the regulatory license fee imposed by this section as though it were an establishment located in a city or county licensed to sell alcoholic beverages. This fee shall be considered a tax as defined in KRS 243.029.
- (11) Any city or county imposing a regulatory license fee under this section shall file with the department a report showing the applicable fee amount and remittance address for each affected license type in its jurisdiction on or before August 1, 2020. Any adoption of this fee after July 15, 2020, or modification of the applicable fee amount or remittance address for each affected licensee shall be reported to the department within thirty (30) days of adoption by the city or county imposing the fee. Within twenty (20) days after receipt of the information, the department shall compile and publish the information so that it is readily available to the public.

**Signed by Governor March 19, 2021.**

## CHAPTER 49

### ( SB 12 )

AN ACT relating to the procurement of human tissue.

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

➔Section 1. KRS 311.1939 is amended to read as follows:

- (1) Except as otherwise provided in subsection ~~(4)~~~~(2)~~ of this section, a person ***shall not, [that]*** for valuable consideration, knowingly ***purchase, [purchases]*** ***sell, transfer, or offer to purchase, sell, or transfer [or sell]*** a part for transplantation or therapy if removal of a part from an individual ***has occurred***, is intended to occur, ***or*** after the individual's death.
- (2) ***A for-profit entity shall not engage, directly or indirectly, in the procurement, transfer, or distribution of any human eye, cornea, eye tissue, corneal tissue, or portions of eyes.***
- (3) ***A person who knowingly violates any of the provisions in this section*** shall be imprisoned in the penitentiary for not less than one (1) nor more than five (5) years or be fined not more than fifty thousand dollars (\$50,000), or both.
- ~~(4)~~~~(2)~~ ***A nonprofit entity [person]*** may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

**Signed by Governor March 19, 2021.**

## CHAPTER 50

### ( HB 229 )

AN ACT relating to the protection of agricultural animals.

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

➔Section 1. KRS 512.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Litter" means rubbish, refuse, waste material, offal, paper, glass, cans, bottles, trash, debris or any foreign substance of whatever kind or description and whether or not it is of value;
- (2) "Noxious substance" means any substance capable of generating offensive, noxious or suffocating fumes, gases or vapors; and
- (3) "Property" includes *livestock as defined in KRS 150.010 and poultry as defined in KRS 246.010* ~~feather~~.

Signed by Governor March 19, 2021.

## CHAPTER 51

### ( HB 402 )

AN ACT relating to flagrant nonsupport.

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

➔Section 1. KRS 530.050 is amended to read as follows:

- (1) A person is guilty of nonsupport:
  - (a) When he *or she* persistently fails to provide support which he *or she* can reasonably provide and which *the person* ~~he~~ knows he *or she* has a duty to provide to a minor, ~~or to~~ a child adjudged mentally disabled, *an* indigent spouse, or indigent parent; or
  - (b) Upon a finding that a defendant obligor, subject to court order to pay any amount for the support of a minor child, is delinquent in meeting the full obligation established by *the court* ~~such~~ order, and has been ~~so~~ delinquent for a period of at least two (2) months duration.
- (2) A person is guilty of flagrant nonsupport when he *or she* persistently fails to provide support which he *or she* can reasonably provide and which *the person* ~~he~~ knows he *or she* has a duty to provide by virtue of a court or administrative order to a minor, ~~or to~~ a child adjudged mentally disabled, *an* indigent spouse, or indigent parent, and the failure results in:
  - (a) An arrearage of not less than ~~two~~ ~~one~~ thousand *five hundred* dollars (\$2,500) ~~(\$1,000)~~; or
  - (b) Six (6) consecutive months without payment of support; or
  - (c) The dependent having been placed in destitute circumstances. For the purposes of this paragraph, it shall be prima facie evidence that a dependent has been placed in destitute circumstances if the dependent is a recipient of public assistance as defined in KRS 205.010.
- (3) A person has a duty to provide support for an indigent spouse, a minor child or children, or a child or children adjudged mentally disabled and, for purposes of this section, is presumed to know of that duty.
- (4) Any person who is eighteen (18) years of age or over, residing in this state and having in this state a parent who is destitute of means of subsistence and unable because of old age, infirmity, or illness to support himself or herself, has a duty to provide support for such parent and, for purposes of this section, is presumed to know of that duty.
- (5) Nonsupport is a Class A misdemeanor. For a second offense, the person shall receive a minimum sentence of seven (7) days in jail. For a third or any subsequent offense, the person shall receive a minimum sentence of thirty (30) days in jail.
- (6) Flagrant nonsupport is a Class D felony.

Signed by Governor March 19, 2021.

## CHAPTER 52

( SB 74 )

AN ACT related to dementia services.

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

➔Section 1. KRS 194A.600 is amended to read as follows:

As used in KRS 194A.600 to 194A.609:

- (1) "Council" means the Alzheimer's Disease and Related Disorders Advisory Council;
- (2) "Dementia" means Alzheimer's disease and related dementia illnesses and disorders; and
- (3) "Office" means the Office *of Dementia Services*~~[on Alzheimer's Disease and Related Disorders]~~.

➔Section 2. KRS 194A.601 is amended to read as follows:

- (1) The Office *of Dementia Services*~~[on Alzheimer's Disease and Related Disorders]~~ is established within the cabinet. The purpose of the office is to oversee information and resources related to policy and services affecting ~~[the sixty thousand (60,000)]~~ residents of Kentucky with dementia, and the caregivers and families of the residents.
- (2) The *dementia services coordinator*~~[director of the office]~~ shall be a full-time, permanent employee and shall be responsible for the staffing and operational details of the office. A report on the *operations of the office shall be made to the secretary within ninety (90) days of the effective date of this Act. An annual report on the operation of the office*~~[start-up and implementation of the office]~~ shall be made to the Interim Joint Committee on Health, *Welfare, and Family Services*~~[and Welfare]~~ by *December 1 of each year*~~[September 30, 2000, and on a quarterly basis thereafter]~~.
- (3) The *duties of the office shall include but not be limited to:*
  - (a) *Creating, implementing, and updating the Kentucky Alzheimer's and Related Dementias State Plan;*
  - (b) *Coordinating and managing the Alzheimer's Disease and Related Disorders Advisory Council;*
  - (c) *Assessing and analyzing dementia-specific data collected by the cabinet, including the behavioral risk factor surveillance system, and data from other relevant departments and divisions;*
  - (d) *Evaluating of state-funded dementia services;*
  - (e) *Identifying and supporting the development of dementia-specific trainings;*
  - (f) *Streamlining all applicable state government services to increase efficiency and improve the quality of care in residential and home and community-based settings;*
  - (g) *Identifying any duplicative services to eliminate all unnecessary costs;*
  - (h) *Identifying and applying for grant opportunities to expand the scope of services while reducing state costs; and*
  - (i) *Completing other duties relevant to supporting policy development and implementation to support individuals with dementia and their family caregivers*~~[Enhance the quality of life for persons affected by dementia and for their caregivers];~~
  - ~~(b) Recommend the delivery of services in the most effective and efficient manner possible to facilitate the needs of people with dementia and their caregivers, after consultation with other agencies of state government that work with dementia-related illness;~~
  - ~~(c) Determine ways the Commonwealth may secure additional federal and private funding to provide additional services and programs through a coordinated effort;~~
  - ~~(d) Apply for any public or private funding relating to dementia that will enhance the office's abilities to perform its duties under this section;~~
  - ~~(e) Promote public and professional awareness and education of dementia and access to needed services and programs;~~
  - ~~(f) Oversee and receive reports from the Alzheimer's Disease and Related Disorders Advisory Council; and~~

~~(g) Coordinate and oversee the implementation of the recommendations of the 1995 Governor's Task Force on Alzheimer's Disease and Related Disorders].~~

➔Section 3. KRS 194A.603 is amended to read as follows:

- (1) The Alzheimer's Disease and Related Disorders Advisory Council is created. The council shall report directly to the office.
- (2) The council shall be composed of *the following* ~~[a minimum of]~~ fifteen (15) members:
  - (a) *The secretary of the Cabinet for Health and Family Services or his or her designee;*
  - (b) *The commissioner of the Department for Aging and Independent Living or his or her designee;*
  - (c) *The commissioner of the Department for Public Health or his or her designee;*
  - (d) *The commissioner of the Department for Medicaid Services or his or her designee;*
  - (e) *The state long-term care ombudsman or his or her designee;*
  - (f) *The executive director of the Area Agencies on Aging or his or her designee;*
  - (g) *One (1) individual who is the family caregiver of an individual living with Alzheimer's disease or another dementia, appointed by the Governor from a list of names of qualified persons submitted by any interested parties;*
  - (h) *One (1) individual who represents the residential long-term care industry, appointed by the Governor from a list of names of qualified persons submitted by any interested parties;*
  - (i) *One (1) individual who represents providers of adult day care services, appointed by the Governor from a list of names of qualified persons submitted by any interested parties;*
  - (j) *One (1) individual who represents the home care providers, appointed by the Governor from a list of names of qualified persons submitted by any interested parties;*
  - (k) *One (1) individual employed by and representing an organization that advocates solely on behalf of physicians, appointed by the Governor from a list of names of qualified persons submitted by any interested parties;*
  - (l) *One (1) individual employed by and representing an organization that advocates solely on behalf of nurses, appointed by the Governor from a list of names of qualified persons submitted by any interested parties;*
  - (m) *One (1) individual who conducts research regarding Alzheimer's disease or other dementias, appointed by the Governor from a list of names of qualified persons submitted by any interested parties;*
  - (n) *One (1) individual who represents an organization that advocates solely on behalf of individuals living with Alzheimer's disease or other dementias, appointed by the Governor from a list of names of qualified persons submitted by any interested parties; and*
  - (o) *One (1) individual representing a statewide organization that advocates on behalf of Kentuckians aged fifty (50) or older, appointed by the Governor from a list of names of qualified persons submitted by any interested parties.* ~~[Three (3) members shall represent agencies of state government dealing with dementia, three (3) shall represent local health departments, one (1) shall represent the University of Kentucky Alzheimer's Disease Research Center at the Sanders Brown Center on Aging, at least one (1) shall be appointed from each of the chapters of the Alzheimer's Disease and Related Disease Association that serve the Commonwealth, and the remainder shall represent consumers, health care providers, and the medical research community.]~~
- (3) Members who are not state employees shall be reimbursed for necessary and actual expenses.
- (4) The council shall meet *at least* quarterly *and at other such times as it determines necessary to perform its duties*. A majority of the members shall constitute a quorum for the transaction of the council's business.
- ~~(5)(3)~~ The council shall:
  - (a) Elect its own chairperson and establish other officers and subcommittees as needed to execute the duties of the council;

- (b) Adopt bylaws and operate under its bylaws;
  - (c) *Starting on July 1, 2021, and repeating every four (4) years after that date, submit an updated Kentucky Alzheimer's and Related Dementias State Plan to the Governor for his or her approval and thereafter make it available to the General Assembly. If the council determines that amendments need to be made to the state plan, an amended Kentucky Alzheimer's and Related Dementia State Plan may be presented to the Governor for review and approval;*
  - (d) *Starting on July 1, 2021, and repeating every year after that date, submit an annual report on the implementation progress of the Kentucky Alzheimer's and Related Dementias State Plan to the Governor. This annual report shall include a summary of the progress toward implementation of the state plan and recommendations for amendments to the state plan; and*
  - (e) *Serve in an advisory capacity to the Governor, the General Assembly, the cabinet and all other state agencies on matters relating to the Kentucky Alzheimer's and Related Dementias State Plan. The council shall review and make recommendations regarding progress towards the goals of the state plan and on progress in implementing resources and services to serve individuals with dementia and related diseases across Kentucky in the future* ~~[Select the director of the office;~~
  - ~~(d) Establish and evaluate goals and outcomes for the office that may facilitate treatment and care of persons with dementia;~~
  - ~~(e) Assist with the dissemination of information about the availability of program materials, education materials, and curriculum guides; and~~
  - ~~(f) Prepare a report of its activities, at least annually, for submission to the office].~~
- ~~(6)(4)~~ *Members shall serve for a term of two (2) years and may be reappointed. All subsequent appointments or reappointments shall be for terms of two (2) years. If an appointee resigns or is otherwise unable to complete the appointed term, the Governor shall appoint a new individual whose expertise or experience satisfies the vacated position within ninety (90) days* ~~[The office shall provide requested personnel to assist the council in fulfilling its responsibilities].~~

Signed by Governor March 19, 2021.

## CHAPTER 53

### ( SB 236 )

AN ACT relating to vehicle license plates.

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

➔Section 1. KRS 186.005 is amended to read as follows:

- (1) It is declared to be the policy of this Commonwealth that all ~~commercial~~ vehicles should be regulated, registered, and the laws pertaining thereto be administered by the Transportation Cabinet. Motor vehicles other than commercial vehicles should be registered, regulated, and controlled by the Transportation Cabinet and the Justice and Public Safety Cabinet.
- (2) All motor vehicles registered under the provisions of KRS 186.050(1) shall be on an annual basis and evidenced by a license plate whose registration designation is a combination of ~~three (3)~~ letters of the alphabet and ~~three (3)~~ Arabic numerical digits. These registration plates shall be issued for use during a multiyear period and validated for continued use the following year, or years, by affixing an appropriate insignia of plastic or adhesive material bearing the date of the new year.
- (3) *Unless otherwise specified*, all motor vehicles ~~registered under the provisions of KRS 186.050(3)(a), (4)(a), (5), (6), or (11)~~ shall have registration plates issued for use during a multiyear period and validated for continued use the following year, by affixing an appropriate insignia of plastic or adhesive material bearing the date of the new year.
- (4) The Transportation Cabinet may promulgate regulations and prepare the proper insignia and forms, which forms shall include information required by the Transportation Cabinet.

➔Section 2. KRS 186.240 is amended to read as follows:

- (1) It shall be the duty of the cabinet to carry out the provisions of KRS 186.005 to 186.260, and:
  - (a) ~~Provide~~~~Prepare and furnish~~ to the clerk in each county *access to* ~~a sufficient supply of~~ all forms ~~and blanks~~ provided for in KRS 186.005 to 186.260. ~~The forms for receipts shall be designated for the writing of not less than triplicate copies, the originals of which shall be numbered consecutively for each county, the second and third copies bearing the same number as the original. Receipts to be used as duplicates for lost receipts, as provided in KRS 186.180(1), shall be in duplicate only, and shall not be numbered;~~
  - (b) Keep a numerical record of all registration numbers issued in the state, ~~for which they may use the second copy of receipts forwarded by the clerk of each county,~~ and also keep a record of motor or vehicle identification numbers required by KRS 186.160; and
  - (c) Furnish to each clerk, originally each year upon estimate, and thereafter upon requisition at all times, a sufficient supply of *standard, noncommercial plates and the supplies necessary to provide evidence of* ~~and other insignia evidencing~~ registration for all classes of vehicles required to be registered.
  - (d) ~~the cabinet shall~~ Prescribe a plate of practical form and size for police identification purposes that shall contain:
    1. The registration *identifier* ~~number~~;
    2. *An indication that Kentucky is the issuing jurisdiction;*
    3. *For standard plates for noncommercial vehicles, the county in which the plate is issued;* ~~The word "Kentucky;" and~~
    4. ~~3.~~ *For* ~~The name of the county in which the plate is issued, or in lieu thereof the words "Official," "Transportation," "Executive," or "Farm." ]~~ plates for commercial vehicles, ~~shall contain~~ the year the license expires and words or information the Department of Vehicle Regulation may prescribe by administrative regulation, pursuant to KRS Chapter 13A; ~~and~~ ~~Numerals indicating a year shall not be placed upon any license plate issued pursuant to KRS 186.060, relating to the licensing of vehicles owned exclusively by the state and KRS 186.061, relating to the licensing of vehicles owned exclusively by a nonprofit volunteer fire department, volunteer fire prevention unit, and volunteer fire protection unit.]~~
    5. *At the discretion of the cabinet,* a state slogan ~~may be placed upon the plate.~~
- (2) License plates issued pursuant to *this chapter* ~~KRS 186.050(1)~~ shall conform to the provisions of subsection (1)(c) ~~and (d)~~ of this section. ~~except:~~
  - ~~(a) The word "Kentucky" shall be centered above the county name in which the plate is issued;~~
  - ~~(b) The words "Bluegrass State" shall be centered at the top of the plate above the registration number; and~~
  - ~~(c) The name of the county in which the plate is issued shall be centered in the lower portion of the plate below the registration number and shall be printed in letters that are the same size as those used to print the word "Kentucky." Beginning January 1, 1993,~~ The Transportation Cabinet shall provide for the issuance of reflectorized plates for all motor vehicles, and shall collect a fee, in addition to the fee set out in KRS Chapter 186 and KRS 281.631, of fifty cents (\$0.50). The fifty cents (\$0.50) fee to reflectorize license plates shall be used by the cabinet as provided in subsection (3) of this section. ~~;~~
- (3) The reflectorized license plate program fund is established in the state road fund and appropriated on a continual basis to the cabinet to administer the moneys as provided in this subsection. The fifty cents (\$0.50) fee collected by the cabinet to reflectorize license plates shall be deposited into the program fund and used to issue reflectorized license plates. If at the end of a fiscal year, money remains in the program fund, it shall be retained in the fund and shall not revert to the state road fund. The interest and income earned on money in the program fund shall also be retained in the program fund to carry out the provisions of this subsection. The Transportation Cabinet shall *issue* ~~begin issuing the new~~ reflectorized license *plates* ~~plate~~ under the provisions of this subsection on ~~January 1, 2003, and shall continue to issue a new reflectorized license plate on~~ a schedule to be determined at the discretion of the cabinet. ~~in the years thereafter;~~
- (4) Except as directed under subsection (3) of this section, the Transportation Cabinet shall receive all moneys forwarded by the clerk in each county and turn it over to the State Treasurer for the benefit of the state road fund. ~~;~~

- (5) The Transportation Cabinet shall require an accounting by the clerk in each county for any moneys received by him under the provisions of this chapter, after the deduction of his fees under this chapter, and for all receipts, forms, plates, and insignia consigned to him. The Auditor of Public Accounts, pursuant to KRS 43.071, shall annually audit each county clerk concerning his responsibilities for the collection of various fees and taxes associated with motor vehicles. The secretary of the Transportation Cabinet, with the advice, consultation, and approval of the Auditor, shall develop and implement an inventory and accounting system which shall insure that the audits mandated in KRS 43.071 are performed in accordance with generally accepted auditing standards. The Transportation Cabinet shall pay for the audits mandated by KRS 43.071. ~~and~~
- (6) When applied for under *Section 3 or 4 of this Act* ~~[KRS 186.160]~~, motor or vehicle numbers assigned shall be distinctive to show that they were designated by the cabinet.

➔Section 3. KRS 186.060 is amended to read as follows:

- (1) Applications for registration of motor vehicles leased or owned by a county, city, urban-county, or board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state or by the state or federal government shall be accompanied by a statement from the head of the department of the governmental unit that leases or owns the motor vehicle, certifying that the motor vehicle is leased or owned and operated by the governmental unit. The application and statement shall be forwarded by the county clerk to the cabinet, which shall give special authority to the clerk to register it. Upon receiving that authority, the clerk shall issue a registration receipt and the official number plate described in *subsection (6) of Section 2 of this Act* ~~[KRS 186.240(1)(c)]~~, and report the registration to the head of the department authorizing the registration. For his services in issuing such certificate of registration and number plate and reporting the same, the county clerk shall be entitled to a fee of three dollars (\$3) in each instance, to be paid by the department upon whose authorization such license was issued.
- (2) After such registration of any vehicle leased or owned by a county, city, urban-county, or board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state, or by the state or federal government and after issuance of such number plate for such vehicle so leased or owned, no subsequent registration or renewal of same, and no subsequent renewal of a number plate of the vehicle shall be necessary so long as the vehicle is leased or owned by the governmental unit except in the case of loss or destruction of the license plate. In the event of loss or destruction, the number plate shall be replaced in the same manner as if no plate had ever been issued.
- (3) When a motor vehicle leased or owned by a county, city, urban-county, or board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state, or by the state or federal government is transferred or sold to another governmental unit, a new license plate shall be issued for the vehicle in the same manner as provided for in subsection (1) of this section and shall have the same effect as given to such license plates in subsection (2) of this section.
- (4) No person shall use on a motor vehicle, not leased or owned by a county, city, urban-county, board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state, or the state or federal government, any license plate that has been issued for use on a motor vehicle leased or owned by the governmental unit.
- (5) Notwithstanding the provisions of KRS 186.020 and 186.050, a governmental entity which leases a motor vehicle may have that vehicle equipped with an official plate under this section. Upon termination of the lease agreement, if ownership of the motor vehicle does not revert to an entity allowed to use an official plate under this section, the owner of the motor vehicle shall surrender the official plates and apply for registration under the provisions of KRS 186.050.

➔Section 4. KRS 186.061 is amended to read as follows:

- (1) Applications for registration of motor vehicles owned exclusively by any nonprofit volunteer fire department, volunteer fire prevention unit, or volunteer fire protection unit shall be accompanied by a statement from the chief or assistant chief of the volunteer fire department or unit that owns the motor vehicle, certifying that the motor vehicle is exclusively owned and operated by the volunteer fire department or unit. The application and statement shall be forwarded by the county clerk to the cabinet, which shall give special authority to the clerk to register it. Upon receiving that authority, the clerk shall issue a registration receipt and the official number plate described in *subsection (6) of Section 2 of this Act* ~~[KRS 186.240(1)(c)]~~, and report the registration to the head of the cabinet authorizing the registration. For his services in issuing such certificate of registration and

number plate and reporting the same, the county clerk shall be entitled to a fee of three dollars (\$3) in each instance, to be paid by the volunteer fire department or unit.

- (2) After registration of any vehicle owned exclusively by any nonprofit volunteer fire department, volunteer fire prevention unit, or volunteer fire protection unit and after issuance of a number plate for the vehicle so owned, no subsequent registration or renewal of same, and no subsequent renewal of a number plate of the vehicle shall be necessary so long as the vehicle is owned exclusively by the volunteer fire department or unit except in the case of loss or destruction of the license plate. In the event of loss or destruction, the number plate shall be replaced in the same manner as if no plate had ever been issued.
- (3) When a motor vehicle owned exclusively by any nonprofit volunteer fire department, volunteer fire prevention unit, or volunteer fire protection unit is transferred or sold to another nonprofit volunteer fire department, volunteer fire prevention unit, or volunteer fire protection unit or another governmental unit a new license plate shall be issued for the vehicle in the same manner as provided for in subsection (1) of this section and shall have the same effect as given to such license plates in subsection (2) of this section.
- (4) No person shall use on a motor vehicle, not exclusively owned by any nonprofit volunteer fire department, volunteer fire prevention unit, or volunteer fire protection unit, any license plate that has been issued for use on a motor vehicle owned by a volunteer fire department or unit.

**Signed by Governor March 19, 2021.**

## CHAPTER 54

### ( HB 238 )

AN ACT relating to city utility commission membership.

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

➔Section 1. KRS 96.530 is amended to read as follows:

- (1) Any city acquiring or constructing an electric light, heat, and power plant under the provisions of KRS 96.520 shall, by ordinance, appoint a city utility commission consisting of *either* three (3) commissioners *or five (5) commissioners* to operate, manage, and control the plant~~[-, except that a city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census shall appoint five (5) commissioners].~~ The utility commission shall have absolute control of the plant in every respect, including its operation and fiscal management and the regulation of rates, except that in fixing rates the commission shall be governed by the provisions of KRS 96.430, as it is made applicable to those plants by KRS 96.520, and by any ordinance enacted under that section, except that in fixing rates the commission in a city with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census shall be governed by the provisions of KRS 96.535 and any ordinance enacted according to this section. The utility commission, when so appointed, shall be a public body politic and corporate, with perpetual succession; and the body may contract and be contracted with, sue and be sued, in and by its corporate name, and have and use a corporate seal. The utility commission shall provide rules for the management of the plant, and it shall fix the number, qualifications, pay, and terms of employment of all employees needed to operate the plant. In cities with populations equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census providing civil service coverage for city employees, the utility commission appointed under this section may provide civil service coverage for all of its employees, and it shall exercise the powers and functions with respect to their employees which are vested in the city legislative body with respect to the city employees by KRS 90.380. Employees who have been in the employment of the utility commission for one (1) year immediately preceding the adoption of an order by the utility commission placing all of its employees under civil service coverage shall not be required to stand a civil service examination, and they shall be eligible for all the benefits provided by civil service coverage. Out of the revenue of the plant, it shall pay operating expenses, repairs, and necessary additions and provide sufficient reserve fund against any emergency that may arise. The commission shall from time to time pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.430 and 96.440, as they are made applicable to the plants by KRS 96.520, except that the commission in a city with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census shall pay to the city the surplus revenue derived from the



operation of the plant as is provided in KRS 96.535 and any ordinance adopted according to this section. Notwithstanding the foregoing provisions, the utility commission, for the purpose stated in KRS 96.520(1), may enter into an agreement for the operation of any of its plants or other facilities.

- (2) (a) Except as provided in KRS 61.070, no person shall be appointed a member of the commission who has, within the last two (2) years before his appointment, held any city, county, state, or federal office, or been a member of any committee of any political party, or who is related within the third degree to the mayor, or a member of a city legislative body.
- (b) The commission shall not appoint to any subordinate office that it may create any person who is related to any commissioner, to the mayor or to any member of the city legislative body. No officer or employee of the city, whether holding a paid or unpaid office, shall be eligible to be appointed as a member of the commission or to be employed by the commission in any capacity.
- (c) The members of the commission shall be citizens, taxpayers, and legal voters of the city and shall not at the time of appointment be indebted to the city or be surety on the official bond of any officer of the city. However, *in cities with three (3) commission members*, one (1) commission member may be appointed *who does not live within the city boundaries, and, in cities with five (5) commission members, no more than two (2) commission members may be appointed who do not live within the city boundaries. In both instances, the appointment or appointments shall occur only if the appointing authority determines that each appointee:*
1. *Is a resident of a county in which the utility operates;*
  2. *Possesses qualifications and expertise that would benefit and be in the best interests of the city utility; and*
  3. *a. Is not employed by;*  
*b. Is not serving in any fiduciary or agency capacity with; or*  
*c. Does not possess an ownership interest in;*  
*a direct supplier or direct competitor of the city utility* ~~[who lives in a portion of the utility's service area that is not within the city if that portion contains ten percent (10%) or more of the utility's customers and that member has been a customer of the utility for not less than one (1) year].~~
- (d) If at any time during his *or her* term of office any member of the commission becomes a candidate for or is elected or appointed to any public office, he *or she* shall automatically vacate his *or her* membership on the commission, and another person shall be appointed in his *or her* place.
- (3) The city shall pay the cost of securing bonds for the commissioners from a surety company, and each commissioner shall execute bond to be approved by the city legislative body.
- (4) The city legislative body shall fix the salary to be paid each member of the commission at a sum not to exceed two thousand four hundred dollars (\$2,400) per annum. The Department for Local Government shall compute by the second Friday in February of every year the annual increase or decrease in the Consumer Price Index of the preceding year by using 1998 as the base year, and the salary of the commissioners may be adjusted at a rate no greater than that stipulated by the Department for Local Government.
- (5) The first commissioners appointed under this section shall be appointed one (1) for the term of one (1) year, one (1) for the term of two (2) years, and one (1) for the term of three (3) years. Upon the expiration of the first terms, successors shall be appointed for a term of three (3) years. On a commission with five (5) members, not more than two (2) members shall hold concurrent terms of office.
- (6) All commission members appointed subsequent to the initial members shall be appointed by the mayor or chief executive of the municipality, with the approval of the governing body of the municipality.

**Signed by Governor March 19, 2021.**

## ( HB 75 )

AN ACT relating to living organ donation.

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:*

(a) *"Insurance coverage" means coverage under a disability insurance, life insurance, or long-term care insurance policy; and*

(b) *"Living donor" means an individual who:*

1. *Has donated all or part of an organ; and*

2. *Is not deceased.*

(2) *Notwithstanding any other provision of law, it shall be unlawful to:*

(a) *Limit or decline to issue or renew insurance coverage due solely to the status of an individual as a living donor;*

(b) *Preclude an insured from donating all or part of an organ as a condition of continuing to receive insurance coverage; or*

(c) *Otherwise discriminate in the offering, issuance, cancellation, amount of insurance coverage, price, or any other condition of insurance coverage provided under a policy, based solely and without any additional actuarial risks upon the status of an individual as a living donor.*

➔Section 2. KRS 2.240 is amended to read as follows:

(1) The fourth week of April of each year is designated as Organ Donor Awareness Week, and the Governor shall annually issue a proclamation inviting and urging the people of the Commonwealth to be involved with appropriate activities. This observance is created to educate the citizens of the Commonwealth about the importance of organ donation.

(2) As part of Organ Donor Awareness Week, the Governor and the House of Representatives and the Senate of the General Assembly shall honor those persons who have donated organs and surviving family members with a ceremony in the Capitol rotunda. Each person who has donated an organ shall be recognized collectively by citation and, upon request, the person or the person's family shall be given a copy of the citation. The Governor may establish an organ donor honor board to collect the name of each person, subject to the person's consent, who donates an organ in the Commonwealth during the year, and to recognize medical professionals, educators, volunteers, public employees, and private organizations that are involved with the organ donation process. Nothing in this section shall be construed to require reporting of the name of any person involved with the organ donation process or to supersede patient confidentiality protections established by statute, the Board of Medical Licensure or other state entity, or the Federal Health Insurance Portability and Accountability Act.

(3) Education efforts are encouraged to focus on the importance of organ donation and its significance with saving the lives of Kentuckians. The Cabinet for Health and Family Services is encouraged to develop and circulate materials relating to organ donation, *including but not limited to:*

(a) *The benefits of living organ donation; and*

(b) *The impact of living organ donation on the access of a living organ donor to insurance, including the protections set forth in Section 1 of this Act.*

➔Section 3. Section 1 of this Act applies to insurance policies issued, renewed, or declined on or after the effective date of this Act.

➔Section 4. This Act may be cited as the Living Donor Protection Act of 2021.

**Signed by Governor March 22, 2021.**

## CHAPTER 56

## ( HB 219 )

AN ACT relating to the practice of pharmacy.

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

➔Section 1. KRS 217.177 is amended to read as follows:

- (1) No person engaged in sales at retail shall display hypodermic syringes or needles in any portion of the place of business which is open or accessible to the public.
- (2) *Pharmacies offering retail sale of hypodermic syringes or needles shall make available:*
  - (a) *Written or electronic educational materials on safe and proper disposal of hypodermic needles and syringes;*
  - (b) *Written or electronic educational or referral information for syringe exchange service programs and substance use disorder treatment; and*
  - (c) *A verbal, physical, or electronic offer to provide a naloxone prescription for opioid overdose.*
- (3) *Nothing in this section shall apply to the sale of hypodermic syringes or needles dispensed as a prescription or in conjunction with a prescription medication that requires reconstitution or administration with a syringe.* ~~Every person engaged in sales of hypodermic syringes or needles at retail shall maintain a bound record in which shall be kept:~~
  - ~~(a) The name of the purchaser; and~~
  - ~~(b) The address of the purchaser; and~~
  - ~~(c) The quantity of syringes or needles purchased; and~~
  - ~~(d) The date of the sale; and~~
  - ~~(e) Planned use of such syringes or needles.~~
- ~~(3) Said record shall be maintained for a period of two (2) years from the date of the sale and shall be available for inspection during business hours by any law enforcement officer, agent or employee of the Cabinet for Health and Family Services or Board of Pharmacy engaged in the enforcement of KRS Chapter 218A.~~
- ~~(4) No person shall present false identification or give a false or fictitious name or address in obtaining or attempting to obtain any hypodermic syringe or needle.~~
- ~~(5) No person engaged in the retail sale of hypodermic syringes or needles shall:~~
  - ~~(a) Fail to keep the records required by this section; or~~
  - ~~(b) Fraudulently alter any record required to be kept by this section; or~~
  - ~~(c) Destroy, before the time period required by this section has elapsed, any record required to be kept by this section; or~~
  - ~~(d) Sell, or otherwise dispose of, any hypodermic syringe to any person who does not present the identification required by this section; or~~
  - ~~(e) Disclose the names in said book except to those required by this section.~~
- ~~(6)~~(4) Any physician, other licensed medical person, hospital, or clinic disposing of hypodermic syringes or needles shall ~~flush the barrel of same or otherwise~~ render the instrument incapable of further use.

➔Section 2. KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

- (1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes but is not limited to:

- (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
  - (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
  - (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
  - (d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
  - (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
  - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
  - (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
  - (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
  - (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
  - (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
  - (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and
  - (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.
- (2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.
- (3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.
- (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.
- (5) (a) This section shall not prohibit a local health department from operating a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes.
- (b) To operate a substance abuse treatment outreach program under this subsection, the local health department shall have the consent, which may be revoked at any time, of the local board of health and:
1. The legislative body of the first or home rule class city in which the program would operate if located in such a city; and

2. The legislative body of the county, urban-county government, or consolidated local government in which the program would operate.
- (c) Items exchanged at the program shall not be deemed drug paraphernalia under this section while located at the program.
- (6) (a) Prior to searching a person, a person's premises, or a person's vehicle, a peace officer may inquire as to the presence of needles or other sharp objects in the areas to be searched that may cut or puncture the officer and offer to not charge a person with possession of drug paraphernalia if the person declares to the officer the presence of the needle or other sharp object. If, in response to the offer, the person admits to the presence of the needle or other sharp object prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object or for possession of a controlled substance for residual or trace drug amounts present on the needle or sharp object.
- (b) The exemption under this subsection shall not apply to any other drug paraphernalia that may be present and found during the search or to controlled substances present in other than residual or trace amounts.
- (7) (a) ***This section shall not prohibit the retail sale of hypodermic syringes and needles without a prescription in pharmacies.***
- (b) ***Hypodermic syringe and needle inventory of a pharmacy shall not be deemed drug paraphernalia under this section.***
- (8) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor.

➔Section 3. KRS 315.020 is amended to read as follows:

- (1) No owner of a pharmacy who is not a pharmacist shall fail to place a pharmacist in charge of his pharmacy or shall permit any person to compound or dispense prescription drugs, medicines, or pharmaceuticals in his place of business except in the presence and under the immediate supervision of a pharmacist.
- (2) No manufacturer of pharmaceuticals who is not a pharmacist shall fail to place a pharmacist in charge of his place of business or shall permit any person to compound prescription drugs, medicines, or pharmaceuticals in his place of business, except as provided by the board through the promulgation of administrative regulations pursuant to KRS Chapter 13A.
- (3) Except as provided in subsection (4) of this section, no person shall engage in the practice of pharmacy unless licensed to practice under the provisions of KRS Chapter 315.
- (4) The provisions of subsection (3) of this section shall not apply to:
  - (a) Pharmacist interns performing professional practice activities under the immediate supervision of a licensed pharmacist. The nature and scope of the activities referred to in this paragraph shall be determined by the board through administrative regulation promulgated pursuant to KRS Chapter 13A;
  - (b) Pharmacist interns and pharmacy technicians performing specifically identified pharmacy practice activities while under the supervision of a pharmacist. The nature and scope of the activities referred to in this paragraph shall be determined by the board through administrative regulation promulgated pursuant to KRS Chapter 13A;
  - (c) Other licensed health care professionals practicing within the statutory scope of their professional practices; or
  - (d) Volunteer health practitioners providing services under KRS 39A.350 to 39A.366.
- (5) (a) ***As used in this subsection:***
  1. ***"Order entry" means the process by which pharmacy personnel validate prescription data and enter that data into a pharmacy's dispensing or medication management system. Prescription data includes, but is not limited to, patient demographics, prescriber demographics, drug name, strength, dosage form, quantity, the directions for use, refill authorization, or any clarifications of the same; and***
  2. ***"Order entry verification" means the process by which a pharmacist verifies prescription data entered in a pharmacy's dispensing or medication management system after order entry has been completed.***
- (b) ***Nothing in this chapter shall prohibit a pharmacist licensed in Kentucky, or***

*a pharmacy technician registered in Kentucky or a pharmacy intern certified in Kentucky who is working under the supervision of the pharmacist, from accessing the electronic database of the pharmacy, from inside or outside of the pharmacy, to perform order entry, order entry verification, or drug regimen review as defined in KRS 315.010, if:*

1. *The pharmacy has established controls to protect the confidentiality and integrity of protected health information;*
  2. *No part of the pharmacy's database is duplicated, downloaded, or removed from the electronic database;*
  3. *The pharmacy is located in Kentucky and is permitted by the board; and*
  4. *All personnel who access the pharmacy's electronic database from outside of the pharmacy reside in Kentucky or within one hundred (100) miles of the pharmacy.*
- (c) *Supervision required by paragraph (b) of this subsection may include electronic supervision.*
- (d) *This subsection shall only apply to pharmacies that are not open to the public and do not dispense to walk-in patients in a retail setting.*
- (e) *Nothing in this subsection shall be construed to authorize final product verification and dispensing of a prescription from a location outside of or other than a pharmacy.*
- (f) *Nothing in this subsection permits pharmacists, pharmacy technicians, or pharmacy interns to receive hard copy prescriptions outside of the premises of a permitted pharmacy.*
- (6) Effective April 1, 2009, an owner of a pharmacy shall not employ a person to assist in the practice of pharmacy unless the person is registered as a pharmacy technician by the board or exempt under KRS 315.135.

**Signed by Governor March 22, 2021.**

## CHAPTER 57

### ( SB 38 )

AN ACT relating to surgical smoke evacuation.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Energy-generating device" means any tool that performs a surgical function using heat, laser, electricity, or another form of energy;*
- (b) *"Smoke evacuation system" means smoke evacuators, laser plume evacuators, or local exhaust ventilators that effectively capture and neutralize surgical smoke at the site of origin and before the smoke can make ocular contact or contact with the respiratory tract of the occupants of the room; and*
- (c) *"Surgical smoke" means the by-product, including surgical plume, smoke plume, bio-aerosols, laser-generated airborne contaminants, and other lung-damaging dust, that results from contact with tissue by an energy-generating device.*

(2) *On or before January 1, 2022, in order to protect operating room nurses, operating room personnel, and patients from the hazards of surgical smoke, the cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A requiring a health facility licensed under this chapter that utilizes energy-generating devices to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.*

➔Section 2. KRS 216B.990 is amended to read as follows:

- (1) Any person who, in willful violation of this chapter, operates a health facility or abortion facility without first obtaining a license or continues to operate a health facility or abortion facility after a final decision suspending or revoking a license shall be fined not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation.
- (2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars (\$500) for each violation.
- (3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (4) Any health facility which willfully violates KRS 216B.250 shall be fined one hundred dollars (\$100) per day for failure to post required notices and one hundred dollars (\$100) per instance for willfully failing to provide an itemized statement within the required time frames.
- (5) In addition to the civil penalties established under KRS 216B.306(1) and (4), any person who advertises, solicits boarders, or operates a boarding home without first obtaining a registration as required by KRS 216B.305 and any person who aids or abets the operation of a boarding home that is not registered shall be imprisoned for no more than twelve (12) months.
- (6) Any person or entity establishing, managing, or operating an abortion facility or conducting the business of an abortion facility which otherwise violates any provision of this chapter or any administrative regulation promulgated thereunder regarding abortion facilities shall be subject to revocation or suspension of the license of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion facilities or any administrative regulation related thereto by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious disregard for the statute or administrative regulation, either by persons acting individually or in concert with others, shall constitute a violation and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of the violation shall be in any county of the state in which the violation, or any portion thereof, occurred.
- (7) Any hospital acting by or through its agents or employees that violates any provision of KRS 216B.150 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation.
- (8) *Any health facility acting by or through its agents or employees that violates any provision of Section 1 of this Act shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation.*

Signed by Governor March 22, 2021.

## CHAPTER 58

( HB 276 )

AN ACT relating to temporary nurse aides and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"COVID-19 pandemic" means the state of emergency declared by the Governor in response to COVID-19 on March 6, 2020, by Executive Order 2020-215; and*
- (b) *"Temporary COVID-19 personal care attendant" or "PCA" means a person who is employed and received training in a skilled nursing facility under a temporary accommodation made to address work load increases and staffing shortages caused by the COVID-19 pandemic by the Cabinet for Health and Family Services as authorized by KRS 214.020, Executive Order 2020-215, and the*

*suspension of federal regulatory and statutory provisions by the Centers for Medicare and Medicaid Services.*

- (2) *The Department for Medicaid Services shall accept the training requirements as included in the "Temporary COVID-19 Personal Care Attendant memorandum" issued April 14, 2020, by the Cabinet for Health and Family Services that are completed by a PCA who is in good standing with his or her employer after the COVID-19 state of emergency is rescinded by the Governor. The PCA shall be deemed a state registered nurse aide and shall be placed on the Kentucky Nurse Aide Registry if:*
- (a) *A minimum of eighty (80) hours of PCA duties have been completed within a skilled nursing facility under the supervision of a licensed or registered nurse; and*
  - (b) *Competency has been established by the following:*
    - 1. *Through an assessment in all areas of required nurse aide training as provided for in 42 C.F.R. sec. 483.152(b) by an instructor who is a licensed nurse confirmed by the facility to have completed instructor training required by the Department for Medicaid Services; and*
    - 2. *Successful completion of the nurse aide examination.*
- (3) *The Department for Medicaid Services shall:*
- (a) *Apply for any Medicaid waivers or state plan amendments necessary to implement subsection (2) of this section;*
  - (b) *Incorporate the provisions under subsection (2) of this section into the nurse aide training and competency evaluation program requirements; and*
  - (c) *Promulgate any administration regulation necessary to implement this subsection and subsection (2) of this section.*

➔Section 2. Whereas the COVID-19 pandemic has had a devastating impact on the long-term care workforce, there is a great need for state-trained nurse aides in nursing facilities, the employment of temporary nurse aides during the COVID-19 pandemic has provided a unique opportunity to provide training for nurse aides, and there is a risk that those who served as personal care attendants during the COVID-19 pandemic may lose employment after the pandemic, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by Governor March 22, 2021.**

## CHAPTER 59

### ( SB 154 )

AN ACT relating to home health care and declaring an emergency.

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

➔Section 1. KRS 216.935 is amended to read as follows:

As used in KRS 216.935 to 216.939, unless the context requires otherwise:

- (1) "Home health aide" means an individual who is hired to perform home health aide services;[;]
- (2) "Home health agency" means a public agency or private organization, or a subdivision of such an agency or organization which is licensed as a home health agency by the Cabinet for Health and Family Services and is certified to participate as a home health agency under Title XVIII of the Social Security Act;[;]
- (3) "Home health aide services" means those services provided by a home health aide and supervised by a registered nurse which are directed towards the personal care of the patient. Such services shall include, but not be limited to, the following:
  - (a) Helping the patient with bath and care of mouth, skin, and hair;
  - (b) Helping the patient to the bathroom or in using a bedpan;



- (c) Helping the patient in and out of bed and assisting with ambulation;
  - (d) Helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate professional personnel;
  - (e) Assisting with medication ordinarily self-administered that has been specifically ordered by a physician, ~~an~~ **advanced practice registered nurse, or a physician assistant**;
  - (f) Performing incidental household services as are essential to the patient's health care at home, if these services would have been performed if the patient was in a hospital or skilled nursing facility; and
  - (g) Reporting changes in the patient's condition or family situation to the professional nurse supervisor; ~~and~~
- (4) "Nurse aide" means an individual, including a nursing student, medication aide, and a person employed through a nursing pool, who provides nursing or nursing related services to a resident in a nursing facility or home health agency, excluding:
- (a) An individual who is a licensed health professional;
  - (b) A volunteer who provides the nursing or nursing-related services without monetary compensation; and
  - (c) A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services.

➔Section 2. KRS 304.17-312 is amended to read as follows:

As used in KRS 304.17-313, 304.18-037, 304.32-280, and 304.38-210:

- (1) "Home health agency" means a public agency or private organization, or a subdivision of such an agency or organization which is licensed as a home health agency by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and is certified to participate as a home health agency under Title XVIII of the Social Security Act;~~;~~
- (2) "Home health care" means the care and treatment provided by a home health agency which is prescribed and supervised by a physician, **an advanced practice registered nurse, or a physician assistant**. The care and treatment shall include but not be limited to one (1) or more of the following:
  - (a) Part-time or intermittent skilled nursing services provided by an advanced practice registered nurse, registered nurse, or licensed practical nurse;
  - (b) Physical, respiratory, occupational, or speech therapy;
  - (c) Home health aide services;
  - (d) Medical appliances and equipment, drugs and medication, and laboratory services, to the extent that such items and services would have been covered under the policy if the covered person had been in a hospital; ~~and~~
- (3) "Home health aide services" means those services provided by a home health aide and supervised by a registered nurse which are directed towards the personal care of the patient. Such services shall include but not be limited to the following:
  - (a) Helping the patient with bath, care of mouth, skin, and hair;
  - (b) Helping the patient to the bathroom or in using a bedpan;
  - (c) Helping the patient in and out of bed and assisting with ambulation;
  - (d) Helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate professional personnel;
  - (e) Assisting with medication ordinarily self-administered that has been specifically ordered by a physician, **an advanced practice registered nurse, or a physician assistant**;
  - (f) Performing incidental household services as are essential to the patient's health care at home provided that such services would have been performed if the patient was in a hospital or skilled nursing facility; and
  - (g) Reporting to the professional nurse supervisor changes in the patient's condition or family situation.

➔Section 3. KRS 304.17-313 is amended to read as follows:

- (1) All insurers issuing individual health insurance policies in the Commonwealth providing coverage on an expense incurred basis shall make available and offer to the purchaser coverage for home health care. The coverage may contain a limitation on the number of home health care visits for which benefits are payable, but the number of such visits shall not be less than sixty (60) in any calendar year or in any continuous period of twelve (12) months for each person covered under the policy. Each visit by an authorized representative of a home health agency shall be considered as one (1) home health care visit, except that at least four (4) hours of home health aide service shall be considered as one (1) home health visit.
- (2) Home health care coverage shall be subject to the same deductible and coinsurance provisions as are other services covered by insurers issuing individual health insurance policies in the Commonwealth.
- (3) Home health care shall not be reimbursed unless an attending physician, ***an advanced practice registered nurse, or a physician assistant*** certifies that hospitalization or confinement in a skilled nursing facility as defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board would otherwise be required if home health care was not provided.
- (4) Medicare beneficiaries shall be deemed eligible to receive home health care benefits under an individual health insurance policy providing coverage on an expense incurred basis provided that the policy shall only pay for those home health care services which are not paid for by Medicare and do not exceed the maximum liability of the policy.
- (5) Pursuant to the provisions of this section, all insurers issuing individual health insurance policies in the Commonwealth on an expense incurred basis shall inform the beneficiaries of such policies, in writing, of the specific home health care benefits which are covered. Such written notification shall take place at the time of issuance or reissuance of the policy.

➔Section 4. KRS 304.18-037 is amended to read as follows:

- (1) All insurers issuing group or blanket health insurance policies and certificates issued thereunder in the Commonwealth providing coverage on an expense incurred basis shall make available and offer to the master policyholder coverage for home health care. The coverage may contain a limitation on the number of home health care visits for which benefits are payable, but the number of such visits shall not be less than sixty (60) in any calendar year or in any continuous period of twelve (12) months for each person covered under the policy. Each visit by an authorized representative of a home health agency shall be considered as one (1) home health care visit except that at least four (4) hours of home health aide service shall be considered as one (1) home health visit.
- (2) Home health care coverage shall be subject to the same deductible and coinsurance provisions as are other services covered by insurers issuing group or blanket health insurance policies in the Commonwealth.
- (3) Home health care shall not be reimbursed unless an attending physician, ***an advanced practice registered nurse, or a physician assistant*** certifies that hospitalization or confinement in a skilled nursing facility as defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board would otherwise be required if home health care was not provided.
- (4) Medicare beneficiaries shall be deemed eligible to receive home health care benefits under a group or blanket health insurance policy provided that the policy shall only pay for those home health care services which are not paid for by Medicare and do not exceed the maximum liability of the policy.
- (5) Pursuant to the provisions of this section, all insurers issuing group or blanket health insurance policies and certificates issued thereunder in the Commonwealth providing coverage on an expense incurred basis which include coverage for home health care shall inform the beneficiaries of such policies, in writing, of the specific home health care benefits which are covered. Such written notification shall take place at the time of issuance or reissuance of the policy.

➔Section 5. KRS 304.38-210 is amended to read as follows:

- (1) Health maintenance organizations issuing policies in the Commonwealth which provide hospital, medical, or surgical expense benefits shall make available and offer to include benefits for home health care. On group benefits the option for home health care benefits shall be made available and offered to the master policyholder. The coverage may contain a limitation on the number of home health care visits for which benefits are payable, but the number of such visits shall not be less than sixty (60) in any calendar year or in any continuous period of twelve (12) months for each person covered under the policy. Each visit by an

authorized representative of a home health agency shall be considered as one (1) home health care visit except that at least four (4) hours of home health service shall be considered as one (1) home health visit.

- (2) Home health care coverage shall be subject to the same deductible and coinsurance provisions as are other services covered by health maintenance organizations which issue policies in the Commonwealth that provide hospital, medical, or surgical expense benefits.
- (3) Home health care shall not be reimbursed unless an attending physician, *an advanced practice registered nurse, or a physician assistant* certifies that hospitalization or confinement in a skilled nursing facility as defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board would otherwise be required if home health care was not provided.
- (4) Medicare beneficiaries shall be deemed eligible to receive home health care benefits under a policy, contract or plan entered into, issued, delivered, or amended in this state by a health maintenance organization which provides hospital, medical, or surgical expense benefits provided that the policy, contract or plan shall only pay for those home health care services which are not paid for by Medicare and do not exceed the maximum liability of the policy, contract or plan.
- (5) Pursuant to the provisions of this section, all health maintenance organizations issuing policies in the Commonwealth which provide hospital, medical, or surgical expense benefits or coverage for home health care shall inform the beneficiaries of such policies, in writing, of the specific home health care benefits which are covered. Such written notification shall take place at the time of issuance or reissuance of the policy.

→Section 6. Whereas the rights of Kentucky citizens to have access to adequate health care is vital to an individual's health and well-being, 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 22, 2021.**

## CHAPTER 60

### ( HB 183 )

AN ACT relating to the hospital rate improvement program, making an appropriation therefor, and declaring an emergency.

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

→Section 1. KRS 205.6405 is amended to read as follows:

As used in KRS 205.6405 to 205.6408:

- (1) "Assessment" means the hospital assessment authorized by KRS 205.6406;
- (2) "Commissioner" means the commissioner of the Department for Medicaid Services;
- (3) "Department" means the Department for Medicaid Services;
- (4) "Excess disproportionate share taxes" means any excess provider tax revenues collected under KRS 142.303 that are not needed to fund the state share of hospital disproportionate share payments under KRS 205.640 due to federal disproportionate share allotments being reduced and limited to the portion of provider tax revenues collected under KRS 142.303 necessary to fund the state share of the difference between the unreduced disproportionate share allotment and the reduced disproportionate share allotment;
- (5) "Intergovernmental transfer" means any transfer of money by or on behalf of a public agency for purposes of qualifying funds for federal financial participation in accordance with 42 C.F.R. sec. 433.51;
- (6) "Long-term acute hospital" means an in-state hospital that is certified as a long-term care hospital under 42 U.S.C. sec. 1395ww(d)(1)(B)(iv);
- (7) "Managed care" means the provision of Medicaid benefits through managed care organizations under contract with the department pursuant to 42 C.F.R. sec. 438;

- (8) "Managed care gap" means the difference between the maximum actuarially sound amount that can be included in managed care rates for hospital inpatient services provided by qualifying hospitals and out-of-state hospitals and the amount of total payments for hospital inpatient services provided by qualifying hospitals and out-of-state hospitals paid by managed care organizations. For purposes of the managed care gap, total payments shall include only those supplemental payments made to a qualifying hospital and shall exclude payments established under KRS 205.6405 to 205.6408;
- (9) "Managed care organization" means an entity contracted with the department to provide Medicaid benefits pursuant to 42 C.F.R. sec. 438;
- (10) "Non-state government-owned hospital" means the same as non-state government-owned or operated facilities in 42 C.F.R. sec. 447.272 and represents one (1) group of hospitals for purposes of estimating the upper payment limit;
- (11) "University hospital" means a state university teaching hospital, owned or operated by either the University of Kentucky College of Medicine or the University of Louisville School of Medicine, including a hospital owned or operated by a related organization pursuant to 42 C.F.R. sec. 413.17;
- (12) "Pediatric teaching hospital" means the same as in KRS 205.565;
- (13) "Private hospitals" means the same as privately owned and operated facilities in 42 C.F.R. sec. 447.272 and represents one (1) group of hospitals for purposes of estimating the upper payment limit;
- (14) "Program year" means the state fiscal year during which an assessment is assessed and rate improvement payments are made;
- (15) "Psychiatric access hospital" means an in-state psychiatric hospital licensed under KRS Chapter 216B that:
  - (a) Is not located in a Metropolitan Statistical Area;
  - (b) Provides at least sixty-five thousand (65,000) days of inpatient care as reflected in the department's hospital rate data for state fiscal year 1998-1999;
  - (c) Provides at least twenty percent (20%) of inpatient care to Medicaid-eligible recipients as reflected in the department's hospital rate data for state fiscal year 1998-1999; and
  - (d) Provides at least five thousand (5,000) days of inpatient psychiatric care to Medicaid recipients in a state fiscal year;
- (16) "Qualifying hospital" means a Medicaid-participating, in-state hospital licensed under KRS Chapter 216B, including a long-term acute hospital, but excluding a university hospital and a state mental hospital defined in KRS 205.639. *The department may, but is not required to, exclude critical access hospitals from the definition of "qualifying hospital" for purposes of calculating the quarterly assessments. Notwithstanding the permission referenced in this subsection, or any other provision of the law to the contrary, the department may include critical access hospitals for purposes of calculating and paying the quarterly supplemental payments authorized in KRS 205.6406;*
- (17) "Qualifying hospital disproportionate share percentage" means a percentage equal to the amount of hospital provider taxes paid pursuant to KRS 142.303 by qualifying hospitals in state fiscal year 2016-2017 divided by the amount of hospital provider taxes paid pursuant to KRS 142.303 by all hospitals in state fiscal year 2016-2017;
- (18) "University hospital disproportionate share percentage" means a percentage equal to the amount of hospital provider taxes paid pursuant to KRS 142.303 by university hospitals and state mental hospitals, as defined in KRS 205.639, in state fiscal year 2016-2017 divided by the amount of hospital provider taxes paid pursuant to KRS 142.303 by all hospitals in fiscal year 2016-2017;
- (19) "Upper payment limit" or "UPL" means the methodology permitted by federal regulation to achieve the maximum allowable amount on aggregate hospital Medicaid payments to non-state government-owned hospitals and private hospitals under 42 C.F.R. sec. 447.272. A separate UPL shall be estimated for non-state government-owned hospitals and private hospitals; and
- (20) "UPL gap" means the difference between the UPL and amount of total fee-for-service payments paid by the department for hospital inpatient services provided by non-state government-owned hospitals and private hospitals to Medicaid beneficiaries and excluding payments established under KRS 205.6405 to 205.6408. A separate UPL gap shall be estimated for the non-state government-owned hospitals and private hospitals.

➔Section 2. KRS 205.6406 is amended to read as follows:

- (1) To the extent allowable under federal law, the department shall develop the following programs to increase Medicaid reimbursement for inpatient hospital services provided by a qualifying hospital to Medicaid recipients:
  - (a) A program to increase inpatient reimbursement to qualifying hospitals within the Medicaid fee-for-service program in an aggregate amount equivalent to the UPL gap; and
  - (b) A program to increase inpatient reimbursement to qualifying hospitals within the Medicaid managed care program in an aggregate amount equivalent to the managed care gap.
- (2) On an annual basis prior to the start of each program year, the department shall determine:
  - (a) The maximum allowable UPL for inpatient services provided in the Kentucky Medicaid fee-for-service program;
  - (b) The fee-for-service UPL gap for applicable ownership groups;
  - (c) A per discharge uniform add-on amount to be applied to Medicaid fee-for-service discharges at qualifying hospitals for that program year, determined by dividing the UPL gap for the applicable ownership group by total fee-for-service hospital inpatient discharges at qualifying hospitals in the data used to calculate the UPL gap. Claims for discharges that already receive an enhanced rate at qualifying hospitals that also are classified as a pediatric teaching hospital or as a psychiatric access hospital shall be excluded from the calculation of the per discharge uniform add-on, unless the department is required to include these claims to obtain federal approval;
  - (d) The maximum managed care gap for inpatient services; and
  - (e) A per discharge uniform add-on amount to be applied to Medicaid managed care discharges at qualifying hospitals for that program year in an amount that is calculated by dividing the managed care gap by total managed care in-state qualifying hospital inpatient discharges in the data used to calculate the managed care gap. Claims for discharges that already receive an enhanced rate at qualifying hospitals that also are classified as a pediatric teaching hospital or as a psychiatric access hospital shall be excluded from the calculation of the per discharge uniform add-on, unless the department is required to include these claims to obtain federal approval.

At least thirty (30) days prior to the beginning of each program year, the department shall provide each qualifying hospital the opportunity to verify the base data to be utilized in both the fee-for-service and managed care gap calculations, with data sources and methodologies identified.

- (3) On a quarterly basis in the program year, the department shall:
  - (a) Calculate a fee-for-service quarterly supplemental payment for each qualifying hospital using fee-for-service claims for inpatient discharges paid in the quarter to the qualifying hospital multiplied by the uniform add-on amount determined in subsection (2)(c) of this section;
  - (b) Calculate a managed care quarterly supplemental payment for each qualifying hospital to be paid by each managed care organization using managed care encounter claims for inpatient discharges received in the quarter multiplied by the uniform add-on amount determined in subsection (2)(e) of this section;
  - (c) Make the quarterly supplemental payment calculated under paragraph (a) of this subsection;
  - (d) Provide each managed care organization with a listing of the supplemental payments to be paid by each managed care organization to each qualifying hospital;
  - (e) Provide each managed care organization with a supplemental capitation payment to cover the managed care organization's quarterly supplemental payments to be paid to qualifying hospitals in the quarter;
  - (f) Determine the amount of state funds necessary to obtain federal matching funds that, in the aggregate, equal the total quarterly supplemental payments to be paid to all qualifying hospitals in both the fee-for-service and the Medicaid managed care programs;
  - (g) Determine a per discharge hospital assessment for the quarter for each qualifying hospital, which shall be calculated by first applying towards the state share calculated under paragraph (f) of this subsection the qualifying hospital disproportionate share percentage of the excess disproportionate share taxes and then dividing the remaining state share by the total discharges reported by all in-state qualifying

- hospitals on the Medicare cost report filed by those qualifying hospitals in the calendar year two (2) years prior to the program year;
- (h) Determine each qualifying hospital's quarterly assessment by multiplying the assessment established in paragraph (g) of this subsection by the hospital's total discharges from the qualifying hospital's Medicare cost report filed in the calendar year two (2) years prior to the program year; and
  - (i) Provide each qualifying hospital with a notice sent on the same day as the distribution to managed care organizations of the supplemental capitation payments pursuant to paragraph (e) of this subsection, of the qualifying hospital's quarterly assessment, that shall state the total amount due from the assessment, the date payment is due, the total number of paid claims for inpatient discharges used to calculate the qualifying hospital's quarterly supplemental payments, and the amount of quarterly supplemental payments due to be received by the qualifying hospital from the department and each Medicaid managed care organization.
- (4) In calculating the quarterly supplemental payments under subsection (3)(a) and (b) of this section for qualifying hospitals that are also classified as a pediatric teaching hospital or as a psychiatric access hospital, no add-on shall be applied to the paid claims for the services for which that hospital also receives supplemental payments pursuant to state plan methodologies and managed care contracts in effect on January 1, 2019.
  - (5) Each qualifying hospital shall receive four (4) quarterly supplemental payments in the program year, as determined under subsection (3) of this section.
  - (6) Medicaid managed care organizations shall pay the supplemental payments to qualifying hospitals within five (5) business days of receiving the supplemental capitation payment from the department.
  - (7) A qualifying hospital shall pay its quarterly assessment no later than fifteen (15) days from the date the qualifying hospital is notified of the assessment from the department. A non-state government-owned hospital may make payment of its assessment through an intergovernmental transfer. The department may delay or withhold a portion of the supplemental payment if a hospital is delinquent in its payment of a quarterly assessment.
  - (8) The department shall complete the actions required under subsection (3) of this section expeditiously and within the same quarter as all required information is received.
  - (9) Qualifying hospitals may notify the department of errors in the data used to make a quarterly supplemental payment by providing documentation within thirty (30) days of receipt of a quarterly supplemental payment from a Medicaid managed care organization. If the department agrees that an error occurred in a qualifying hospital's quarterly supplemental payment, the department shall reconcile the payment error through an adjustment in the qualifying hospital's next quarterly supplemental payment.
  - (10) The programs in this section shall not be implemented if federal financial participation is not available or if the provider tax waiver is not approved. A qualifying hospital shall have no obligation to pay an assessment if any federal agency determines that federal financial participation is not available for any assessment. Any assessments received by the department that cannot be matched with federal funds shall be returned pro rata to the qualified hospitals that paid the assessments.
  - (11) The department may implement the hospital rate improvement programs only if Medicaid state plan amendments required for federal financial participation are approved by the United States Centers for Medicare and Medicaid Services.
  - (12) The assessment authorized under KRS 205.6405 to 205.6408 shall be restricted for use to accomplish the inpatient reimbursement increases established under this section. The Commonwealth shall not maintain or revert funds received under KRS 205.6405 to 205.6408 to the state general fund, except that the department may receive two hundred fifty thousand dollars (\$250,000) in state funds each program year to administer the programs. The department shall not establish Medicaid fee-for-service rate-setting methodology changes that result in rate reductions from policies in effect as of October 1, 2018, for acute care hospitals and July 1, 2019, for hospitals paid on a per diem basis.
  - (13) The department shall promulgate administrative regulations to implement the provisions of KRS 205.6405 to 205.6408.
  - (14) ***If the department submits, and the United States Centers for Medicare and Medicaid Services (CMS) approves, a supplemental payment formula that permits the managed care gap to be calculated based upon a percentage of average commercial rates (ACR) that results in a total annual supplemental payment***

*greater than eighty percent (80%) of ACR instead of the Medicare upper payment limit, then the hospital rate improvement programs shall be modified as follows:*

- (a) *The amount of funds the department may receive to administer the programs as stated in subsection (12) of this section shall be replaced by an administrative fee that shall be calculated to be an amount equal to four percent (4%) of the assessment collected under this section. The administrative fee payable under this paragraph shall accrue only for supplemental payments attributable to state fiscal year 2021-2022 and for state fiscal years thereafter so long as CMS approves the supplemental payment formula in accordance with this subsection. The administrative fee shall be paid within thirty (30) days after supplemental payments are issued to qualifying hospitals; and*
- (b) *The department shall not be required under KRS 205.6408 to transfer any excess disproportionate share taxes to the hospital Medicaid assessment fund for use as state matching dollars for the payments made under this section.*

→Section 3. Whereas, ensuring necessary funding for hospitals is a compelling and immediate need, 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 22, 2021.**

## CHAPTER 61

( HB 448 )

AN ACT relating to child welfare.

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

→Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when:
  - (a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:
    1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
    2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
    3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child, including but not limited to parental incapacity due to a substance use disorder as defined in KRS 222.005;
    4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
    5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
    6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
    7. Abandons or exploits the child;
    8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical

treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) cumulative months out of forty-eight (48) months; or
  10. Commits or allows female genital mutilation as defined in KRS 508.125 to be committed; or
- (b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age;
- (2) "Age or developmentally appropriate" has the same meaning as in 42 U.S.C. sec. 675(11);
  - (3) "Aggravated circumstances" means the existence of one (1) or more of the following conditions:
    - (a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;
    - (b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;
    - (c) The parent has sexually abused the child and has refused available treatment;
    - (d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or
    - (e) The parent has caused the child serious physical injury;
  - (4) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;
  - (5) "Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;
  - (6) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
  - (7) "Cabinet" means the Cabinet for Health and Family Services;
  - (8) "Certified juvenile facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
  - (9) "Child" means any person who has not reached his or her eighteenth birthday, unless otherwise provided;
  - (10) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
  - (11) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
  - (12) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
  - (13) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Health and Family Services, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless otherwise provided by law;



- (14) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (15) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (16) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (17) "Court-designated worker" means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (18) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (19) "Department" means the Department for Community Based Services;
- (20) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (21) "Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted or closely supervised environment for his or her own or the community's protection;
- (22) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;
- (23) "Diversion agreement" means a mechanism designed to hold a child accountable for his or her behavior and, if appropriate, securing services to serve the best interest of the child and to provide redress for that behavior without court action and without the creation of a formal court record;
- (24) "Eligible youth" means a person who:
  - (a) Is or has been committed to the cabinet as dependent, neglected, or abused;
  - (b) Is eighteen (18) years of age to nineteen (19) years of age; and
  - (c) Is requesting to extend or reinstate his or her commitment to the cabinet in order to participate in state or federal educational programs or to establish independent living arrangements;
- (25) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (26) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment as testified to by a qualified mental health professional;
- (27) "Evidence-based practices" means policies, procedures, programs, and practices proven by scientific research to reliably produce reductions in recidivism;
- (28) "Fictive kin" means an individual who is not related by birth, adoption, or marriage to a child, but who has an emotionally significant relationship with the child;
- (29) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (30) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (31) "Graduated sanction" means any of a continuum of accountability measures, programs, and sanctions, ranging from less restrictive to more restrictive in nature, that may include but are not limited to:
  - (a) Electronic monitoring;
  - (b) Drug and alcohol screening, testing, or monitoring;

- (c) Day or evening reporting centers;
  - (d) Reporting requirements;
  - (e) Community service; and
  - (f) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment;
- (32) "Habitual runaway" means any child who has been found by the court to have been absent from his or her place of lawful residence without the permission of his or her custodian for at least three (3) days during a one (1) year period;
- (33) "Habitual truant" means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150(1) two (2) or more times during a one (1) year period;
- (34) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (35) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (36) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (37) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (38) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; or protection of the community, and is conducted at the suitable available facility closest to the child's place of residence to allow for appropriate family engagement;
- (39) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (40) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (41) "Needs of the child" means necessary food, clothing, health, shelter, and education;
- (42) "Nonoffender" means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;
- (43) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (44) "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;
- (45) "Out-of-home placement" means a placement other than in the home of a parent, relative, or guardian, in a boarding home, clinical treatment facility, community-based facility, detention facility, emergency shelter, fictive kin home, foster family home, hospital, nonsecure facility, physically secure facility, residential treatment facility, or youth alternative center;
- (46) "Parent" means the biological or adoptive mother or father of a child;
- (47) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- (48) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

- (49) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (50) "Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;
- (51) "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- (52) "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
  - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
  - (c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate licensed under the provisions of KRS Chapter 319;
  - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital, **a private agency or company engaged in providing mental health services**, or a regional comprehensive care center;
  - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, ~~for a~~ a psychiatric unit of a general hospital, **a private agency or company engaged in providing mental health services**, or a regional comprehensive care center;
  - (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, **a private agency or company engaged in providing mental health services**, or a regional comprehensive care center;
  - (g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, **a private agency or company engaged in providing mental health services**, or a regional comprehensive care center; or
  - (h) A physician assistant licensed under KRS 311.840 to 311.862, who meets one (1) of the following requirements:
    1. Provides documentation that he or she has completed a psychiatric residency program for physician assistants;
    2. Has completed at least one thousand (1,000) hours of clinical experience under a supervising physician, as defined by KRS 311.840, who is a psychiatrist and is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc.;
    3. Holds a master's degree from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agencies, is practicing under a supervising physician as defined by KRS 311.840, and;

- a. Has two (2) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or
  - b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least two (2) years; or
4. Holds a bachelor's degree, possesses a current physician assistant certificate issued by the board prior to July 15, 2002, is practicing under a supervising physician as defined by KRS 311.840, and:
- a. Has three (3) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or
  - b. Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least three (3) years;
- (53) "Reasonable and prudent parent standard" has the same meaning as in 42 U.S.C. sec. 675(10);
- (54) "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (55) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (56) "Risk and needs assessment" means an actuarial tool scientifically proven to identify specific factors and needs that are related to delinquent and noncriminal misconduct;
- (57) "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (58) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (59) "Secure juvenile detention facility" means any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined;
- (60) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- (61) "Sexual abuse" includes but is not necessarily limited to any contacts or interactions in which the parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of the child or responsibility for his or her welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- (62) "Sexual exploitation" includes but is not limited to a situation in which a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (63) "Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (64) "Staff secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

- (65) (a) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall include:
1. Beyond the control of school or beyond the control of parents;
  2. Habitual runaway;
  3. Habitual truant; and
  4. Alcohol offenses as provided in KRS 244.085.
- (b) Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew;
- (66) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (67) "Transitional living support" means all benefits to which an eligible youth is entitled upon being granted extended or reinstated commitment to the cabinet by the court;
- (68) "Transition plan" means a plan that is personalized at the direction of the youth that:
- (a) Includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services; and
  - (b) Is as detailed as the youth may elect;
- (69) "Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:
- (a) Who was brought before the court and made subject to the order;
  - (b) Whose future conduct was regulated by the order;
  - (c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and
  - (d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States;
- (70) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (71) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and
- (72) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

**Signed by Governor March 22, 2021.**

## CHAPTER 62

( SB 55 )

AN ACT relating to copayments by medical assistance recipients.

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

➔Section 1. KRS 205.6312 is amended to read as follows:

~~[(1)]~~ ***Notwithstanding any state law to the contrary, the cabinet or a managed care organization contracted by the cabinet to provide Medicaid services pursuant to this chapter shall not institute nominal copayments, cost sharing, or similar charges to be paid by any medical assistance recipients, their spouses, or parents, for any***

*assistance provided pursuant to this chapter, federal law, or any federal Medicaid waiver* ~~[under the provisions of Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o].~~

~~{(2) Copayments or similar charges shall not be imposed for the following services:~~

- ~~(a) All services provided to children under eighteen (18) years of age;~~
- ~~(b) All services furnished to pregnant women, if the services relate to the pregnancy or to any other medical condition which may complicate the pregnancy;~~
- ~~(c) Emergency services including hospital, clinic, office, or other facility services which are necessary to prevent the death or serious impairment of the individual;~~
- ~~(d) Services furnished to institutionalized individuals if the individual is required, as a condition of receiving services, to spend all but a minimal amount of income for personal needs;~~
- ~~(e) Services furnished for an individual who is receiving hospice care as defined under Section 1905 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396d(o); and~~
- ~~(f) Other services excluded from cost sharing by federal law or regulation.~~

~~(3) Standard nominal copayments per service, not to exceed amounts allowable under Section 1916 of Title XIX of the Federal Social Security Act, 42 U.S.C. sec. 1396o shall be collected by the provider and charged for the following services:~~

- ~~(a) Ambulance services which are provided to recipients in need of nonemergency health transportation services;~~
- ~~(b) Nonemergency services delivered in a hospital emergency room; and~~
- ~~(c) Prescription and over the counter drugs, subject to the limitation under subsection (6) of this section.~~

~~(4) No provider participating in the Medical Assistance Program shall deny services to any eligible recipient due to the inability of a recipient to make the required copayment. This provision shall not excuse the recipient from liability for payment of the charge.~~

~~(5) The cabinet shall promulgate administrative regulations under KRS Chapter 13A to implement the provisions of this section.~~

~~(6) Any copayment for a prescription or over the counter drug shall not exceed one dollar (\$1).]~~

➔Section 2. KRS 205.6485 is amended to read as follows:

(1) The Cabinet for Health and Family Services shall prepare a state child health plan meeting the requirements of Title XXI of the Federal Social Security Act, for submission to the Secretary of the United States Department of Health and Human Services within such time as will permit the state to receive the maximum amounts of federal matching funds available under Title XXI. The cabinet shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the following:

- (a) The eligibility criteria for children covered by the Kentucky Children's Health Insurance Program. However, no person eligible for services under Title XIX of the Social Security Act 42 U.S.C. 1396v, as amended, shall be eligible for services under the Kentucky Children's Health Insurance Program except to the extent that Title XIX coverage is expanded by KRS 205.6481 to 205.6495 and KRS 304.17A-340;
- (b) The schedule of benefits to be covered by the Kentucky Children's Health Insurance Program, which shall include preventive services, vision services including glasses, and dental services including at least sealants, extractions, and fillings, and which shall be at least equivalent to one (1) of the following:
  - 1. The standard Blue Cross/Blue Shield preferred provider option under the Federal Employees Health Benefit Plan established by U.S.C. sec. 8903(1);
  - 2. A mid-range health benefit coverage plan that is offered and generally available to state employees; or
  - 3. Health insurance coverage offered by a health maintenance organization that has the largest insured commercial, non-Medicaid enrollment of covered lives in the state;
- (c) The premium contribution per family of health insurance coverage available under the Kentucky Children's Health Insurance Program with provisions for the payment of premium contributions by

families of children eligible for coverage by the program based upon a sliding scale relating to family income. Premium contributions shall be based on a six (6) month period not to exceed:

1. Ten dollars (\$10), to be paid by a family with income between one hundred percent (100%) to one hundred thirty-three percent (133%) of the federal poverty level;
  2. Twenty dollars (\$20), to be paid by a family with income between one hundred thirty-four percent (134%) to one hundred forty-nine percent (149%) of the federal poverty level; and
  3. One hundred twenty dollars (\$120), to be paid by a family with income between one hundred fifty percent (150%) to two hundred percent (200%) of the federal poverty level, and which may be made on a partial payment plan of twenty dollars (\$20) per month or sixty dollars (\$60) per quarter;
- (d) ***There shall be no*** ~~The level of~~ copayments for services provided under the Kentucky Children's Health Insurance Program ~~that shall not exceed those allowed by federal law~~; and
- (e) The criteria for health services providers and insurers wishing to contract with the Commonwealth to provide the children's health insurance coverage. However, the cabinet shall provide, in any contracting process for the preventive health insurance program, the opportunity for a public health department to bid on preventive health services to eligible children within the public health department's service area. A public health department shall not be disqualified from bidding because the department does not currently offer all the services required by paragraph (b) of this subsection. The criteria shall be set forth in administrative regulations under KRS Chapter 13A and shall maximize competition among the providers and insurers. The Cabinet for Finance and Administration shall provide oversight over contracting policies and procedures to assure that the number of applicants for contracts is maximized.
- (2) Within twelve (12) months of federal approval of the state's Title XXI child health plan, the Cabinet for Health and Family Services shall assure that a KCHIP program is available to all eligible children in all regions of the state. If necessary, in order to meet this assurance, the cabinet shall institute its own program.
- (3) KCHIP recipients shall have direct access without a referral from any gatekeeper primary care provider to dentists for covered primary dental services and to optometrists and ophthalmologists for covered primary eye and vision services.

➔Section 3. KRS 205.5591 is amended to read as follows:

- (1) The cabinet shall provide oversight, guidance, and direction to Medicaid providers delivering care using telehealth as defined in KRS 205.510.
- (2) The cabinet shall:
  - (a) Develop policies and procedures to ensure the proper use and security for telehealth, including but not limited to confidentiality and data integrity, privacy and security, informed consent, privileging and credentialing, reimbursement, and technology;
  - (b) Promote access to health care provided via telehealth;
  - (c) Maintain a list of Medicaid providers who may deliver telehealth services to Medicaid recipients throughout the Commonwealth;
  - (d) Require that specialty care be rendered by a health care provider who is recognized and actively participating in the Medicaid program; and
  - (e) Require that any required prior authorization requesting a referral or consultation for specialty care be processed by the patient's primary care provider and that any specialist coordinate care with the patient's primary care provider.
- (3) The cabinet or a Medicaid managed care organization shall not:
  - (a) Require a Medicaid provider to be physically present with a Medicaid recipient, unless the provider determines that it is medically necessary to perform those services in person;
  - (b) Require prior authorization, medical review, or administrative clearance for telehealth that would not be required if a service were provided in person;
  - (c) Require a Medicaid provider to be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person;

- (d) Require demonstration that it is necessary to provide services to a Medicaid recipient through telehealth;
  - (e) Restrict or deny coverage of telehealth based solely on the communication technology or application used to deliver the telehealth services; or
  - (f) Require a Medicaid provider to be part of a telehealth network.
- (4) The Medicaid program or a Medicaid managed care organization shall require a telehealth provider to be licensed in Kentucky in order to receive reimbursement for telehealth services.
- (5) The Medicaid program or a Medicaid managed care organization shall reimburse for covered services provided to a Medicaid recipient through telehealth, as defined in KRS 205.510. The department shall promulgate administrative regulations to establish requirements for telehealth coverage and reimbursement, which shall be equivalent to the coverage for the same service provided in person unless the telehealth provider and the Medicaid program or a Medicaid managed care organization contractually agree to a lower reimbursement rate for telehealth services, or the department establishes a different reimbursement rate.
- (6) ~~Benefits for a service provided to a Medicaid recipient through telehealth may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the Medicaid program for the same service provided in person.~~
- ~~(7)~~ Nothing in this section shall be construed to require the Medicaid program or a Medicaid managed care organization to:
- (a) Provide coverage for telehealth services that are not medically necessary; or
  - (b) Reimburse any fees charged by a telehealth facility for transmission of a telehealth encounter.
- ~~(7)(8)~~ The cabinet shall maintain telehealth policies and guidelines to providing care that ensure that Medicaid-eligible citizens will have safe, adequate, and efficient medical care, and that prevent waste, fraud, and abuse of the Medicaid program.

**Signed by Governor March 22, 2021.**

## CHAPTER 63

### ( SB 163 )

AN ACT relating to charitable health care providers.

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

➔Section 1. KRS 216.940 is amended to read as follows:

As used in KRS 216.940 to 216.945:

- (1) "Charitable health care provider" means any person, agency, clinic, or facility, licensed or certified by the Commonwealth or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care or dentistry:
  - (a) *Within the scope of practice for which the person, agency, clinic, or facility is licensed or certified; and*
  - (b) Without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer; ~~"Charitable health care provider" means those persons, agencies, clinics, or facilities providing primary medical care and performing no invasive or surgical procedures, and those persons, agencies, clinics, or facilities providing services within the dentist's scope of practice under KRS Chapter 313.~~
- (2) "Regularly practice" means to practice for more than sixty (60) days within any ninety (90) day period; ~~and~~
- (3) "Sponsoring organization" means any organization, with an established relationship with a practicing entity, that organizes or arranges for the voluntary provision of health care services in the state.



➔Section 2. KRS 304.40-075 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Charitable health care provider" *has the same meaning as in Section 1 of this Act* ~~means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care or dentistry without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" means those persons, agencies, clinics, or facilities providing primary care medicine and performing no invasive or surgical procedures, and those persons, agencies, clinics, or facilities providing services within the dentist's scope of practice under KRS Chapter 313;~~
  - (b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and
  - (c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.
- (2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.
- (3)
  - (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund upon written application for payment of the premium by the health care provider wishing to offer charitable services. A health care provider shall submit an application for payment of premium to the Department of Insurance no later than one (1) year from the expiration of the policy for which payment is being requested.
  - (b) The Department of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:
    1. Name and address of the charitable health care provider;
    2. Number of employees of the charitable health care provider who will be:
      - a. Rendering medical care without compensation or charge and without expectation of compensation or charge; ~~and~~ ~~and who will be~~
      - b. Covered under the policy issued under subsection (2) of this section;
    3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;
    4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed;
    5. A copy of the registration filed with the Cabinet for Health and Family Services under KRS 216.941; and
    6. A copy of the medical malpractice policy, declaration page, and any other documentation the commissioner may deem necessary to determine the proper amount of premiums and taxes to be reimbursed.
  - (c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.
  - (d) Any premium refund for medical professional liability insurance issued under subsection (2) of this section received for any reason by the charitable health care provider shall be promptly remitted to the department for transmittal to the general fund.

- (4) This section shall only apply to charitable health care providers, and persons volunteering to perform medical services for charitable health care providers:
- (a) Who are not otherwise covered by any policy of medical professional liability insurance for the charitable health care services provided;~~and~~ and
  - (b) That meet the terms for eligibility established pursuant to this section.
- (5) Coverage offered to charitable health care providers, and persons volunteering at charitable health care providers, shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.
- (6) The Department of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the Department of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.
- (7) The Cabinet for Health and Family Services shall make available to the Department of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.
- (8) The Department of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health and Family Services under KRS 216.941.

**Signed by Governor March 22, 2021.**

## CHAPTER 64

### ( HB 69 )

AN ACT relating to actuarial reporting for the state-administered retirement systems.

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

➔Section 1. KRS 6.350 (Effective April 1, 2021) is amended to read as follows:

- (1) A bill which would increase or decrease the benefits or increase or decrease participation in the benefits or change the actuarial accrued liability of any state-administered retirement system shall not be reported from a legislative committee of either house of the General Assembly for consideration by the full membership of that house unless the bill is accompanied by an actuarial analysis.
- (2) (a) An actuarial analysis required by this section shall show the economic effect of the bill on the state-administered retirement system over a **thirty (30)**~~twenty (20)~~ year period, including:
- 1. An estimate of the effect on the unfunded actuarial accrued liabilities and funding levels of the affected systems; and
  - 2. A projection of the annual employer costs to the systems of implementing the legislation over the **thirty (30)**~~twenty (20)~~ year period. The annual employer cost projection shall include the effect on the contributions of participating employers as a percentage of total payroll and in total dollars of contributions.
- (b) If a bill affects more than one (1) state-administered retirement system, the actuarial analysis shall project costs for each affected state-administered retirement system.
- (c) A statement that the cost is negligible or indeterminable shall not be considered in compliance with this section. If a cost cannot be determined by the actuary in accordance with paragraph (a) of this subsection, then the systems shall certify in writing:
- 1. The estimated number of individuals affected;
  - 2. The estimated change in benefit payments;

3. The estimated change to employer costs; and
  4. The estimated change to administrative expenses.
- (d) An actuarial analysis shall state the actuarial assumptions and methods of computation used in the analysis and shall state whether or not the bill or resolution, if enacted, would, in the opinion of the actuary, make the affected state-administered retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound. Actuarial cost methods and assumptions that meet actuarial standards of practice established by the Actuarial Standards Board shall be used in all cost projections.
- (e) An actuarial analysis required by this section shall be prepared by an actuary who is a fellow of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries.
- (3) (a) An actuary commissioned to make an actuarial analysis that is required by this section, or for the purpose of seeking appropriations for a state-administered retirement system, shall include in the analysis a complete definition of each actuarial term used in the analysis and, either in the analysis or in a separate actuarial valuation report made available as a public record, an enumeration and explanation of each actuarial assumption used to complete the actuarial analysis.
- (b) If the actuary commissioned to complete the actuarial analysis is relying upon assumptions that have not been previously established by the actuary in an actuarial valuation of the affected state-administered retirement system, the actuary shall clearly note and describe the new assumption and the basis for selecting the assumption.
- (4) The actuarial analysis required by this section:
- (a) Shall be completed by the actuary retained by the affected state-administered retirement system. The state-administered retirement systems shall provide the analysis without cost to the General Assembly;
  - (b) *Shall be provided in a uniform format established by the Legislative Research Commission; and*
  - (c) *Shall include on the front page a summary of relevant data from the analysis, including but not limited to:*
    1. *The total nominal dollar savings or costs over the thirty (30) year period;*
    2. *The net present value of savings or costs over the thirty (30) year period; and*
    3. *The estimated change in the normal cost, if applicable.*
- (5) For purposes of this section, the terms:
- (a) "State-administered retirement system" shall include:
    1. The Kentucky Employees Retirement System and the State Police Retirement System administered by the Kentucky Retirement Systems and established under the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705;
    2. The Kentucky Teachers' Retirement System established under KRS 161.220 to 161.716;
    3. The Judicial Retirement Plan established under KRS 21.345 to 21.580;
    4. The Legislators' Retirement Plan established under KRS 6.500 to 6.577; and
    5. The County Employees Retirement System established under KRS 78.510 to 78.852; and
  - (b) "Funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage.
- ➔Section 2. KRS 21.440 is amended to read as follows:
- (1) (a) The investment committee for the judicial retirement fund shall at least once in every two (2) year period procure an actuarial valuation of the judicial retirement fund. The valuation shall, at a minimum, include:
    1. A description of the actuarial assumptions used in the actuarial valuation, which shall be reasonably related to the experience of the fund and represent the actuary's best estimate of anticipated experience;

2. A description of any funding methods utilized or required by state law in the development of the actuarial valuation results;
  3. A description of any changes in actuarial assumptions and methods from the previous year's actuarial valuation;
  4. The actuarially recommended contribution rate for employers for the upcoming budget periods;
  5. A **thirty (30)**~~twenty (20)~~ year projection of the funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers based upon the actuarial assumptions, funding methods, and experience of the system as of the valuation date; and
  6. A sensitivity analysis that evaluates the impact of changes in plan assumptions, including but not limited to the investment return assumption, payroll growth assumption, and medical inflation assumptions, on employer contribution rates, funding levels, and unfunded liabilities.
- (b) At least once in each five (5) year period, the board of trustees of the Judicial Form Retirement System shall cause an actuarial investigation to be made of all the relevant experience under the retirement plan relative to the actuarial assumptions and funding methods previously adopted by the board. The actuarial investigation shall include at a minimum a summary of the changes in actuarial assumptions and funding methods recommended in the investigation and the projected impact of the recommended changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a **thirty (30)**~~twenty (20)~~ year period.
- (c) Pursuant to the investigation, the board shall from time to time revise the actuarial tables previously adopted by the board and shall thereupon revise the bases of the rates of contributions required under KRS 21.345 to 21.580.
- (d) For any change in actuarial assumptions, funding methods, retiree health insurance premiums and subsidies, or any other decisions made by the board that impact system liabilities and actuarially recommended contribution rates for employers and that are not made in conjunction with the actuarial investigation required by paragraph (b) of this subsection, an actuarial analysis shall be completed showing the projected impact of the changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a **thirty (30)**~~twenty (20)~~ year period.
- (e) A copy of the valuation, the five (5) year actuarial investigation, and any analysis required by this subsection shall be forwarded electronically to the Legislative Research Commission within ten (10) days of receipt by the committee, and the Legislative Research Commission shall distribute the information received to the committee staff and co-chairs of any committee that has jurisdiction over the Judicial Form Retirement System. The actuarial valuation required by paragraph (a) of this subsection shall be submitted no later than November 15 following the close of the fiscal year.
- (f) All the investigations and valuations shall be certified to the board by an actuary who shall be a fellow of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries.
- (2) (a) The board of trustees of the Judicial Form Retirement System shall annually procure an audit of the system and each of the funds therein. The audit shall be conducted in accordance with generally accepted auditing standards. Except as provided by paragraph (b) of this subsection, the board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. The board shall make copies of the audit required by this section available for examination by any member or beneficiary in the office of the manager of the system and in such other places as may be necessary to make the audit available to all members and beneficiaries. A copy of the audit shall be sent to the Legislative Research Commission within ten (10) days of receipt by the committee.
- (b) Once every five (5) years, the Auditor of Public Accounts shall perform the audit described by this subsection, and the system shall reimburse the Auditor of Public Accounts for all costs of the audit. The Auditor of Public Accounts shall determine which fiscal year during the five (5) year period the audit prescribed by this paragraph will be completed.

➔Section 3. KRS 61.670 (Effective April 1, 2021) is amended to read as follows:

- (1)
  - (a) As soon as practicable after its organization, the board shall adopt the actuarial tables necessary for the administration of the system and for the annual determination of actuarial assets and liabilities of the system.
  - (b) The board shall cause an actuarial valuation to be made annually. The valuation shall at a minimum include:
    1. A description of the actuarial assumptions used in the actuarial valuation, which shall be reasonably related to the experience of the system and represent the actuary's best estimate of anticipated experience;
    2. A description of any funding methods utilized or required by state law in the development of the actuarial valuation results;
    3. A description of any changes in actuarial assumptions and methods from the previous year's actuarial valuation;
    4. The actuarially recommended contribution rate for employers for the upcoming budget periods;
    5. A **thirty (30)**~~twenty (20)~~ year projection of the funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers based upon the actuarial assumptions, funding methods, and experience of the system as of the valuation date; and
    6. A sensitivity analysis that evaluates the impact of changes in system assumptions, including but not limited to the investment return assumption, payroll growth assumption, and medical inflation rates, on employer contribution rates, funding levels, and unfunded liabilities.
  - (c) At least once in each five (5) year period, the board shall cause an actuarial investigation to be made of all the experience under the retirement system relative to the actuarial assumptions and funding methods previously adopted by the board. The actuarial investigation shall include at a minimum a summary of the changes in actuarial assumptions and funding methods recommended in the investigation and the projected impact of the recommended changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a **thirty (30)**~~twenty (20)~~ year period.
  - (d) Pursuant to the actuarial investigation the board shall, from time to time, revise the actuarial tables previously adopted by the board and shall thereupon revise the bases of the rates of contributions required under KRS 61.510 to 61.692 and KRS 16.505 to 16.652.
  - (e) For any change in actuarial assumptions, funding methods, retiree health insurance premiums and subsidies, or any other decisions made by the board that impact system liabilities and actuarially recommended contribution rates for employers and that are not made in conjunction with the actuarial investigation required by paragraph (c) of this subsection, an actuarial analysis shall be completed showing the projected impact of the changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a **thirty (30)**~~twenty (20)~~ year period.
  - (f) All actuarial investigations, analyses, and valuations shall be certified to the board by an actuary who shall be a fellow of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries.
- (2) A copy of each five (5) year actuarial investigation, actuarial analysis, and annual valuation required by subsection (1) of this section shall be forwarded electronically to the Legislative Research Commission no later than ten (10) days after receipt by the board, and the Legislative Research Commission shall distribute the information received to the committee staff and co-chairs of any committee that has jurisdiction over the Kentucky Retirement Systems. The actuarial valuation required by subsection (1)(b) of this section shall be submitted no later than November 15 following the close of the fiscal year.
- (3) The Legislative Research Commission may employ an actuary with the same qualifications as the actuary employed by the board, and the board shall, free of charge, provide the actuary employed by the Commission with the same data provided to its own actuary, and any supplementary data he or she may require. The actuary employed by the Commission shall review the assumptions, determinations and recommendations of the board actuary, and legislative proposals related to the retirement systems, and report his or her findings to the Commission and to the board. The board shall pay fifty percent (50%) of the cost of the Commission's actuary, and the Commission shall pay the other fifty percent (50%).

➔Section 4. KRS 161.400 is amended to read as follows:

- (1)
  - (a) The board of trustees shall designate as actuary a competent person who shall be a fellow of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries. He shall be the technical adviser of the board on matters regarding the operation of the funds of the system and shall perform such other duties as are required in connection therewith.
  - (b) At least once in each five (5) year period, the actuary shall make an actuarial investigation into the actuarial assumptions and funding methods used, including but not limited to mortality, investment rate of return, and service and compensation of the members and beneficiaries of the retirement system, relative to the actuarial assumptions and funding methods previously adopted by the board. The actuarial investigation shall include at a minimum a summary of the changes in actuarial assumptions and funding methods recommended in the investigation and the projected impact of the recommended changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a *thirty (30)*~~twenty (20)~~ year period.
  - (c) At least annually the actuary shall make an actuarial valuation of the retirement system. The valuation shall include:
    1. A description of the actuarial assumptions used, and the assumptions shall be reasonably related to the experience of the system and represent the actuary's best estimate of anticipated experience;
    2. A description of any funding methods utilized or required by state law in the development of the actuarial valuation results;
    3. A description of any changes in actuarial assumptions and methods from the previous year's actuarial valuation;
    4. The actuarially recommended contribution rate for employers for the upcoming budget periods;
    5. A *thirty (30)*~~twenty (20)~~ year projection of the funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers based upon the actuarial assumptions, funding methods, and experience of the system as of the valuation date; and
    6. A sensitivity analysis that evaluates the impact of changes in system assumptions, including but not limited to the investment return assumption, payroll growth assumption, and medical inflation rates, on employer contribution rates, funding levels, and unfunded liabilities.
  - (d) On the basis of the results of the valuations, the board of trustees shall make necessary changes in the retirement system within the provisions of law and shall establish the contributions payable by employers and the state specified in KRS 161.550.
  - (e) For any change in actuarial assumptions, funding methods, retiree health insurance premiums and subsidies, or any other decisions made by the board that impact system liabilities and actuarially recommended contribution rates for employers and that are not made in conjunction with the actuarial investigation required by paragraph (b) of this subsection, an actuarial analysis shall be completed showing the projected impact of the changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a *thirty (30)*~~twenty (20)~~ year period.
- (2) Actuarial factors and actuarial cost factor tables in use by the retirement system for all purposes shall be determined by the actuary of the retirement system and approved by the board of trustees by resolution and implemented without the necessity of an administrative regulation.
- (3) A copy of each five (5) year actuarial investigation, actuarial analysis, and valuation required by subsection (1) of this section shall be forwarded electronically to the Legislative Research Commission no later than ten (10) days after receipt by the board, and the Legislative Research Commission shall distribute the information received to the committee staff and co-chairs of any committee that has jurisdiction over the Kentucky Teachers' Retirement System. The actuarial valuation required by subsection (1)(c) of this section shall be submitted no later than November 15 following the close of the fiscal year.

**Signed by Governor March 22, 2021.**

## CHAPTER 65

## ( HB 277 )

AN ACT relating to operator's licenses for the military.

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

➔Section 1. KRS 186.430 is amended to read as follows:

- (1) Except as provided in subsection (2) *or* (6) of this section, a person over the age of sixteen (16) who is a United States citizen and who is not a resident of Kentucky may drive in Kentucky for a period of time not to exceed one (1) year from the date the person enters Kentucky if:
  - (a) The person possesses a valid license issued by the person's home state;
  - (b) The person has the license in his or her immediate possession at all times when operating a vehicle on the highways; and
  - (c) The person's home state accords similar privileges to licensed residents of Kentucky.
- (2) A person who is a United States citizen but who is not a resident of Kentucky who is enrolled as a full-time or part-time student at a university, college, or technical college located in Kentucky may drive in Kentucky on a valid license issued by the person's state of domicile, and shall not be required to obtain a Kentucky operator's license under this chapter if the person has a student identification card from a university, college, or technical college located in Kentucky in his or her immediate possession at all times when driving in Kentucky.
- (3) A person over the age of sixteen (16) who is not a United States citizen and who is legally visiting this country for less than one (1) year may drive in Kentucky on a valid domestic license issued by the person's country of domicile and shall not be required to obtain a Kentucky driver's license.
- (4) A person over the age of sixteen (16) who is not a United States citizen, who has not been granted status as a permanent resident of the United States, but is a resident of Kentucky, shall be issued a Kentucky operator's license if the person complies with the requirements of KRS 186.4121. The cabinet may at any time refuse or discontinue the exemptions authorized in this section for any grounds and may deny, cancel, suspend, or revoke an instruction permit or operator's license issued under this chapter.
- (5) A person whose operator's license or privilege to operate a motor vehicle, motorcycle, or moped in this state has been denied, withdrawn, canceled, suspended, or revoked as provided in KRS 186.400 to 186.640 shall not operate a motor vehicle, motorcycle, or moped in this state under a license, permit, or registration certificate issued by any other jurisdiction during the period of denial, withdrawal, cancellation, suspension, or revocation.
- (6) *The following persons may drive in Kentucky on a valid operator's license issued by the person's state or United States territory of domicile and shall not be required to obtain a Kentucky operator's license under this chapter if the person is:*
  - (a) *A member of the Armed Forces of the United States stationed in Kentucky who maintains a home of record for military purposes outside of Kentucky;*
  - (b) *The member's spouse; or*
  - (c) *The member's child or stepchild who is sixteen (16) years of age or older and a dependent or under guardianship of the member.*

➔Section 2. KRS 186.416 is amended to read as follows:

- (1) If a resident 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 resident, or the resident's spouse or dependents, may renew a Class D operator's license issued under this section by mail. If the resident, or his or her spouse or dependents, was issued an "under 21" operator's license, upon the date of the license holder's 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."
- (2) A resident of the Commonwealth renewing an operator's license by mail under subsection (1) of this section may have a personal designee apply to the cabinet on behalf of the resident to renew the resident's operator's license. An operator's license being renewed by mail under subsection (1) of this section shall be issued a license bearing the applicant's historical photo if there is a photo on file. If there is no photo on file, the license

shall be issued without a photograph and shall show in the space provided for the photograph the legend "valid without photo and signature."

- (3) (a) 1. If a resident 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.
2. The spouse or dependent of a person identified in subparagraph 1. of this paragraph shall be afforded the same consideration identified in that subparagraph regarding the renewal of an expired operator's license.
- (b) A person 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 person 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 resident 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 or her 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.
- (4) (a) Any person who served in the active Armed Forces of the United States, including the Coast Guard, and any member of the National Guard or Reserve Component who completed the member's term of service and was released, separated, discharged, or retired therefrom under either an honorable discharge or a general under honorable conditions discharge may, at the time of initial application or application for renewal or duplicate, request that an operator's license or a personal identification card issued under this chapter bear the word "veteran" on the face or the back of the license or personal identification card.
- (b) The designation shall be in a style and format considered appropriate by the Transportation Cabinet. Prior to obtaining a designation requested under this subsection, the applicant shall present *to* the cabinet ~~with one (1) of the following~~ as proof of *eligibility, an original or copy of his or her* ~~veteran status~~:
1. *Unexpired* ~~An original or copy of his or her~~ Veteran Identification Card or Veteran Health Identification Card issued by the United States Department of Veterans Affairs; ~~or a~~
  2. *DD-2, DD-214, DD-256, DD-257, or NGB-22 form*; or
  - 3~~2~~. *Unexpired* ~~A current military or~~ Geneva Conventions Identification Card *issued by the United States Department of Defense* ~~establishing current service or retirement status in the Armed Forces of the United States~~.

The cabinet shall not be liable for fraudulent or misread forms presented.

**Signed by Governor March 22, 2021.**

## CHAPTER 66

( HB 126 )

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 194A.990 is amended to read as follows:



- (1) (a) Any person who violates the provisions of KRS 194A.505(1), (2), or (7) shall be guilty of a Class ~~B~~<sup>A</sup> misdemeanor~~or~~ unless:
1. The sum total of benefits received in excess of that to which the person was entitled at the time of the offense was committed is valued at **five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;**~~or over one hundred dollars (\$100), in which case it is a Class D felony~~
  2. **The sum total of benefits received in excess of that to which the person was entitled at the time the offense was committed is valued at or above one thousand dollars (\$1,000) in which case it is a Class D felony; or**
  3. **The person has three (3) or more convictions under subparagraph 1. of this paragraph within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.**
- (b) **If any person commits two (2) or more separate violations of the provisions of KRS 194A.505(1), (2), or (7) within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.**
- (2) Any person who violates KRS 194A.505(3) shall be guilty of a Class D felony.
- (3) Any person who violates the provisions of KRS 194A.505(4) or (5) shall be guilty of a Class C felony.
- (4) Any person who violates the provisions of KRS 194A.505(6) shall be guilty of a Class D felony, unless the purpose of the violation is to obtain ten thousand dollars (\$10,000) or more, in which case it shall be a Class C felony.
- (5) Any person who violates KRS 194A.505(1) to (6) shall, in addition to any other penalties provided by law, forfeit and pay a civil penalty of payment to the cabinet in the amount of all benefits and payments to which the person was not entitled.
- (6) Any provider who violates KRS 194A.505(1) to (6) shall, in addition to any other penalties provided by law, including the penalty set forth in subsection (5) of this section, forfeit and pay civil penalties of:
- (a) Payment to the State Treasury's general revenue fund in an amount equal to three (3) times the amount of the benefits and payments to which the person was not entitled; and
  - (b) Payment to the State Treasury's general revenue fund of all reasonable expenses that the court determines have been necessarily incurred by the state in the enforcement of this section.

➔Section 2. KRS 205.8463 is amended to read as follows:

- (1) No person shall knowingly or wantonly devise a scheme or plan a scheme or artifice, or enter into an agreement, combination, or conspiracy to obtain or aid another in obtaining payments from any medical assistance program under this chapter by means of any fictitious, false, or fraudulent application, claim, report, or document submitted to the Cabinet for Health and Family Services, or intentionally engage in conduct which advances the scheme or artifice.
- (2) No person shall intentionally, knowingly, or wantonly make, present, or cause to be made or presented to an employee or officer of the Cabinet for Health and Family Services any false, fictitious, or fraudulent statement, representation, or entry in any application, claim, report, or document used in determining rights to any benefit or payment.
- (3) No person shall, with intent to defraud, knowingly make, or induce, or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operations of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled-nursing facility, intermediate-care facility, home-health agency, or other provider of services to the Medical Assistance Program.
- (4) No person shall, in any matter within the jurisdiction of the Cabinet for Health and Family Services under this chapter, knowingly falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

- (5) (a) Any person who violates subsections (1) and (2) of this section shall be guilty of a Class ~~B~~<sup>A</sup> misdemeanor unless:
1. The sum total of benefits or payments claimed in any application, claim, report, or document, or in any combination or aggregation thereof, is valued at **five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;**~~three hundred dollars (\$300) or more in which case it shall be a Class D felony~~
  2. **The sum total of benefits or payments claimed in any application, claim, report, or document, or in any combination or aggregation thereof, is valued at or above one thousand dollars (\$1,000), in which case it is a Class D felony; or**
  3. **The person has three (3) or more convictions under subparagraph 1. of this paragraph within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.**
- (b) **If any person commits two (2) or more separate violations of subsections (1) and (2) of this section within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.**
- (6) Any person who violates the provisions of subsection (3) of this section shall be guilty of a Class C felony.
- (7) Any person who violates the provisions of subsection (4) of this section shall be guilty of a Class D felony.

➔Section 3. KRS 238.995 is amended to read as follows:

- (1) Any person who willfully conducts without the required license any activity which under this chapter requires a license shall be guilty of a Class A misdemeanor.
- (2) Any person who makes any materially false or misleading statement in making application for licensure or in submitting reports required under this chapter, or any person who willfully fails to maintain records or make entries required under this chapter, or any person who willfully refuses to produce for inspection any books, documents, or records required under this chapter shall be guilty of a Class A misdemeanor.
- (3) (a) Any person who engages in conduct designed to corrupt the outcome of any charitable gaming activity with purpose to defraud or knowing that he is facilitating a fraud shall be guilty of **a Class B misdemeanor unless:**
1. ~~[a Class A misdemeanor if ]~~The amount involved is **five hundred dollars (\$500) or more but less than one thousand**~~[three hundred]~~ **dollars (\$1,000), in which case it is a Class A misdemeanor;**~~[(300) and]~~
  2. ~~[a Class D felony if ]~~The amount involved is **one thousand**~~[three hundred]~~ **dollars (\$1,000)**~~[(300)]~~ **or more, in which case it is a Class D felony; or**
  3. **The person has three (3) or more convictions under subparagraph 1. of this paragraph within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.**
- (b) **If any person commits two (2) or more separate offenses under paragraph (a) of this subsection within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.**
- (4) (a) Any person who knowingly diverts charitable gaming funds from legitimate charitable purpose or lawful expenses allowed under this chapter to his financial benefit or the financial benefit of another person shall be guilty of **a Class B misdemeanor unless:**
1. ~~[a Class A misdemeanor if ]~~The amount involved is **five hundred dollars (\$500) or more but less than one thousand**~~[three hundred]~~ **dollars (\$1,000), in which case it is a Class A misdemeanor;**~~[(300) and]~~
  2. ~~[a Class D felony if ]~~The amount involved is **one thousand**~~[three hundred]~~ **dollars (\$1,000)**~~[(300)]~~ **or more, in which case it is a Class D felony; or**

3. *The person has three (3) or more convictions under subparagraph 1. of this paragraph within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.*

(b) *If any person commits two (2) or more separate offenses under paragraph (a) of this subsection within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.*

(5) Any person who commits a second or subsequent offense within a five (5) year period under subsection (1) or (2) of this section shall be guilty of a Class D felony.

(6) Nothing contained in this chapter shall prohibit prosecution of a violation under KRS Chapter 528 by the Attorney General, county attorneys, or Commonwealth's attorneys.

(7) No person shall make or cause a false entry to be made in the business records of a charitable organization; alter, erase, obliterate, delete, remove, or destroy a true entry in the business records of a charitable organization; omit to make a true entry in the business records of a charitable organization in violation of a duty to do so that he knows to be imposed upon him by law or by the nature of his position; or prevent the making of a true entry or cause the omission thereof in the business records of a charitable organization.

(8) Violation of subsection (7) of this section or falsifying business records of a charitable organization is a Class A misdemeanor.

➔Section 4. KRS 341.990 is amended to read as follows:

(1) Except as otherwise provided in subsection (11) of this section, any employee of any state agency who violates any of the provisions of KRS 341.110 to 341.230 shall be guilty of a Class B misdemeanor.

(2) Any person subpoenaed to appear and testify or produce evidence in an inquiry, investigation, or hearing conducted under this chapter who fails to obey the subpoena shall be guilty of a Class B misdemeanor.

(3) Any subject employer, or officer or agent of a subject employer, who violates subsection (1) of KRS 341.470 shall be guilty of a Class A misdemeanor.

(4) Any person who violates subsection (2) of KRS 341.470 shall be guilty of a Class A misdemeanor.

(5) (a) Any person who knowingly makes a false statement or representation of a material fact or knowingly fails to disclose a material fact to the secretary to obtain or increase any benefit under this chapter or under an employment security law of any other state, or of the federal government, either for himself or for any other person, business entity, or organization shall be guilty of a Class ~~B~~[A] misdemeanor unless:

1. The value of the benefits procured or attempted to be procured is *five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;*~~one hundred dollars (\$100) or more, in which case he shall be guilty of a Class D felony;~~

2. *The value of the benefits procured or attempted to be procured is one thousand dollars (\$1,000) or more, in which case it is a Class D felony; or*

3. *The person has three (3) or more convictions under subparagraph 1. of this paragraph within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.*

(b) *If any person commits two (2) or more separate offenses under paragraph (a) of this subsection within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.*

(6) (a) Any person who knowingly makes a false statement or representation, or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any worker entitled thereto, or to avoid becoming or remaining subject to this chapter, or to avoid or reduce any payment required of an employing unit under this chapter shall be guilty of a Class ~~B~~[A] misdemeanor unless:

1. The liability avoided or attempted to be avoided is **five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;** ~~one hundred dollars (\$100) or more, in which case he shall be guilty of a Class D felony~~
  2. **The liability avoided or attempted to be avoided is one thousand dollars (\$1,000) or more, in which case it is a Class D felony; or**
  3. **The person has three (3) or more convictions under subparagraph 1. of this paragraph within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.**
- (b) **If any person commits two (2) or more separate offenses under paragraph (a) of this subsection within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.**
- (c) ~~(b)~~ Any person who willfully fails or refuses to furnish any reports required, or to produce or permit the inspection or copying of records required in this chapter shall be guilty of a Class B misdemeanor. Each such false statement, representation or failure and each day of failure or refusal shall constitute a separate offense.
- (7) In any prosecution for the violation of subsection (5) or (6) of this section, it shall be a defense if the person relied on the advice of an employee or agent of the Office of Unemployment Insurance, Department of Workforce Investment.
  - (8) Any person who willfully violates any provision of this chapter or any rule or regulation under it, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which no specific penalty is prescribed in this chapter or in any other applicable statute, shall be guilty of a violation. Each day the violation continues shall constitute a separate offense.
  - (9) In addition to the higher rates imposed under KRS 341.540(7), any person, whether or not an employing unit, who knowingly advises or assists an employing unit in the violation or attempted violation of KRS 341.540 or any other provision of this chapter related to determining the assignment of a contribution rate shall be subject to a civil monetary penalty of not less than five thousand dollars (\$5,000).
  - (10) Proceeds from all penalties imposed under subsection (9) of this section and KRS 341.540 shall be deposited in the unemployment compensation administration account and shall be expended solely for the cost of administration of this chapter consistent with KRS 341.240.
  - (11) Any person who violates the confidentiality provision in KRS 341.190(4) shall be guilty of a Class A misdemeanor.

➔Section 5. KRS 434.650 is amended to read as follows:

- (1) (a) A person who, with intent to defraud the issuer, a participating party, a person, or organization providing money, goods, services, or anything else of value, or any other person:
  1. ~~(a)~~ Uses for the purpose of obtaining money, goods, services, or anything else of value a credit or debit card obtained or retained in violation of KRS 434.570 to 434.650, or any of such sections, or a credit or debit card which he knows is forged, expired, or revoked; ~~or~~
  2. ~~(b)~~ Obtains money, goods, services, or anything else of value by representing without consent of the cardholder that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued; ~~or~~
  3. ~~(c)~~ Uses a credit or debit card obtained or retained in violation of KRS 434.570 to 434.650, or any of such sections, or a credit or debit card which he knows is forged, expired, or revoked, as authority or identification to cash or attempts to cash or otherwise negotiate or transfer a check or other order for payment of money, whether or not negotiable, if said negotiation or transfer or attempt to negotiate or transfer would constitute a crime under KRS 514.040 or 516.030; or
  4. ~~(d)~~ Deposits into his account or any account, via an automated banking device, a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any other such document not his lawful or legal property; ~~or~~

is guilty **as provided in paragraph (b) of this subsection.**

- (b) *The penalty for violating paragraph (a) of this subsection is ~~of~~ a Class B~~A~~ misdemeanor unless:*
1. ~~if~~ *The value of all money, goods, services, or other things of value obtained in violation of this section over a six (6) month period is **five hundred dollars (\$500) or more but is less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;** ~~less than five hundred dollars (\$500).~~*
  2. *The value of all money, goods, services, or other things of value obtained in violation of this section over a six (6) month period is one thousand dollars (\$1,000) ~~a Class D felony if such value is five hundred dollars (\$500)~~ or more but is less than ten thousand dollars (\$10,000), in which case it is a Class D felony;*
  3. *The person has three (3) or more convictions under subparagraph 1. of this paragraph within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or*
  4. *The value of all money, goods, services, or other things of value obtained in violation of this section over a six (6) month period ~~a Class C felony if such value~~ is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.*

- (2) A person who receives money, goods, services, or anything else of value as a result of a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any other such document having been deposited into an account via an automated banking device, knowing at the time of receipt of the money, goods, services, or item of value that the document so deposited was false, fictitious, forged, altered, or counterfeit or that the above described deposited item was not his lawful or legal property, violates this subsection and is subject to the penalties set forth in subsection (1) of this section.
- (3) Knowledge of revocation shall be presumed to have been received by a cardholder four (4) days after it has been mailed to him at the address set forth on the credit or debit card or at his last known address by registered or certified mail, return receipt requested, and, if the address is more than five hundred (500) miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone, and Canada, notice shall be presumed to have been received ten (10) days after mailing by registered or certified mail.

➔Section 6. KRS 434.655 is amended to read as follows:

- (1) A cardholder who fraudulently uses a credit or debit card to obtain money, goods, services, or anything else of value after said cardholder has reported to the issuer said credit or debit card lost, as stolen, or not received is deemed to have used said credit or debit card in order to defraud the issuer; and said cardholder shall be guilty of *a Class B misdemeanor unless:*
- (a) ~~a Class A misdemeanor if~~ *The value of all money, goods, services, or other things of value furnished in violation of this section over a six (6) month period is ~~less than~~ five hundred dollars (\$500) **or more but is less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;***
  - (b) ~~The a Class D felony if such~~ *value of all money, goods, services, or other things of value furnished in violation of this section over a six (6) month period is one thousand ~~five hundred~~ dollars (\$1,000) ~~(\$500)~~ or more but is less than ten thousand dollars (\$10,000), in which case it is a Class D felony;*
  - (c) *The person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or*
  - (d) ~~The a Class C felony if such~~ *value of all money, goods, services, or other things of value furnished in violation of this section over a six (6) month period is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.*
- (2) A cardholder who, after using a credit or debit card, fraudulently reports to the issuer that such usage or transaction was not made by said cardholder, or that said credit or debit card was lost, stolen, or not received at the time of such usage or transaction, in order to defraud the issuer, the cardholder, or any other person in connection with said usage, shall be guilty of *a Class B misdemeanor unless:*

- (a) ~~[a Class A misdemeanor if ]~~The value of all money, goods, services, or other things of value furnished in violation of this section over a six (6) month period is ~~[less than]~~ five hundred dollars (\$500) **or more but is less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;**~~[ ]~~
- (b) ~~The [a Class D felony if such ]~~value of all money, goods, services, or other things of value furnished in violation of this section over a six (6) month period is **one thousand**~~[five hundred]~~ dollars (\$1,000)~~[( \$500)]~~ or more but is less than ten thousand dollars (\$10,000), **in which case it is a Class D felony;**~~[ or ]~~
- (c) **The person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or**
- (d) ~~The [a Class C felony if such ]~~ value of all money, goods, services, or other things of value furnished in violation of this section over a six (6) month period is ten thousand dollars (\$10,000) or more, **in which case it is a Class C felony.**

➔Section 7. KRS 434.690 is amended to read as follows:

- (1) A person who receives money, goods, services, or anything else of value obtained in violation of KRS 434.650, knowing or believing that it was so obtained is guilty of **a Class B misdemeanor unless:**
  - (a) ~~[A Class A misdemeanor, if ]~~The value of all money, goods, services, and other things of value received in violation of this section over a six (6) month period is ~~[less than]~~ five hundred dollars (\$500) **or more but is less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;**~~[ ]~~
  - (b) ~~The [a Class D felony if such ]~~ value of all money, goods, services, and other things of value received in violation of this section over a six (6) month period is **one thousand**~~[five hundred]~~ dollars (\$1,000)~~[( \$500)]~~ or more but is less than ten thousand dollars (\$10,000), **in which case it is a Class D felony;**~~[ or ]~~
  - (c) **The person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or**
  - (d) ~~The [a Class C felony if such ]~~ value of all money, goods, services, and other things of value received in violation of this section over a six (6) month period is ten thousand dollars (\$10,000) or more, **in which case it is a Class C felony.**
- (2) A person who possesses three (3) or more tickets for airline, railroad, steamship, or other transportation service, which tickets were obtained by the use of a stolen or forged credit or debit card is presumed to know that such tickets were so obtained.

➔Section 8. KRS 514.030 is amended to read as follows:

- (1) Except as otherwise provided in KRS 217.181, a person is guilty of theft by unlawful taking or disposition when he unlawfully:
  - (a) Takes or exercises control over movable property of another with intent to deprive him thereof; or
  - (b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.
- (2) Theft by unlawful taking or disposition is a Class **B**~~[A]~~ misdemeanor unless:
  - (a) The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony;
  - (b) The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense;
  - (c) The property is one (1) or more controlled substances valued collectively at less than ten thousand dollars (\$10,000), in which case it is a Class D felony;
  - (d) **The value of the property is five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;**

- (e) The value of the property is **one thousand dollars (\$1,000)**~~five hundred dollars (\$500)~~ or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;
  - (f) **The person has three (3) or more convictions under paragraph (d) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered;**
  - ~~(g)(e)~~ The value of the property is ten thousand dollars (\$10,000) or more but less than one million dollars (\$1,000,000), in which case it is a Class C felony;
  - ~~(h)(f)~~ The value of the property is one million dollars (\$1,000,000) or more but less than ten million dollars (\$10,000,000), in which case it is a Class B felony; or
  - ~~(i)(g)~~ The value of the property is ten million dollars (\$10,000,000) or more, in which case it is a Class B felony.
- (3) Any person convicted under subsection (2)~~(i)(g)~~ of this section shall not be released on probation or parole until he or she has served at least fifty percent (50%) of the sentence imposed, any statute to the contrary notwithstanding.
- (4) **If any person commits two (2) or more separate offenses of theft by unlawful taking or disposition within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.**

➔Section 9. KRS 514.040 is amended to read as follows:

- (1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:
- (a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;
  - (b) Prevents another from acquiring information which would affect judgment of a transaction;
  - (c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
  - (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or
  - (e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- (2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.
- (3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.
- (4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
- (a) The maker had no account with the drawee at the time the check or order was issued; or
  - (b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. Notice of the refusal may include a citation to this section and a description of this section's criminal penalties and shall be deemed properly addressed when mailed to the address printed or written on the check or sight order or provided by the drawer or maker upon issuance of the check or sight order. The notice, if mailed, shall be deemed received by the addressee seven (7) days after it is placed in the United States mail. The notice may be sent by first-class mail if supported by an affidavit of service setting out the contents of the notice, the address to which the notice was mailed, that correct postage was applied, and the date the notice was placed in the United States mail. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the

instrument, together with any merchant's posted bad check handling fee not to exceed fifty dollars (\$50) and any fee imposed pursuant to subsection (5) of this section.

- (5) If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of fifty dollars (\$50), if the instrument is paid. Money paid to the county attorney pursuant to this section shall be used only for payment of county attorney office operating expenses. Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer before the end of the next fiscal year for use by the fiscal court of the county.
- (6) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.
- (7) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.
- (8) Theft by deception is a Class ~~B~~~~A~~ misdemeanor unless:
  - (a) The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is **five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;**~~;~~
  - (b)~~(a)~~ **The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is one thousand dollars (\$1,000)**~~five hundred dollars (\$500)~~ or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;~~;~~~~or~~
  - (c) **A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of convictions were entered; or**
  - (d)~~(b)~~ **The value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.**
- (9) **If any person commits two (2) or more separate offenses of theft by deception within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.**

➔Section 10. KRS 514.050 is amended to read as follows:

- (1) Except as provided in KRS 365.710, a person is guilty of theft of property lost, mislaid, or delivered by mistake when:
  - (a) He comes into control of the property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient; and
  - (b) With intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.
- (2) Theft of property lost, mislaid, or delivered by mistake is a Class ~~B~~~~A~~ misdemeanor unless:
  - (a) The value of the property is **five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;**~~;~~
  - (b)~~(a)~~ **The value of the property is one thousand dollars (\$1,000)**~~five hundred dollars (\$500)~~ or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;~~;~~~~or~~
  - (c) **A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or**
  - (d)~~(b)~~ **The value of the property is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.**
- (3) **If any person commits two (2) or more separate offenses of theft of property lost, mislaid, or delivered by mistake within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.**

➔Section 11. KRS 514.060 is amended to read as follows:



- (1) A person is guilty of theft of services when:
- (a) The person intentionally obtains services by deception or threat or by false token or other means to avoid payment for the services which he knows are available only for compensation;
  - (b) The person intentionally obtains wireless communications services or access to services by any of the following means:
    1. Unauthorized interception of any electronic serial number, mobile identification number, personal identification number, or like identifying number;
    2. Unauthorized interception of any cellular service or personal communications service as terms may be defined in 47 C.F.R. parts 22 and 24 respectively;
    3. Unauthorized interception of any similar telephone service; or
    4. Use of deception, threat, or other means to avoid payment for the services which the person knows are available only for charge or compensation; or
  - (c) Having control over or unauthorized access to the use of the services of others to which the person is not entitled, the person intentionally diverts the services to the person's own benefit or the benefit of another not entitled thereto.
- (2) Where compensation for services is ordinarily paid immediately upon the rendering of the services, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay shall be prima facie evidence that the services were obtained by deception as to intention to pay.
- (3) In any prosecution for theft of gas, water, electricity, or other public service, where the utility supplying the service had installed a meter or other device to record the amount of service supplied, proof that:
- (a) The meter or other device has been altered, tampered with, or bypassed in a manner so as to prevent or reduce the recording thereof; or
  - (b) Service has been, after having been disconnected by the utility supplying service, reconnected without authorization of the utility
- shall be prima facie evidence of the intent to commit theft of service by the person or persons obligated to pay for service supplied through the meter or other device.
- (4) Theft of services is a Class ~~B~~~~A~~ misdemeanor unless:
- (a) The value of the service is *five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;*~~;~~
  - ~~(a)~~ *The value of the service is one thousand dollars (\$1,000) five hundred dollars (\$500) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;*~~;~~
  - (c) *A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or*
  - ~~(b)~~ *The value of the service is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.*
- (5) *If any person commits two (2) or more separate offenses of theft of services within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.*

➔Section 12. KRS 514.070 is amended to read as follows:

- (1) A person is guilty of theft by failure to make required disposition of property received when:
- (a) He obtains property upon agreement or subject to a known legal obligation to make specified payment or other disposition whether from such property or its proceeds or from his own property to be reserved in equivalent amount; and
  - (b) He intentionally deals with the property as his own and fails to make the required payment or disposition.

- (2) The provisions of subsection (1) apply notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.
- (3) An officer or employee of the government or of a financial institution is presumed:
- (a) To know any legal obligation relevant to his criminal liability under this section; and
  - (b) To have dealt with the property as his own when:
    1. He fails to account or pay upon lawful demand; or
    2. An audit reveals a shortage or falsification of accounts.
- (4) Theft by failure to make required disposition of property received is a Class ~~B~~~~A~~ misdemeanor unless:
- (a) The value of the property is *five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;*~~;~~
  - ~~(b)(a)~~ *The value of the property is one thousand dollars (\$1,000)*~~five hundred dollars (\$500)~~ or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;~~;~~
  - (c) *A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or*
  - ~~(d)(b)~~ *The value of the property is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.*
- (5) No person shall be convicted of theft by failure to make required disposition of property received when he or she has also been convicted of a violation of KRS 522.050 arising out of the same incident.
- (6) *If any person commits two (2) or more separate offenses of theft by failure to make a required disposition of property received within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.*

➔Section 13. KRS 514.080 is amended to read as follows:

- (1) A person is guilty of theft by extortion when he intentionally obtains property of another by threatening to:
- (a) Inflict bodily injury on anyone or commit any other criminal offense; or
  - (b) Accuse anyone of a criminal offense; or
  - (c) Expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
  - (d) Use wrongfully his position as a public officer or servant or employee by performing some act within or related to his official duties, either expressed or implied, or by refusing or omitting to perform an official duty, either expressed or implied, in a manner affecting some person adversely; or
  - (e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
  - (f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.
- (2) It is a defense to prosecution based on subsection (1)(b), (c), or (d) that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was claimed as restitution or indemnification for harm done in the circumstances to which accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.
- (3) Theft by extortion is a Class ~~B~~~~A~~ misdemeanor unless:
- (a) The value of the property obtained is *five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;*~~;~~
  - ~~(b)(a)~~ *The value of the property is one thousand dollars (\$1,000)*~~Five hundred dollars (\$500)~~ or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;~~;~~

(c) *A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or*

(d)~~(b)~~ *The value of the property is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.*

(4) *If any person commits two (2) or more separate offenses of theft by extortion within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.*

➔Section 14. KRS 514.090 is amended to read as follows:

(1) A person is guilty of theft of labor already rendered when, in payment of labor already rendered by another, he intentionally issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.

(2) For purposes of subsection (1) of this section, an issuer of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:

(a) The issuer had no account with the drawee at the time the check or order was issued; or

(b) Payment was refused by the drawee for lack of funds, upon presentation within thirty days (30) after issue, and the issuer failed to make good within ten (10) days after receiving notice of that refusal.

(3) Theft of labor already rendered is a Class ~~B~~~~A~~ misdemeanor unless:

(a) *The value of the labor rendered is five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;*~~;~~

(b)~~(a)~~ *The value of the labor rendered is one thousand dollars (\$1,000)~~five hundred dollars (\$500)~~ or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;*~~;~~

(c) *A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered; or*

(d)~~(b)~~ *The value of the labor rendered is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.*

(4) *If any person commits two (2) or more separate offenses of theft of labor already rendered within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.*

➔Section 15. KRS 514.110 is amended to read as follows:

(1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, or having reason to believe that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.

(2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.

(3) Receiving stolen property is a Class ~~B~~~~A~~ misdemeanor unless:

(a) *The value of the property is five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000), in which case it is a Class A misdemeanor;*

(b) The value of the property is *one thousand dollars (\$1,000)~~five hundred dollars (\$500)~~ or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;*

(c) *A person has three (3) or more convictions under paragraph (a) of this subsection within the last five (5) years, in which case it is a Class D felony. The five (5) year period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered;*

(d)~~(b)~~ The value of the property is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony;

- (e)~~(e)~~ The property is a firearm, regardless of the value of the firearm, in which case it is a Class D felony; or
- (f)~~(d)~~ The property is anhydrous ammonia, regardless of the value of the ammonia, in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.
- (4) *If any person commits two (2) or more separate offenses of receiving stolen property within ninety (90) days, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge.*

Signed by Governor March 22, 2021.

## CHAPTER 67

### ( HB 140 )

AN ACT relating to telehealth.

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 4 of this Act, unless context otherwise requires:*

- (1) *"Cabinet" means the Cabinet for Health and Family Services;*
- (2) *"Health care service" means health care procedures, treatments, or services rendered by a provider within the scope of practice for which the provider is licensed or certified and includes physical and behavioral health care;*
- (3) *"Professional licensure board" means a licensure board established in Kentucky for the purpose of regulating and overseeing the practice of health care providers, including but not limited to:*
  - (a) *Board of Physical Therapy as established in KRS 327.030;*
  - (b) *Kentucky Applied Behavior Analysis Licensing Board as established in KRS 319C.030;*
  - (c) *Kentucky Board of Alcohol and Drug Counselors established by KRS 309.081;*
  - (d) *Kentucky State Board of Chiropractic Examiners established by KRS 312.025;*
  - (e) *Kentucky Board of Dentistry established by KRS 313.020;*
  - (f) *Kentucky Board of Emergency Medical Services established by KRS 311A.015;*
  - (g) *Kentucky Board of Examiners of Psychology established by KRS 319.020;*
  - (h) *Kentucky Board of Licensed Diabetes Educators established by KRS 309.329;*
  - (i) *Kentucky Board of Licensed Professional Counselors established by KRS 335.510;*
  - (j) *Kentucky Board of Licensure and Certification for Dietitians and Nutritionists established by KRS 310.040;*
  - (k) *Kentucky Board of Licensure for Marriage and Family Therapists established by KRS 335.310;*
  - (l) *Kentucky Board of Licensure for Occupational Therapy established by KRS 319A.020;*
  - (m) *Kentucky Board of Licensure for Professional Art Therapists established by KRS 309.131;*
  - (n) *State Board of Medical Licensure established by KRS 311.530;*
  - (o) *Kentucky Board of Nursing established by KRS 314.121;*
  - (p) *Kentucky Board of Optometric Examiners established by KRS 320.230;*

- (q) *Kentucky Board of Pharmacy established by KRS 315.150;*
  - (r) *Kentucky Board of Social Work established by KRS 335.050;*
  - (s) *Kentucky Board of Respiratory Care established by KRS 314A.200; and*
  - (t) *Kentucky Board of Speech-Language Pathology and Audiology established by KRS 334A.070;*
- (4) *"State agency authorized or required to promulgate administrative regulations relating to telehealth" means:*
- (a) *A professional licensure board;*
  - (b) *The Cabinet for Health and Family Services;*
  - (c) *The Department for Medicaid Services within the Cabinet for Health and Family Services; and*
  - (d) *The Department of Insurance within the Public Protection Cabinet; and*
- (5) *"Telehealth" or "digital health":*
- (a) *Means a mode of delivering healthcare services through the use of telecommunication technologies, including but not limited to synchronous and asynchronous technology, remote patient monitoring technology, and audio-only encounters, by a health care provider to a patient or to another health care provider at a different location;*
  - (b) *Shall not include:*
    - 1. *The delivery of health care services through electronic mail, text, chat, or facsimile unless a state agency authorized or required to promulgate administrative regulations relating to telehealth determines that health care services can be delivered via these modalities in ways that enhance recipient health and well-being and meet all clinical and technology guidelines for recipient safety and appropriate delivery of services; or*
    - 2. *Basic communication between a health care provider and a patient, including but not limited to appointment scheduling, appointment reminders, voicemails, or any other similar communication intended to facilitate the actual provision of healthcare services either in-person or via telehealth; and*
  - (c) *Unless waived by the applicable federal authority, shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet, in consultation with the Division of Telehealth Services within the Office of Health Data and Analytics as established in Section 5 of this Act, shall:*
- (a) *Provide guidance and direction to providers delivering health care services using telehealth or digital health;*
  - (b) *Promote access to health care services provided via telehealth or digital health;*
  - (c) *Maintain an online telehealth provider directory for consumer use; and*
  - (d) *No later than thirty (30) days after the effective date of this Act, promulgate administrative regulations in accordance with KRS Chapter 13A to:*
    - 1. *Establish a glossary of telehealth terminology to provide standard definitions for all healthcare providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors;*
    - 2. *Establish minimum requirements for the proper use and security of telehealth, including requirements for confidentiality and data integrity, privacy and security, informed consent, privileging and credentialing, reimbursement, and technology;*
    - 3. *Establish minimum requirements to prevent waste, fraud, and abuse related to telehealth; and*

4. *Maintain the discretion of state agencies authorized or required to promulgate administrative regulations relating to telehealth to establish requirements to authorize, prohibit, or otherwise govern the use of telehealth in accordance with the state agencies' respective jurisdictions.*
- (2) *In order to comply with the deadline for the promulgation of administrative regulations established in subsection (1)(d) of this section, the cabinet may promulgate emergency administrative regulations in accordance with KRS 13A.190.*
- (3) *The cabinet, in consultation with the Department for Medicaid Services and any managed care organization with whom the department contracts for the delivery of Medicaid services, shall study the impact of telehealth on the health care delivery system in Kentucky and shall submit an annual report to the Legislative Research Commission no later than December 1 of each year. This report shall include analysis of:*
- (a) *The economic impact of telehealth on the Medicaid budget, including any costs or savings as a result of decreased transportation expenditures and office or emergency room visits;*
  - (b) *The quality of care as a result of telehealth services;*
  - (c) *Reimbursement and delivery of telehealth among all managed care organizations with whom the department contracts for the delivery of Medicaid services; and*
  - (d) *Any other issues deemed relevant by the cabinet, including any issues or information deemed relevant by the Division of Telehealth Services pursuant to subsection (4) of Section 5 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

*If a state agency authorized or required to promulgate administrative regulations relating to telehealth chooses to promulgate an administrative regulation relating to telehealth, the state agency:*

- (1) *Shall:*
- (a) *Use terminology consistent with the glossary of telehealth terminology established by the cabinet pursuant to Section 2 of this Act; and*
  - (b) *Comply with the minimum requirements established by the cabinet pursuant to Section 2 of this Act;*
- (2) *Shall not:*
- (a) *Require a provider to be physically present with the recipient, unless the state agency or provider determines that it is medically necessary to perform those services in person;*
  - (b) *Require prior authorization, medical review, or administrative clearance for telehealth that would not be required if a service were provided in person;*
  - (c) *Require a provider to be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person;*
  - (d) *Require demonstration that it is necessary to provide services to a patient through telehealth;*
  - (e) *Restrict or deny coverage of telehealth based solely on the communication technology or application used to deliver the telehealth services;*
  - (f) *Prohibit the delivery of telehealth services to a person located in Kentucky by a provider who is a participant in a recognized interstate compact and delivers telehealth services to a person in Kentucky under the standards and provisions of that interstate compact;*
  - (g) *Prohibit an insurer or managed care organization from utilizing audits for medical coding accuracy in the review of telehealth services specific to audio-only encounters; or*
  - (h) *Require a provider to be part of a telehealth network; and*
- (3) *May promulgate administrative regulations, which shall be no more restrictive than administrative regulations for providers who deliver healthcare services in person, to establish additional requirements relating to telehealth, including requirements:*
- (a) *For the proper use and security of telehealth;*
  - (b) *To address emergency situations, including but not limited to suicidal ideations or plans; threats to self or others; evidence of dependency, neglect, or abuse; or other life-threatening conditions;*

- (c) *To prevent waste, fraud, and abuse of telehealth services, both in general and specific to the provision of telehealth services delivered via audio-only encounters; or*
- (d) *That a telehealth provider be licensed in Kentucky, or as allowed under the standards and provisions of a recognized interstate compact, in order to receive reimbursement for telehealth services.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

*Nothing in Sections 1 to 4 of this Act shall be interpreted or construed to limit the authority of the Department of Workers' Claims to promulgate administrative regulations governing the delivery of health care services via telehealth or digital health pursuant to KRS Chapter 342.*

➔Section 5. KRS 194A.105 is amended to read as follows:

There is hereby created a Division of Telehealth Services within the Office of Health Data and Analytics to be headed by a director appointed by the secretary pursuant to KRS 12.050. The division shall:

- (1) Provide ~~oversight,~~ guidance ~~and direction to healthcare providers delivering care using telehealth;~~ and direction to ~~healthcare~~ ~~Medicaid~~ providers delivering care using telehealth; ~~The division shall implement telehealth services and~~
- (2) Develop ~~standards,~~ guidance, resources, and education to help promote access to healthcare services in the Commonwealth;
- (3) *Assist the Cabinet for Health and Family Services with the implementation of Section 2 of this Act; and*
- (4) *Provide the Department for Medicaid Services with any additional information deemed relevant by the division for inclusion in the report required by subsection (3) of Section 2 of this Act.*

➔Section 6. KRS 205.510 is amended to read as follows:

As used in this chapter as it pertains to medical assistance unless the context clearly requires a different meaning:

- (1) *"Behavioral health professional" means a person authorized to provide mental health or substance use disorder services under the laws of the Commonwealth;*
- (2) "Chiropractor" means a person authorized to practice chiropractic under *the laws of the Commonwealth* ~~KRS Chapter 312~~;
- (3) ~~(2)~~ "Council" means the Advisory Council for Medical Assistance;
- (4) ~~(3)~~ "Dentist" means a person authorized to practice dentistry under laws of the Commonwealth;
- (5) ~~(4)~~ "Health professional" means a physician, physician assistant, nurse, doctor of chiropractic, ~~behavioral~~ ~~mental~~ health professional, optometrist, dentist, or allied health professional who is licensed in Kentucky;
- (6) ~~(5)~~ "Medical care" as used in this chapter means essential medical, surgical, chiropractic, dental, optometric, podiatric, telehealth, and nursing services, in the home, office, clinic, or other suitable places, which are provided or prescribed by physicians, optometrists, podiatrists, or dentists licensed to render such services, including drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing-home and convalescent care, hospital care as defined in KRS 205.560(1)(a), and such other essential medical services and supplies as may be prescribed by such persons; but not including abortions, or induced miscarriages or premature births, unless in the opinion of a physician such procedures are necessary for the preservation of the life of the woman seeking such treatment or except in induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child. However, this section does not authorize optometrists to perform any services other than those authorized by KRS Chapter 320;
- (7) ~~(6)~~ "Nurse" means a person authorized to practice professional nursing under the laws of the Commonwealth;
- (8) ~~(7)~~ "Nursing home" means a facility which provides routine medical care in which physicians regularly visit patients, which provide nursing services and procedures employed in caring for the sick which require training, judgment, technical knowledge, and skills beyond that which the untrained person possesses, and which maintains complete records on patient care, and which is licensed pursuant to the provisions of KRS 216B.015;
- (9) ~~(8)~~ "Optometrist" means a person authorized to practice optometry under the laws of the Commonwealth;

- (10)(9) "Other persons eligible for medical assistance" may include the categorically needy excluded from ~~monetary~~ ~~money~~ payment status by state requirements and classifications of medically needy individuals as permitted by federal laws and regulations and as prescribed by administrative regulation of the secretary for health and family services or his designee;
- (11)(10) "Pharmacist" means a person authorized to practice pharmacy under the laws of the Commonwealth;
- (12)(11) "Physician" means a person authorized to practice medicine or osteopathy under the laws of the Commonwealth;
- (13)(12) "Podiatrist" means a person authorized to practice podiatry under the laws of the Commonwealth;
- (14)(13) "Primary-care center" means a facility which provides comprehensive medical care with emphasis on the prevention of disease and the maintenance of the patients' health as opposed to the treatment of disease;
- (15)(14) "Public assistance recipient" means a person who has been certified by the Department for Community Based Services of the Cabinet for Health and Family Services as being eligible for, and a recipient of, public assistance under the provisions of this chapter;
- (16)(15) "Telehealth" ~~means the same as in Section 1 of this Act~~;
- (a) ~~Means the delivery of health care related services by a Medicaid provider who is a health care provider licensed in Kentucky to a Medicaid recipient through a face-to-face encounter with access to real-time interactive audio and video technology or store and forward services that are provided via asynchronous technologies as the standard practice of care where images are sent to a specialist for evaluation. The requirement for a face-to-face encounter shall be satisfied with the use of asynchronous telecommunications technologies in which the health care provider has access to the Medicaid recipient's medical history prior to the telehealth encounter;~~
- (b) ~~Shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call; and~~
- (c) ~~Shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9;~~
- (17)(16) "Telehealth consultation" means a medical or health consultation, for purposes of patient diagnosis or treatment, that meets the definition of telehealth in this section;
- (18)(17) "Third party" means an individual, institution, corporation, company, insurance company, personal representative, administrator, executor, trustee, or public or private agency, including, but not limited to, a reparation obligor and the assigned claims bureau under the Motor Vehicle Reparations Act, Subtitle 39 of KRS Chapter 304, who is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient of medical assistance provided under Title XIX of the Social Security Act, 42 U.S.C. sec. 1396 et seq.; and
- (19)(18) "Vendor payment" means a payment for medical care which is paid by the Cabinet for Health and Family Services directly to the authorized person or institution which rendered medical care to an eligible recipient.

➔Section 7. KRS 205.559 is amended to read as follows:

- (1) The Cabinet for Health and Family Services and any ~~regional~~ managed care **organization with whom the Department for Medicaid Services contracts for the delivery of Medicaid services** ~~[partnership or other entity under contract with the cabinet for the administration or provision of the Medicaid program]~~ shall provide Medicaid reimbursement for **covered** ~~a~~ **telehealth services and telehealth consultations,** ~~[consultation as defined in KRS 205.510 that is]~~ **if the telehealth service or telehealth consultation:**
- (a) **Is provided by a Medicaid-participating practitioner** ~~[who is licensed in Kentucky]~~, **including those employed by a home health agency licensed pursuant to KRS Chapter 216, to a Medicaid recipient or another Medicaid-participating practitioner at a different physical location; and**
- (b) **Meets all clinical, technology, and medical coding guidelines for recipient safety and appropriate delivery of services established by the Department for Medicaid Services or the provider's professional licensure board.**



- (2) (a) ***For rural health clinics, federally qualified health centers, and federally qualified health center look-alikes, reimbursement for covered telehealth services and telehealth consultations shall:*** ~~[The cabinet shall establish reimbursement rates for telehealth consultations]~~
1. ***To the extent permitted under federal law, include an originating site fee in an amount equal to that which is permitted under 42 U.S.C. sec. 1395m for Medicare-participating providers if the Medicaid beneficiary who received the telehealth service or telehealth consultation was physically located at the rural health clinic, federally qualified health center, or federally qualified health center look-alike at the time of service or consultation delivery and the provider of the telehealth service or telehealth consultation is not employed by the rural health clinic, federally qualified health center, or federally qualified health center look-alike; or***
  2. ***If the telehealth service or telehealth consultation provider is employed by the rural health clinic, federally qualified health center, or federally qualified health center look-alike, include a supplemental reimbursement paid by the Department for Medicaid Services in an amount equal to the difference between the actual reimbursement amount paid by a Medicaid managed care organization and the amount that would have been paid if reimbursement had been made directly by the department.***
- (b) A request for reimbursement shall not be denied solely because:
1. An in-person consultation between a Medicaid-participating practitioner and a patient did not occur; ***or***
  2. ***A Medicaid-participating provider employed by a rural health clinic, federally qualified health center, or federally qualified health center look-alike was not physically located on the premises of the clinic or health center when the telehealth service or telehealth consultation was provided.***
- (c) ~~(b)~~ ***Telehealth services and telehealth consultations*** ~~[A telehealth consultation]~~ shall not be reimbursable under this section if ***they are*** ~~[it is]~~ provided through the use of ~~[an audio-only telephone,]~~ a facsimile machine, ***text, chat,*** or electronic mail ***unless the Department for Medicaid Services determines that telehealth can be provided via these modalities in ways that enhance recipient health and well-being and meet all clinical and technology guidelines for recipient safety and appropriate delivery of services.***
- (3) (a) A health-care facility that receives reimbursement under this section for consultations provided by a Medicaid-participating provider who practices in that facility and a health professional who obtains a consultation under this section shall establish quality-of-care protocols, ***which may include a requirement for an annual in-person or face-to-face consultation with a patient who receives telehealth services,*** and patient confidentiality guidelines to ensure that telehealth consultations meet all requirements and patient care standards as required by law.
- (b) ***The Department for Medicaid Services and any managed care organization with whom the department contracts for the delivery of Medicaid services shall not deny reimbursement for telehealth services covered by this section based solely on quality-of-care protocols adopted by a health-care facility pursuant to paragraph (a) of this subsection.***
- (4) The cabinet shall not require a telehealth consultation if an in-person consultation with a Medicaid-participating provider is reasonably available where the patient resides, works, or attends school or if the patient prefers an in-person consultation.
- (5) The cabinet shall request any waivers of federal laws or regulations that may be necessary to implement this section ***and Section 8 of this Act.***
- (6) ~~[(a)]~~ ***Medicaid-participating practitioners and home health agencies are strongly encouraged to use audio-only encounters as a mode of delivering telehealth services only when no other approved mode of delivering telehealth services is available*** ~~[The cabinet and any regional managed care partnership or other entity under contract with the cabinet for the administration or provision of the Medicaid program shall study the impact of this section on the health care delivery system in Kentucky and shall, upon implementation, issue an annual report to the Legislative Research Commission. This report shall include an analysis of:~~
1. ~~The economic impact of this section on the Medicaid budget, including any costs or savings as a result of decreased transportation expenditures and office or emergency room visits;~~

- ~~2. The quality of care as a result of telehealth consultations rendered under this section; and~~
- ~~3. Any other issues deemed relevant by the cabinet.~~
- ~~(b) In addition to the analysis required under paragraph (a) of this subsection, the cabinet report shall compare telehealth reimbursement and delivery among all regional managed care partnerships or other entities under contract with the cabinet for the administration or provision of the Medicaid program.~~
- ~~(7) The cabinet shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms, records required, and authorization procedures to be followed in conjunction with this section].~~
- (7) *As used in this section:*
- (a) *"Federally qualified health center" means the same as in 42 U.S.C. sec. 1396d;*
- (b) *"Federally qualified health center look-alike" means an organization that meets all of the eligibility requirements of a federally qualified health center but does not receive federal grants issued pursuant to 42 U.S.C. sec. 254b;*
- (c) *"Originating site" means the site at which a Medicaid beneficiary is physically located at the time a telehealth service or telehealth consultation is provided; and*
- (d) *"Rural health clinic" means the same as in 42 U.S.C. sec. 1395x.*
- ➔Section 8. KRS 205.5591 is amended to read as follows:
- (1) The cabinet shall provide oversight, guidance, and direction to Medicaid providers delivering care using telehealth~~[as defined in KRS 205.510].~~
- (2) The *Department for Medicaid Services*~~[cabinet]~~ shall:
- (a) *Within thirty (30) days after the effective date of this Act:*
1. *Promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for telehealth coverage and reimbursement rates, which shall be equivalent to coverage requirements and reimbursement rates for the same service provided in person unless the telehealth provider and the department or a managed care organization contractually agree to a lower reimbursement rate for telehealth services; and*
2. *Create, establish, or designate the claim forms, records required, and authorization procedures to be followed in conjunction with this section and Section 7 of this Act*~~[Develop policies and procedures to ensure the proper use and security for telehealth, including but not limited to confidentiality and data integrity, privacy and security, informed consent, privileging and credentialing, reimbursement, and technology;~~
- ~~(b) Promote access to health care provided via telehealth;~~
- ~~(c) Maintain a list of Medicaid providers who may deliver telehealth services to Medicaid recipients throughout the Commonwealth;~~
- ~~(b)(d)~~ Require that specialty care be rendered by a health care provider who is recognized and actively participating in the Medicaid program;~~{and}~~
- ~~(c)(e)~~ Require that any required prior authorization requesting a referral or consultation for specialty care be processed by the patient's primary care provider and that any specialist coordinate care with the patient's primary care provider; *and*
- (d) *Require a telehealth provider to be licensed in Kentucky, or as allowed under the standards and provisions of a recognized interstate compact, in order to receive reimbursement for telehealth services.*
- (3) *In accordance with Section 3 of this Act, the Department for Medicaid Services and any*~~[The cabinet or a Medicaid]~~ managed care organization *with whom the department contracts for the delivery of Medicaid services* shall not:
- (a) Require a Medicaid provider to be physically present with a Medicaid recipient, unless the provider determines that it is medically necessary to perform those services in person;

- (b) Require prior authorization, medical review, or administrative clearance for telehealth that would not be required if a service were provided in person;
  - (c) Require a Medicaid provider to be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person;
  - (d) Require demonstration that it is necessary to provide services to a Medicaid recipient through telehealth;
  - (e) Restrict or deny coverage of telehealth based solely on the communication technology or application used to deliver the telehealth services; or
  - (f) Require a Medicaid provider to be part of a telehealth network.
- (4) ~~The Medicaid program or a Medicaid managed care organization shall require a telehealth provider to be licensed in Kentucky in order to receive reimbursement for telehealth services.~~
- (5) ~~The Medicaid program or a Medicaid managed care organization shall reimburse for covered services provided to a Medicaid recipient through telehealth, as defined in KRS 205.510. The department shall promulgate administrative regulations to establish requirements for telehealth coverage and reimbursement, which shall be equivalent to the coverage for the same service provided in person unless the telehealth provider and the Medicaid program or a Medicaid managed care organization contractually agree to a lower reimbursement rate for telehealth services, or the department establishes a different reimbursement rate.~~
- (6) ~~Benefits for a service provided to a Medicaid recipient through telehealth may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the Medicaid program for the same service provided in person.~~
- (5)(7) Nothing in this section shall be construed to require the Medicaid program or a Medicaid managed care organization to:
- (a) Provide coverage for telehealth services that are not medically necessary; or
  - (b) Reimburse any fees charged by a telehealth facility for transmission of a telehealth encounter.
- (6)(8) The cabinet, *in implementing Sections 2 and 3 of this Act*, shall maintain telehealth policies and guidelines to providing care that ensure that Medicaid-eligible citizens will have safe, adequate, and efficient medical care, and that prevent waste, fraud, and abuse of the Medicaid program.
- (7) ***In order to comply with the deadline for the promulgation of administrative regulations established in subsection (2) of this section, the Department for Medicaid Services may promulgate emergency administrative regulations in accordance with KRS 13A.190.***

➔Section 9. KRS 304.17A-005 is amended to read as follows:

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

- (1) "Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;
- (2) "At the time of enrollment" means:
  - (a) At the time of application for an individual, an association that actively markets to individual members, and an employer-organized association that actively markets to individual members; and
  - (b) During the time of open enrollment or during an insured's initial or special enrollment periods for group health insurance;
- (3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in KRS 304.17A-0954, with similar case characteristics for health benefit plans with the same or similar coverage;
- (4) "Basic health benefit plan" means any plan offered to an individual, a small group, or employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of this subtitle. If vision or eye services

are offered, these services may be provided by an ophthalmologist or optometrist. Chiropractic benefits may be offered by providers licensed pursuant to KRS Chapter 312;

- (5) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3);
- (6) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- (7) "COBRA" means any of the following:
- (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;
  - (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169); or
  - (c) 42 U.S.C. sec. 300bb;
- (8) "Creditable coverage":
- (a) Means, with respect to an individual, coverage of the individual under any of the following:
    1. A group health plan;
    2. Health insurance coverage;
    3. Part A or Part B of Title XVIII of the Social Security Act;
    4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;
    5. Chapter 55 of Title 10, United States Code, including medical and dental care for members and certain former members of the uniformed services, and for their dependents; for purposes of Chapter 55 of Title 10, United States Code, "uniformed services" means the Armed Forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service;
    6. A medical care program of the Indian Health Service or of a tribal organization;
    7. A state health benefits risk pool;
    8. A health plan offered under Chapter 89 of Title 5, United States Code, such as the Federal Employees Health Benefit Program;
    9. A public health plan as established or maintained by a state, the United States government, a foreign country, or any political subdivision of a state, the United States government, or a foreign country that provides health coverage to individuals who are enrolled in the plan;
    10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)); or
    11. Title XXI of the Social Security Act, such as the State Children's Health Insurance Program; and
  - (b) Does not include coverage consisting solely of coverage of excepted benefits as defined in this section;
- (9) "Dependent" means any individual who is or may become eligible for coverage under the terms of an individual or group health benefit plan because of a relationship to a participant;
- (10) "Employee benefit plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan as defined by ERISA;
- (11) "Eligible individual" means an individual:
- (a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;
  - (b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et seq.) and does not have other health insurance coverage;

- (c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in KRS 304.17A-240(2)(a), (b), and (c);
  - (d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and
  - (e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;
- (12) "Employer-organized association" means any of the following:
- (a) Any entity that was qualified by the commissioner as an eligible association prior to April 10, 1998, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;
  - (b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled;
  - (c) Any entity or association of employers, which has been actively in existence for at least two (2) years, formed under the Employee Retirement Income Security Act, 29 U.S.C. secs. 1001 et seq., to provide an employee welfare benefit plan under guidance issued by the United States Department of Labor prior to the issuance of 29 C.F.R. sec. 2510.3-5, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation; and
  - (d) Any entity or association of employers, which has been actively in existence for at least two (2) years, formed under the Employee Retirement Income Security Act, 29 U.S.C. secs. 1001 et seq., to provide an employee welfare benefit plan, whose members consist of employers or a group of employers that satisfy the requirements of 29 C.F.R. sec. 2510.3-5.

Except as provided in KRS 304.17A-0954, 304.17A-200, and 304.17A-220, and except as otherwise provided by the definition of "large group" contained in this section, an employer-organized association shall not be treated as an association, small group, or large group under this subtitle, except that an employer-organized association as defined under paragraph (c) or (d) of this subsection shall be treated as a large group under this subtitle;

- (13) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;
- (14) "Excepted benefits" means benefits under one (1) or more, or any combination of the following:
- (a) Coverage only for accident, including accidental death and dismemberment, or disability income insurance, or any combination thereof;
  - (b) Coverage issued as a supplement to liability insurance;
  - (c) Liability insurance, including general liability insurance and automobile liability insurance;
  - (d) Workers' compensation or similar insurance;
  - (e) Automobile medical payment insurance;
  - (f) Credit-only insurance;
  - (g) Coverage for on-site medical clinics;
  - (h) Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;
  - (i) Limited scope dental or vision benefits;
  - (j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

- (k) Such other similar, limited benefits as are specified in administrative regulations;
  - (l) Coverage only for a specified disease or illness;
  - (m) Hospital indemnity or other fixed indemnity insurance;
  - (n) Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;
  - (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;
  - (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan; and
  - (q) Health flexible spending arrangements;
- (15) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);
- (16) "Group health plan" means a plan, including a self-insured plan, of or contributed to by an employer, including a self-employed person, or employee organization, to provide health care directly or otherwise to the employees, former employees, the employer, or others associated or formerly associated with the employer in a business relationship, or their families;
- (17) "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals under KRS 304.17A-400 to 304.17A-480;
- (18) "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program under KRS 304.17A-400 to 304.17A-480;
- (19) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (20) "Guaranteed acceptance program qualified individual" means an individual who, on or before December 31, 2000:
- (a) Is not an eligible individual;
  - (b) Is not eligible for or covered by other health benefit plan coverage or who is a spouse or a dependent of an individual who:
    - 1. Waived coverage under KRS 304.17A-210(2); or
    - 2. Did not elect family coverage that was available through the association or group market;
  - (c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);
  - (d) Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and
  - (e) Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:
    - 1. The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;
    - 2. The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or
    - 3. The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;
- (21) "Guaranteed acceptance plan supporting insurer" means either an insurer, on or before December 31, 2000, that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, on or before December 31, 2000, provided that a guaranteed acceptance plan supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;

## (22) "Health benefit plan":

## (a) Shall include any:

1. Hospital or medical expense policy or certificate;
2. Nonprofit hospital, medical-surgical, and health service corporation contract or certificate;
3. Provider sponsored integrated health delivery network;
4. Self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA;
5. Self-insured governmental plan or church plan;
6. Health maintenance organization contract, except contracts to provide Medicaid benefits under KRS Chapter 205; or
7. Health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky; and

## (b) Does not include:

1. Policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement, long-term care, Medicare supplement, specified disease, or vision care;
2. Coverage issued as a supplement to liability insurance;
3. Insurance arising out of a workers' compensation or similar law;
4. Automobile medical-payment insurance;
5. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance;
6. Short-term limited-duration coverage;
7. Student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure;
8. Medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract;
9. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;
10. Limited health service benefit plans;
11. Direct primary care agreements established under KRS 311.6201, 311.6202, 314.198, and 314.199; or
12. Coverage provided under KRS Chapter 205;

## (23) "Health care provider" or "provider" means any:

- (a) Advanced practice registered nurse licensed under KRS Chapter 314;
- (b) Chiropractor licensed under KRS Chapter 312;
- (c) Dentist licensed under KRS Chapter 313;
- (d) Facility or service required to be licensed under KRS Chapter 216B;
- (e) Home medical equipment and services provider licensed under KRS Chapter 309;
- (f) Optometrist licensed under KRS Chapter 320;
- (g) Pharmacist licensed under KRS Chapter 315;
- (h) Physician, osteopath, or podiatrist licensed under KRS Chapter 311;
- (i) Physician assistant regulated under KRS Chapter 311; and

- (j) Other health care practitioners as determined by the department by administrative regulations promulgated under KRS Chapter 13A;
- (24) (a) "Health care service" means health care procedures, treatments, or services rendered by a provider within the scope of practice for which the provider is licensed.
- (b) Health care service includes the provision of prescription drugs, as defined in KRS 315.010, and home medical equipment, as defined in KRS 309.402;
- (25) "Health facility" or "facility" has the same meaning as in KRS 216B.015;
- (26) (a) "High-cost condition," pursuant to the Kentucky Guaranteed Acceptance Program, means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the commissioner in accordance with KRS 304.17A-280, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the commissioner under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.
- (b) The commissioner by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:
  - 1. Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and
  - 2. The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the commissioner, the scoring scale for which shall be established by the commissioner.
- (c) The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, Wilson's disease, and amyotrophic lateral sclerosis;
- (27) "Index rate" means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;
- (28) "Individual market" means the market for the health insurance coverage offered to individuals other than in connection with a group health plan. The individual market includes an association plan that is not employer-related, issued to individuals on an individually underwritten basis, other than an employer-organized association or a bona fide association;
- (29) "Insurer" means any insurance company; health maintenance organization; self-insurer, including a governmental plan, church plan, or multiple employer welfare arrangement, not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;
- (30) "Insurer-controlled" means that the commissioner has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;
- (31) "Kentucky Access" has the meaning provided in KRS 304.17B-001;
- (32) "Large group" means:
  - (a) An employer with fifty-one (51) or more employees;
  - (b) An affiliated group with fifty-one (51) or more eligible members; or
  - (c) A fully insured employer-organized association as defined in subsection (12)(c) or (d) of this section that:
    - 1. Covers at least fifty-one (51) employee members; and



2. Is registered with the department pursuant to administrative regulations promulgated by the commissioner;
- (33) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;
- (34) "Market segment" means the portion of the market covering one (1) of the following:
- (a) Individual;
  - (b) Small group;
  - (c) Large group; or
  - (d) Association;
- (35) "Medically necessary health care services" means health care services that a provider would render to a patient for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or its symptoms in a manner that is:
- (a) In accordance with generally accepted standards of medical practice; and
  - (b) Clinically appropriate in terms of type, frequency, extent, and duration;
- (36) "Participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of the employer or members of the organization, or whose beneficiaries may be eligible to receive any benefit as established in Section 3(7) of ERISA;
- (37) "Preventive services" means medical services for the early detection of disease that are associated with substantial reduction in morbidity and mortality;
- (38) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;
- (39) "Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;
- (40) "Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;
- (41) "Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;
- (42) "Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;
- (43) "Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;
- (44) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;
- (45) "Small group" means:
- (a) A small employer with two (2) to fifty (50) employees; or
  - (b) An affiliated group or association with two (2) to fifty (50) eligible members;
- and*
- (46) "Standard benefit plan" means the plan identified in KRS 304.17A-250~~;~~ ~~and~~
- ~~(47) "Telehealth" ;~~

- (a) ~~Means the delivery of health care related services by a health care provider who is licensed in Kentucky to a patient or client through a face to face encounter with access to real time interactive audio and video technology or store and forward services that are provided via asynchronous technologies as the standard practice of care where images are sent to a specialist for evaluation. The requirement for a face to face encounter shall be satisfied with the use of asynchronous telecommunications technologies in which the health care provider has access to the patient's or client's medical history prior to the telehealth encounter;~~
- (b) ~~Shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio only telephone call; and~~
- (c) ~~Shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9l.~~

➔Section 10. KRS 304.17A-138 is amended to read as follows:

(1) *As used in this section:*

- (a) *"Federally qualified health center" means the same as in 42 U.S.C. sec. 1396d;*
- (b) *"Federally qualified health center look-alike" means an organization that meets all of the eligibility requirements of a federally qualified health center but does not receive federal grants issued pursuant to 42 U.S.C. sec. 254b;*
- (c) *"Originating site" means the site at which a Medicaid beneficiary is physically located at the time a telehealth service or telehealth consultation is provided;*
- (d) *"Provider" means the same as in Section 9 of this Act and also includes behavioral health professionals licensed under KRS Chapters 309, 319, and 335; and*
- (e) *"Telehealth" has the same meaning as in Section 1 of this Act; and*
- (f) *"Rural health clinic" means the same as in 42 U.S.C. sec. 1395x.*

- (2) (a) A health benefit plan, *issued or renewed on or after the effective date of this section*, shall reimburse for covered services provided to an insured person through telehealth, *including telehealth services provided by a home health agency licensed under KRS Chapter 216* ~~[as defined in KRS 304.17A-005]~~. Telehealth coverage and reimbursement shall, *except as provided in paragraph (b) of this subsection*, be equivalent to the coverage for the same service provided in person unless the telehealth provider and the health benefit plan contractually agree to a lower reimbursement rate for telehealth services.
- (b) *Rural health clinics, federally qualified health centers, and federally qualified health center look-alikes shall be reimbursed as an originating site in an amount equal to that which is permitted under 42 U.S.C. sec. 1395m for Medicare-participating providers, if the insured was physically located at the rural health clinic, federally qualified health center, or federally qualified health center look-alike at the time of service or consultation delivery and the provider of the telehealth service or telehealth consultation is not employed by the rural health clinic, federally qualified health center, or federally qualified health center look-alike.*

(3) ~~(b)~~ *In accordance with Section 3 of this Act, a health benefit plan, issued or renewed on or after the effective date of this section:*

- (a) Shall not:
1. Require a provider to be physically present with a patient or client, unless the provider determines that it is necessary to perform those services in person;
  2. Require prior authorization, medical review, or administrative clearance for telehealth that would not be required if a service were provided in person;
  3. Require demonstration that it is necessary to provide services to a patient or client through telehealth;
  4. Require a provider to be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person;

5. Restrict or deny coverage of telehealth based solely on the communication technology or application used to deliver the telehealth services; or
6. Require a provider to be part of a telehealth network;

**(b) Shall:**

1. **Require that telehealth services reimbursed under this section meet all clinical, technology, and medical coding guidelines for recipient safety and appropriate delivery of services established by the Department of Insurance or the provider's professional licensure board;**
2. **Require a telehealth provider to be licensed in Kentucky, or as allowed under the standards and provisions of a recognized interstate compact, in order to receive reimbursement for telehealth services; and**
3. **Reimburse a rural health clinic, federally qualified health clinic, or federally qualified health center look-alike for covered telehealth services provided by a provider employed by the rural health clinic, federally qualified health clinic, or federally qualified health center look-alike, regardless of whether the provider was physically located on the premises of the rural health clinic, federally qualified health clinic, or federally qualified health clinic look-alike when the telehealth service was provided; and**

**(c) May utilize audits for medical coding accuracy in the review of telehealth services specific to audio-only encounters.**

~~(4)(2) A health benefit plan shall require a telehealth provider to be licensed in Kentucky in order to receive reimbursement for telehealth services.~~

~~(3)~~ Benefits for a service provided through telehealth required by this section may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the health benefit plan for the same service provided in person.

~~(5)(4)~~ Nothing in this section shall be construed to require a health benefit plan to:

- (a) Provide coverage for telehealth services that are not medically necessary; or
- (b) Reimburse any fees charged by a telehealth facility for transmission of a telehealth encounter.

~~(5) Payment made under this section may be consistent with any provider network arrangements that have been established for the health benefit plan.~~

**(6) Providers and home health agencies are strongly encouraged to use audio-only encounters as a mode of delivering telehealth services when no other approved mode of delivering telehealth services is available.**

**(7) The department shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained in conjunction with this section.**

➔Section 11. KRS 342.315 is amended to read as follows:

- (1) For workers who have had injuries or occupational hearing loss, the commissioner shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers. For workers who have become affected by occupational diseases, the commissioner shall contract with the University of Kentucky and the University of Louisville medical schools, or other physicians otherwise duly qualified as "B" readers who are licensed in the Commonwealth and are board-certified pulmonary specialists. Referral for evaluation may be made whenever a medical question is at issue.
- (2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. Except as otherwise provided in KRS 342.316, the clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.
- (3) The commissioner or an administrative law judge may, upon the application of any party or upon his own motion, direct appointment by the commissioner, pursuant to subsection (1) of this section, of a medical evaluator to make any necessary medical examination of the employee. Such medical evaluator shall file with

the commissioner within fifteen (15) days after such examination a written report. The medical evaluator appointed may charge a reasonable fee not exceeding fees established by the commissioner for those services.

- (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the commissioner that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.
- (5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.
- (6) Not less often than annually the designee of the secretary of the Cabinet for Health and Family Services shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized techniques, whether impairment ratings are in conformity with standards prescribed by the "Guides to the Evaluation of Permanent Impairment," and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter.
- (7) The General Assembly finds that good public policy mandates the realization of the potential advantages, both economic and effectual, of the use of telehealth. The commissioner may, to the extent that he or she finds it feasible and appropriate, require the use of telehealth, as defined in *Section 1 of this Act* [KRS 304.17A-005], in the independent medical evaluation process required by this chapter.

→Section 12. If the Cabinet for Health and Family Services or the Department for Medicaid Services determines that a waiver or any other authorization from a federal agency is necessary prior to the implementation of any provision of Section 7 or 8 of this Act, the cabinet or department shall, within 90 days after the effective date of this Act, request the waiver or authorization and shall only delay full implementation of those provisions for which a waiver or authorization was deemed necessary until the waiver or authorization is granted.

→Section 13. Sections 9 and 10 of this Act take effect January 1, 2022.

**Signed by Governor March 22, 2021.**

## CHAPTER 68

( HB 325 )

AN ACT relating to cannabidiol products.

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

→SECTION 1. A NEW SECTION OF KRS 217.005 TO 217.215 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Cannabidiol" means a non-psychoactive cannabinoid found in the hemp plant Cannabis sativa which has the chemical name 2-[(1R,6R)-3-methyl-6-prop-1-en-2-ylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3-diol;*
- (b) *"Certificate of analysis" means a document produced by a laboratory that has been accredited pursuant to standards of the International Organization for Standardization, attesting to the composition of a product. The certificate of analysis shall include but not be limited to the amount of delta-9 tetrahydrocannabinol, the amount of other cannabinoids, the amount of pesticide residues, the amount of heavy metal traces, the amount of mycotoxin contaminants, the amount of residual solvents, and the amount of microbiological contaminants;*
- (c) *"Hemp" has the same meaning as in KRS 260.850; and*
- (d) *"Quick response code" or "QR code" means a type of machine-readable, two (2) dimensional bar code that stores information about a product.*

- (2) *A manufacturer or processor of ingestible or cosmetic cannabidiol products located in Kentucky shall:*
- (a) *Be permitted as a food manufacturer or a cosmetic manufacturer by the cabinet and shall provide the following information:*
1. *The name of the manufacturer or processor and the physical address where production or processing occurs; and*
  2. *A listing of the cannabidiol products to be produced or processed; and*
- (b) *Obtain a certificate of analysis for all cannabidiol products to be sold or otherwise distributed in the Commonwealth.*
- (3) *All ingestible or cosmetic cannabidiol products sold or otherwise distributed in the Commonwealth shall bear labeling to allow the consumer to access information on the product, including a certificate of analysis for the product, the location where the hemp was grown, and the address and phone number of the manufacturer or distributor using the following:*
- (a) *A scannable bar code, including the batch number or serial number of the product;*
- (b) *A QR code; or*
- (c) *A Web address linked to a document or Web site.*
- (4) *No product labeling or advertising material for any ingestible or cosmetic cannabidiol product sold or otherwise distributed in the Commonwealth shall bear any claims stating that the product can diagnose, treat, cure, or prevent any disease.*
- (5) *The cabinet shall promulgate administrative regulations to establish labeling requirements for ingestible or cosmetic cannabidiol products in accordance with the provisions of this section.*

Signed by Governor March 22, 2021.

## CHAPTER 69

( HB 363 )

AN ACT relating to disabled license plates.

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

➔Section 1. KRS 186.042 is amended to read as follows:

- (1) For the purposes of this section, "persons with disabilities which limit or impair the ability to walk" means persons who:
- (a) Cannot walk two hundred (200) feet or sixty-one (61) meters without stopping to rest;
  - (b) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistant device;
  - (c) Are restricted by lung disease to the extent that the person's forced respiratory and expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/hg on room air at rest;
  - (d) Use portable oxygen;
  - (e) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or
  - (f) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.
- (2) On the application of any person with disabilities which limit or impair the ability to walk, who has lost the use of an arm or both arms, or who is blind, the Transportation Cabinet shall issue the person with a disability, *the parent or guardian of a disabled minor, or the parent or guardian of a disabled adult*, an accessible parking registration plate or renewal decal designating the vehicle licensed as being owned by or leased by a

person with a disability *or their parent or guardian*. The license plate or renewal decal may be issued for a passenger car as set forth in KRS 186.050(1), for a motorcycle as set forth in KRS 186.050(2), or for a commercial vehicle as set forth in KRS 186.050(3)(a). The registration plates issued shall bear the international symbol of access adopted by Rehabilitation International in 1969, reading from left to right and shall be followed by numbers or letters the cabinet finds expedient. *Except as provided in this subsection*, the cabinet shall not issue the registration plates so designated to any person other than a person with a disability as described above. The fee for a disabled license plate shall be as established in KRS 186.162.

- (3) The application for a license plate for a person with a disability shall be made on a form prepared by the Transportation Cabinet. For every person seeking this accessible parking license plate, proof of the disability shall be required by:
  - (a) The county clerk issuing the license plate ascertaining that the applicant *or the applicant's minor or adult child* is obviously disabled as described in this section; or
  - (b) A statement from a licensed physician, physician assistant, chiropractor, or advanced practice registered nurse that the applicant *or the applicant's minor or adult child* is a person with disabilities which limit or impair the ability to walk, a person who has lost the use of an arm, or any person who is blind.
- (4) When a motor vehicle bearing plates issued ~~under [to a person with a disability as prescribed in]~~ this section is being operated by or for the benefit of the person with a disability, who is in the motor vehicle when the motor vehicle is being operated, the motor vehicle may be parked for a period of two (2) hours in excess of the legal parking period permitted by local authorities, except if local ordinances or police regulations prohibit parking on a highway for the purpose of creating a fire lane; if the ordinances or police regulations provide for the accommodation of heavy traffic during morning, afternoon, or evening hours; or if the motor vehicle is parked in such a manner as to clearly be a traffic hazard.
- (5) Registration under this section shall expire July 31.

**Signed by Governor March 22, 2021.**

## CHAPTER 70

### ( HB 419 )

AN ACT relating to physician assistants.

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

➔Section 1. KRS 311.844 is amended to read as follows:

- (1) To be licensed by the board as a physician assistant, an applicant shall:
  - (a) Submit a completed application form with the required fee;
  - (b) Be of good character and reputation;
  - (c) Be a graduate of an approved program; and
  - (d) Have passed an examination approved by the board within three (3) attempts.
- (2) A physician assistant who is authorized to practice in another state and who is in good standing may apply for licensure by endorsement from the state of his or her credentialing if that state has standards substantially equivalent to those of this Commonwealth.
- (3) A physician assistant's license shall be valid for two (2) years and shall be renewed by the board upon fulfillment of the following requirements:
  - (a) The holder shall be of good character and reputation;
  - (b) The holder shall provide evidence of completion, during the previous two (2) years, of a minimum of one hundred (100) hours of continuing education approved by the American Medical Association, the American Osteopathic Association, the American Academy of Family Physicians, the American

Academy of Physician Assistants, or by another entity approved by the board. The one hundred (100) hours of continuing education required by this paragraph shall include:

1. During the first two (2) years of licensure or prior to the first licensure renewal:
    - a. One (1) continuing education course on the human immunodeficiency virus and acquired immunodeficiency syndrome; and
    - b. One and one-half (1.5) hours of continuing education in the prevention and recognition of pediatric abusive head trauma, as defined in KRS 620.020; and
  2. If the license holder is authorized, pursuant to KRS 311.858(5), to prescribe and administer Schedule III, IV, or V controlled substances, a minimum of *seven and one-half (7.5)*~~five (5)~~ hours of approved continuing education relating to controlled substance diversion, pain management, addiction disorders, use of the electronic system for monitoring controlled substances established in KRS 218A.202, or any combination of two (2) or more of these subjects; *and*
- ~~[(c) The holder, if authorized, pursuant to KRS 311.858(5), to prescribe and administer Schedule III, IV, or V controlled substances, shall provide evidence of completion, during the previous two (2) years, of a minimum of five (5) hours, in addition to the continuing education requirements established in paragraph (b) of this subsection, of continuing education relating to controlled substance diversion, pain management, addiction disorders, use of the electronic system for monitoring controlled substances established in KRS 218A.202, or any combination of two (2) or more of these subjects; and~~
- ~~(d)~~(c) The holder shall provide proof of current certification with the National Commission on Certification of Physician Assistants.

**Signed by Governor March 22, 2021.**

## CHAPTER 71

( HB 435 )

AN ACT relating to claims against an estate.

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

➔Section 1. KRS 396.011 is amended to read as follows:

- (1) All claims against a decedent's estate which arose before the death of the decedent, excluding claims of the United States, the State of Kentucky and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations ~~or non-claim statutes~~, are barred against the estate, the personal representative, and the heirs and devisees ~~and non-probate transferees of the decedent~~, unless presented within *six (6) months after the appointment of the personal representative, or where no personal representative has been appointed, within two (2) years after the decedent's death* ~~the earlier of the following~~:
  - ~~(a) Eight (8) months after the decedent's death;~~
  - ~~(b) The time period provided in KRS 396.012(2) for creditors who are given actual notice; or~~
  - ~~(c) The time period provided in KRS 396.012(1) for creditors who are barred by publication.~~
- (2) Nothing in this section shall affect or prevent:
  - (a) To the extent of the security only, any proceeding to enforce any mortgage, pledge, lien or other security interest securing an obligation of the decedent or upon property of the estate; or
  - (b) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

➔Section 2. The following KRS section is repealed:

396.012 Publication of notice by clerk of probate court and actual notice by personal representative regarding time limitations for filing claims.

**Signed by Governor March 22, 2021.**

**CHAPTER 72**

**( SB 61 )**

AN ACT relating to direct-care staff.

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

➔Section 1. KRS 216.710 is amended to read as follows:

As used in KRS 216.710 to 216.714:

- (1) "Cabinet" means the Cabinet for Health and Family Services;
- (2) "Client" means an individual who has been accepted to receive personal services from a personal services agency;
- (3) "Crime" means a conviction of or plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult or child; or the commission of a sex crime. Conviction of or a plea of guilty to an offense committed outside the Commonwealth of Kentucky is a crime if the offense would have been a felony if committed in Kentucky;
- (4) "Department" means a department designated by the Cabinet for Health and Family Services;
- (5) "Designated representative" means a person who has legal authority or is designated by the client to act on behalf of the client with regard to the action to be taken;
- (6) ***"Direct-care staff member" means a home health aide or a personal service aide whose work involves extensive contact with residents or program participants who exhibit symptoms of Alzheimer's disease or other dementias;***
- (7) "Direct service" means personal or group interaction between the employee and the client;
- (8) ***"Facilities or programs" means residential facilities or home-and-community-based service programs and includes but is not limited to personal service agencies and home health agencies that have residents or program participants who exhibit symptoms of Alzheimer's disease or other dementias;***
- ~~(9)~~(7) (a) "Personal services" means:
  1. Assisting with a client's ambulation and activities of daily living as defined in KRS 194A.700;
  2. Facilitating the self-administration of medications if such medications are prepared or directed by a licensed health-care professional or the client's designated representative;
  3. Providing services which may be referred to as attendant care, in-home companion, sitter and respite care services, and homemaker services when provided in conjunction with other personal services; and
  4. Providing services that enable the client to live safely, comfortably, and independently;
- (b) "Personal services" excludes the following:
  1. Housing and services provided by a health facility or service as defined in KRS 216B.015;
  2. Voluntary services provided by employers or membership organizations for their employees, members, and families of the employees or members if the services are not the predominant purpose of the employer or the membership organization's business;
  3. House cleaning, laundry, personal shopping, or transportation provided by an entity if the entity offers no other personal services;
  4. Services provided by the client's family or by individuals who provide services to no more than three (3) clients concurrently;



5. Individuals or entities that provide all personal services on a voluntary basis;
  6. Services that require the order of a licensed health-care professional to be lawfully performed in Kentucky;
  7. Hospitals or other entities that provide information to consumers regarding persons who are available as caregivers if the hospital or other entity makes no attempt to manage or coordinate the selection of such persons for consumers and a disclaimer is provided that the entity providing the information has not made an independent assessment of the ability of the individual or agency to provide personal services;
  8. Free Internet resources that identify potential caregivers; and
  9. Any health-care entity or health-care practitioner otherwise licensed, certified, or regulated by local, state, or federal statutes or regulations;
- (10)~~(8)~~ "Personal services agency" means any person, business entity, corporation, or association, either for-profit or not-for-profit, that directly provides or makes provision for personal services through:
- (a) Its own employees or agents;
  - (b) Contractual arrangements with independent contractors; or
  - (c) Referral of persons to render personal services if the person making the referral has an ownership or financial interest that is realized from the delivery of those services;
- (11)~~(9)~~ "Parent personal services agency" means a personal services agency located in Kentucky that develops and maintains administrative and fiscal control over a branch office in a different Kentucky location, and does not include an out-of-state personal services agency with a branch office in Kentucky;~~and~~
- (12) *"Recipient" means an individual receiving nonmedical home health services or medical home-health services; and*
- (13)~~(10)~~ "Secretary" means the secretary of the Cabinet for Health and Family Services.

➔SECTION 2. A NEW SECTION OF KRS 216.710 TO 216.716 IS CREATED TO READ AS FOLLOWS:

- (1) *The purpose of this section is to set minimum training requirements for direct-care staff members that are employed by facilities or programs regulated by the cabinet that provide services to individuals who exhibit symptoms of Alzheimer's disease or other dementias in the populations they serve.*
- (2) *Direct-care staff members shall, prior to providing care to recipients who exhibit symptoms of Alzheimer's disease or other dementias, complete cabinet-approved training in dementia care that includes a curriculum that is:*
  - (a) *Culturally competent for staff and care recipients; and*
  - (b) *Person-centered, including thorough knowledge of the recipient and the recipient's abilities and care needs, advancement of optimal functioning and a high quality of life, use of problem-solving approaches to care, and techniques that ensure and preserve the recipient's respect, values, choice, and dignity.*
- (3) *Facilities or programs shall ensure that all direct-care staff members who provide care to recipients who exhibit symptoms of Alzheimer's disease or other dementias have completed the training required in subsection (2) of this section, received at least six (6) hours of cabinet-approved training within the first sixty (60) days of employment and a minimum of three (3) additional hours of cabinet-approved training annually. The content of this annual training shall address the most current information on best practices in the treatment and care of persons who exhibit symptoms of Alzheimer's disease or other dementias. The training curriculum shall include but not be limited to the following topics:*
  - (a) *Alzheimer's disease or other dementias;*
  - (b) *Person-centered care;*
  - (c) *Assessment and care planning;*
  - (d) *Activities of daily living; and*
  - (e) *Dementia-related behaviors and communications.*

- (4) *Facilities or programs shall provide certificates of completion of cabinet-approved trainings to direct-care staff members who successfully complete the required courses. Successful completion is determined by attendance for the entire course and achievement of a passing grade on the post-evaluation measures. The certificates of completion shall be portable among employment settings within the state.*
- (5) *Facilities or programs shall be responsible for maintaining documentation of completed training courses for each direct-care staff member who provides care to recipients who exhibit symptoms of Alzheimer's disease or other dementias.*
- (6) *Direct-care staff members who have a lapse of twenty-four (24) months or more providing home health aide services to recipients who exhibit symptoms of Alzheimer's disease or other dementias shall be required to complete the six (6) hours of initial dementia care training within sixty (60) days of providing care to recipients who exhibit symptoms of Alzheimer's disease or other dementias as required by subsection (3) of this section.*
- (7) *Facilities or programs may submit any training curriculums currently in use to the cabinet for approval.*
- (8) *Advertising, marketing, or verbally offering to provide care for a recipient who exhibits symptoms of Alzheimer's disease or other dementias that is not in compliance with the requirements set forth in this section is prohibited.*
- (9) *Any facility or program licensed, certified, or regulated by the cabinet that knowingly holds itself out as a provider to a recipient who exhibits symptoms of Alzheimer's disease or other dementias and fails to comply with this section is deemed to have violated this section and shall be fined an amount not to exceed five hundred dollars (\$500) for each day it is in violation of this section.*
- (10) *Any individual or entity, not a facility or program or not operated by the federal government or any agency thereof, that knowingly holds himself, herself, or itself out as a provider of care to a recipient who exhibits symptoms of Alzheimer's disease or other dementias and fails to comply with this section is deemed to have violated this section and shall be fined an amount not to exceed five hundred dollars (\$500) for each day it is in violation of this section.*
- (11) *The cabinet shall within ninety (90) days of the effective date of this Act:*
  - (a) *Promulgate administrative regulations to implement, monitor, and enforce compliance with the training requirements of this section;*
  - (b) *Identify, designate, and approve standardized curriculums, including online training programs, that will satisfy the requirements of this section; and*
  - (c) *Ensure that the cabinet-approved training programs, both online and in classroom, reflect current standards and best practices in the care and treatment of persons who exhibit symptoms of Alzheimer's disease or other dementias.*

➔Section 3. KRS 216.935 is amended to read as follows:

As used in KRS 216.935 to 216.939, unless the context requires otherwise:

- (1) *"Direct-care staff member" means a home health aide or a personal service aide whose work involves extensive contact with residents or program participants who exhibit symptoms of Alzheimer's disease or other dementias;*
- (2) *"Facilities or programs" means residential facilities or home-and-community-based service programs and include but are not limited to personal service agencies and home health agencies that have residents or program participants who exhibit symptoms of Alzheimer's disease or other dementias;*
- (3) *"Home health aide" means an individual who is hired to perform home health aide services;[;]*
- (4)~~(2)~~ *"Home health agency" means a public agency or private organization, or a subdivision of such an agency or organization which is licensed as a home health agency by the Cabinet for Health and Family Services and is certified to participate as a home health agency under Title XVIII of the Social Security Act;[;]*
- (5)~~(3)~~ *"Home health aide services" means those services provided by a home health aide and supervised by a registered nurse which are directed towards the personal care of the patient. Such services shall include, but not be limited to, the following:*
  - (a) *Helping the patient with bath and care of mouth, skin, and hair;*

- (b) Helping the patient to the bathroom or in using a bedpan;
  - (c) Helping the patient in and out of bed and assisting with ambulation;
  - (d) Helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate professional personnel;
  - (e) Assisting with medication ordinarily self-administered that has been specifically ordered by a physician or advanced practice registered nurse;
  - (f) Performing incidental household services as are essential to the patient's health care at home, if these services would have been performed if the patient was in a hospital or skilled nursing facility; and
  - (g) Reporting changes in the patient's condition or family situation to the professional nurse supervisor;~~;~~
- (6)~~(4)~~ "Nurse aide" means an individual, including a nursing student, medication aide, and a person employed through a nursing pool, who provides nursing or nursing related services to a resident in a nursing facility or home health agency, excluding:
- (a) An individual who is a licensed health professional;
  - (b) A volunteer who provides the nursing or nursing-related services without monetary compensation; and
  - (c) A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services; ~~and~~
- (7) ***"Recipient" means an individual receiving non-medical home health services or medical home-health services.***

➔SECTION 4. A NEW SECTION OF KRS 216.935 TO 216.939 IS CREATED TO READ AS FOLLOWS:

- (1) ***The purpose of this section is to set minimum training requirements for direct-care staff members that are employed by facilities or programs regulated by the cabinet that provide services to individuals who exhibit symptoms of Alzheimer's disease or other dementias in the populations they serve.***
- (2) ***Direct-care staff members shall, prior to providing care to recipients who exhibit symptoms of Alzheimer's disease or other dementias, complete cabinet-approved training in dementia care that includes a curriculum that is:***
  - (a) ***Culturally competent for staff and care recipients; and***
  - (b) ***Person-centered, including thorough knowledge of the recipient and the recipient's abilities and care needs, advancement of optimal functioning and a high quality of life, use of problem-solving approaches to care, and techniques that ensure and preserve the recipient's respect, values, choice, and dignity.***
- (3) ***Facilities or programs shall ensure that all direct-care staff members who provide care to recipients who exhibit symptoms of Alzheimer's disease or other dementias have completed the training required in subsection (2) of this section, received at least six (6) hours of cabinet-approved training within the first sixty (60) days of employment and a minimum of three (3) additional hours of cabinet-approved training annually. The content of this annual training shall address the most current information on best practices in the treatment and care of persons who exhibit symptoms of Alzheimer's disease or other dementias. The training curriculum shall include but not be limited to the following topics:***
  - (a) ***Alzheimer's disease or other dementias;***
  - (b) ***Person-centered care;***
  - (c) ***Assessment and care planning;***
  - (d) ***Activities of daily living; and***
  - (e) ***Dementia-related behaviors and communications.***
- (4) ***Facilities or programs shall provide certificates of completion of cabinet-approved trainings to direct-care staff members who successfully complete the required courses. Successful completion is determined by attendance for the entire course and achievement of a passing grade on the post-evaluation measures. The certificates of completion shall be portable among employment settings within the state.***

- (5) *Facilities or programs shall be responsible for maintaining documentation of completed training courses for each direct-care staff member who provides care to recipients who exhibit symptoms of Alzheimer's disease or other dementias.*
- (6) *Direct-care staff members who have a lapse of twenty-four (24) months or more providing home health aide services to recipients who exhibit symptoms of Alzheimer's disease or other dementias shall be required to complete the six (6) hours of initial dementia care training within sixty (60) days of providing care to recipients who exhibit symptoms of Alzheimer's disease or other dementias as required by subsection (3) of this section.*
- (7) *Facilities or programs may submit any training curriculums currently in use to the cabinet for approval.*
- (8) *Advertising, marketing, or verbally offering to provide care for a recipient who exhibits symptoms of Alzheimer's disease or other dementias that is not in compliance with the requirements set forth in this section is prohibited.*
- (9) *Any facility or program licensed, certified, or regulated by the cabinet that knowingly holds itself out as a provider to a recipient who exhibits symptoms of Alzheimer's disease or other dementias and fails to comply with this section is deemed to have violated this section and shall be fined an amount not to exceed five hundred dollars (\$500) for each day it is in violation of this section.*
- (10) *Any individual or entity, not a facility or program or not operated by the federal government or any agency thereof, that knowingly holds himself, herself, or itself out as a provider of care to a recipient who exhibits symptoms of Alzheimer's disease or other dementias and fails to comply with this section is deemed to have violated this section and shall be fined an amount not to exceed five hundred dollars (\$500) for each day it is in violation of this section.*
- (11) *The cabinet shall within ninety (90) days of the effective date of this Act:*
  - (a) *Promulgate administrative regulations to implement, monitor, and enforce compliance with the training requirements of this section;*
  - (b) *Identify, designate, and approve standardized curriculums, including online training programs, that will satisfy the requirements of this section; and*
  - (c) *Ensure that the cabinet-approved training programs, both online and in classroom, reflect current standards and best practices in the care and treatment of persons who exhibit symptoms of Alzheimer's disease or other dementias.*

Signed by Governor March 22, 2021.

## CHAPTER 73

( SB 80 )

AN ACT relating to peace officers.

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

➔Section 1. KRS 15.391 is amended to read as follows:

- (1) As used in this section:
  - (a) "Agency" means any law enforcement agency, or other unit of government listed in KRS 15.380, that employs a certified peace officer;
  - (b) "Final order" has the same meaning as in KRS 13B.010;
  - (c) "General employment policy" means a rule, regulation, policy, or procedure commonly applicable to the general workforce or civilian employees that is not unique to law enforcement activities or the exercise of peace officer authority, regardless of whether the rule, regulation, policy, or procedure exists or appears in a manual or handbook that is solely applicable to a law enforcement department or agency within the unit of government employing the officer;

(d) **"Investigating agency" means an agency that investigates the use of force by peace officers, including but not limited to the employing agency;**

~~(e)(d)~~ "Professional malfeasance" means engaging in an act in one's professional capacity as a peace officer that violates a federal, state, or local law or regulation, **or any act that involves the following:**

1. **The unjustified use of excessive or deadly force, as determined by an investigating agency;**
2. **Any intentional action by a peace officer that interferes with or alters the fair administration of justice, including but not limited to tampering with evidence, giving of false testimony, or the intentional disclosure of confidential information in a manner that compromises the integrity of an official investigation; or**
3. **Engaging in a sexual relationship with an individual the peace officer knows or should have known is a victim, witness, defendant, or informant in an ongoing criminal investigation in which the peace officer is directly involved;**

~~(f)(e)~~ "Professional nonfeasance" means a failure to perform one's professional duty as a peace officer through omission or inaction that violates a federal, state, or local law or regulation, **or any failure to act that involves the following:**

1. **The failure to intervene when it is safe and practical to do so in any circumstance where it is clear and apparent to the peace officer that another peace officer is engaging in the use of unlawful and unjustified excessive or deadly force; or**
2. **The intentional failure to disclose exculpatory or impeachment evidence that the peace officer knew or should have known to be materially favorable to an accused for the purpose of altering the fair administration of justice; and**

~~(g)(f)~~ "Regulation" means:

1. A federal or state administrative regulation adopted by a federal or state executive branch; and
2. A local rule, regulation, policy, or procedure adopted by ordinance, order, or resolution, or other official action by an agency. However, "regulation" does not mean a general employment policy.

(2) (a) The certification of a peace officer shall be **deemed automatically** revoked by the council **by operation of the law** for one (1) or more of the following:

1. Certification that was the result of an administrative error;
2. Plea of guilty to, conviction of, or entering of an Alford plea to any **state or federal** felony, **or any criminal offense committed in another state that would constitute a felony if committed in this state;**
3. Prohibition by federal or state law from possessing a firearm;~~or~~
4. Receipt of a dishonorable discharge or bad conduct discharge from any branch of the Armed Forces of the United States; **or**
5. **Willful falsification of information to obtain or maintain certification.**

(b) 1. A peace officer whose certification is revoked pursuant to paragraph (a) of this subsection may file an appeal **at any time** with the council. If an appeal is filed, the council shall conduct an administrative hearing pursuant to KRS Chapter 13B to consider the reinstatement of the peace officer's certification if the revocation was made in error or the condition requiring revocation was removed or remedied.

2. **The council may impose any reasonable condition upon the reinstatement of the certification it may deem warranted under the facts of the appeal.**

3. **Notwithstanding any other provision of law, the council may subpoena or request a court to subpoena records that are necessary to provide evidence that will permit the council to evaluate whether the cause for revocation has been remedied or removed. Any confidential or medical information received by the council under this subparagraph shall retain its confidential character.**

4. **The reversal or any other type of invalidation of a conviction by an appellate court shall constitute the removal or remedy of a condition requiring revocation. However, an**

*expungement of a felony offense shall not be considered a removal or remedy that constitutes grounds for the reinstatement of the peace officer's certification under this paragraph.*

5. *A final order issued by the council denying reinstatement of certification may be appealed pursuant to the provisions of KRS 13B.140.*
- (3) (a) The certification of a peace officer may be revoked by the council for one (1) or more of the following:
1. ~~Termination of the peace officer for willful falsification of information to obtain or maintain certified status;~~
  2. ~~Termination of the peace officer for failure to meet or maintain training requirements, unless the certification is in inactive status. As used in this subparagraph, "inactive status" has the same meaning as in KRS 15.386;~~
  - 2.~~3.~~ Termination of the peace officer for professional malfeasance or professional nonfeasance by his or her agency;
  - 3.~~4.~~ *Termination of the peace officer following the plea of guilty to, conviction of, or entering of an Alford plea to any misdemeanor offense, in this state or out of it, that involves:*
    - a. *Dishonesty;*
    - b. *Fraud;*
    - c. *Deceit;*
    - d. *Misrepresentation;*
    - e. *Physical violence;*
    - f. *Sexual abuse; or*
    - g. *Crimes against a minor or a family or household member;*
  4. *Receipt of general discharge under other than honorable conditions from any branch of the Armed Forces of the United States that results in the termination of the peace officer from his or her agency; or*
  5. Resignation or retirement of the peace officer while he or she is under criminal investigation or administrative investigation for professional malfeasance or professional nonfeasance that, in the judgment of the agency that employed the peace officer, would have likely resulted in the termination of that peace officer had *the facts leading to the investigation*~~it~~ been substantiated prior to his or her resignation or retirement~~;~~ ~~or~~
  5. ~~Receipt of general discharge under other than honorable conditions from any branch of the Armed Forces of the United States that results in the termination of the peace officer from his or her agency}.~~
- (b) The council shall review ~~any allegations or~~ reports of *events described in* paragraph (a)~~1. to 5.~~ of this subsection to determine whether the *event*~~allegation or report~~ warrants the initiation of proceedings *by the council* to revoke a peace officer's certification. If the council determines to initiate proceedings to revoke a peace officer's certification *under this subsection*~~based on the allegation or report~~, the administrative hearing shall be conducted pursuant to KRS Chapter 13B. *A final order by the council revoking certification may be appealed pursuant to the provisions of KRS 13B.140.*
- (4) ~~[A peace officer may appeal a final order issued by the council denying reinstatement of his or her certification pursuant to subsection (2) of this section or revoking his or her certification pursuant to subsection (3) of this section as provided in KRS 13B.140.~~
- (5) ~~(a)~~ (a) An agency:
1. That has knowledge of a peace officer in its employment who meets any of the revocation conditions outlined in subsection (2) of this section shall report that condition to the council within fifteen (15) days of gaining knowledge;
  2. That terminated a peace officer for any of the revocation conditions outlined in subsection (3)(a)1., 2., 3., or 4.~~5.~~ of this section shall report that condition to the council within fifteen (15) days of the termination; and

3. That would have likely terminated a peace officer for the revocation condition outlined in subsection (3)(a)5.44 of this section shall report that condition to the council within fifteen (15) days of the peace officer's resignation or retirement. If an agency reports pursuant to this subparagraph, the agency shall notify the peace officer that a report has been made.
- (b) If an agency fails to make a report required by this subsection, the council may suspend the agency from participation in the Kentucky Law Enforcement Foundation Program fund. However, the time that an agency may be suspended by the council under this paragraph shall not exceed five (5) years.
- (5)(6) The council may promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

➔Section 2. KRS 15.392 is amended to read as follows:

- (1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency or his designee shall file with the council a summary report that provides the relevant information about the person's separation from service.
- (2) If the person separated from service has successfully completed basic training at a school certified or recognized by the council, the council shall place the certification on inactive status. Placement of certification on inactive status shall not prevent the council from subsequently instituting an action to revoke an officer's certification in appropriate cases in accordance with KRS 15.391 ~~for any reason justifying revoked or denied status pursuant to KRS 15.386, the council shall revoke the person's certification~~.
- (3) If the person has been separated from service or has not successfully completed basic training at a school certified or recognized by the council and fails to meet the requirements of KRS 15.400(1), the certification shall lapse.
- (4) If the person has been separated due to death, the certification shall be retired.

➔SECTION 3. A NEW SECTION OF KRS 15.310 TO 15.510 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "agency" means any law enforcement agency, or other unit of government listed in KRS 15.380, that employs a certified peace officer.*
- (2) *Subject to subsection (5) of this section, any agency may make a conditional offer of employment to a candidate pending its receipt and evaluation of a response to its request for information from:*
- (a) *The council regarding the certification status of any candidate, including if the council has:*
1. *Received any notification under subsection (4) of Section 1 of this Act related to the candidate;*
  2. *Initiated hearing procedures under Section 1 of this Act against the candidate; or*
  3. *Started investigating whether to initiate hearing procedures for the revocation of the certification of the candidate under Section 1 of this Act; or*
- (b) *Any agency that previously employed the candidate for any information the agency is required to provide under subsection (3) of this section.*
- (3) *Any agency that receives an inquiry under subsection (2) of this section from another agency regarding a candidate for a peace officer position who was formerly employed by the agency shall provide the following documentation to the hiring agency:*
- (a) *A complete copy of the peace officer's personnel file;*
  - (b) *Any documentation related to the arrest or prosecution of the peace officer that the agency maintained;*
  - (c) *Any documentation related to a completed internal administrative investigation of the peace officer; and*
  - (d) *Any documentation related to an incomplete internal administrative investigation of the peace officer that was not completed because of the officer's resignation or retirement while the investigation was pending.*
- (4) *The council and any agency that receives a request for information shall provide it to the requesting hiring agency no later than fourteen (14) days following the receipt of the request.*

- (5) *The hiring agency that elects to make a conditional offer of employment subject to its receipt and evaluation of information pursuant to this section shall require the candidate to complete a waiver and release of liability authorizing the hiring agency to request the information from all prior agencies, which may include employing agencies outside of the Commonwealth.*
- (6) *The council, any agency, and the employees and officers of the council or any agency shall be immune from any civil liability for disclosing information pursuant to the provisions of this section and from any civil liability for the consequences of such a disclosure unless the information disclosed was knowingly false or deliberately misleading, was rendered with malicious purpose, or was in violation of any civil right of the former employee.*

➔SECTION 4. A NEW SECTION OF KRS 15.310 TO 15.510 IS CREATED TO READ AS FOLLOWS:

*If requested by an out-of-state law enforcement agency, the council shall provide the following information regarding the certification status of any candidate for employment, including if the council has:*

- (1) *Received any notification under subsection (4) of Section 1 of this Act related to the candidate;*
- (2) *Initiated hearing procedures under Section 1 of this Act against the candidate; or*
- (3) *Started investigating whether to initiate hearing procedures for the revocation of the certification of the candidate under Section 1 of this Act.*

➔Section 5. KRS 15.440 is amended to read as follows:

- (1) Each unit of government that meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:
- (a) Employs one (1) or more police officers;
- (b) Pays every police officer at least the minimum federal wage;
- (c) Requires all police officers to have, at a minimum, a high school degree, or its equivalent as determined by the council, except that each police officer employed prior to the date on which the officer's police department was included as a participant under KRS 15.410 to 15.510 shall be deemed to have met the requirements of this subsection;
- (d) 1. Requires all police officers to successfully complete a basic training course of nine hundred twenty-eight (928) hours' duration within one (1) year of the date of employment at a school certified or recognized by the council, which may provide a different number of hours of instruction as established in this paragraph, except that each police officer employed prior to the date on which the officer's police department was included as a participant under KRS 15.410 to 15.510 shall be deemed to have met the requirements of this subsection.
2. As the exclusive method by which the number of hours required for basic training courses shall be modified from that which is specifically established by this paragraph, the council may, by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, explicitly set the exact number of hours for basic training at a number different from nine hundred twenty-eight (928) hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis.
3. If the council sets an exact number of hours different from nine hundred twenty-eight (928) in an administrative regulation as provided by this paragraph, it shall not further change the number of hours required for basic training without promulgating administrative regulations in accordance with the provisions of KRS Chapter 13A.
4. Nothing in this paragraph shall be interpreted to prevent the council, pursuant to its authority under KRS 15.330, from approving training schools with a curriculum requiring attendance of a number of hours that exceeds nine hundred twenty-eight (928) hours or the number of hours established in an administrative regulation as provided by subparagraphs 2. and 3. of this paragraph. However, the training programs and schools for the basic training of law enforcement personnel conducted by the department pursuant to KRS 15A.070 shall not contain a curriculum that requires attendance of a number of hours for basic training that is different from nine hundred twenty-eight (928) hours or the number of hours established in an administrative regulation promulgated by the council pursuant to the provisions of KRS Chapter 13A as provided by subparagraphs 2. and 3. of this paragraph.



5. KRS 15.400 and 15.404(1), and subparagraphs 1. to 4. of this paragraph to the contrary notwithstanding, the council may, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, approve basic training credit for:
  - a. Years of service credit as a law enforcement officer with previous service in another state; and
  - b. Basic training completed in another state.
6. KRS 15.400 and 15.404(1) and subparagraphs 1. to 4. of this paragraph to the contrary notwithstanding, the council may, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, approve basic training credit for:
  - a. Completion of eight hundred forty-eight (848) hours of training at a school established pursuant to KRS 15A.070;
  - b. A minimum of fifteen (15) years of experience as a certified law enforcement instructor at a school established pursuant to KRS 15A.070;
  - c. Completion of an average of forty (40) hours of Kentucky Law Enforcement Council approved in-service training annually from January 1, 1997, through January 1, 2020;
  - d. ~~Completion of all mandatory training obligations under KRS 15.334 from January 1, 1997, to January 1, 2020;~~
  - e. ~~Three (3) years of active, full-time service as a:~~
    - i. City, county, urban-county, charter county, consolidated local, or unified local government police officer;
    - ii. Sheriff's deputy, excluding special deputies appointed under KRS 70.045;
    - iii. Department of Kentucky State Police officer; or
    - iv. Kentucky Department of Fish and Wildlife Resources conservation officer exercising peace officer powers under KRS 150.090; and
  - e.~~f.~~ Completion of the:
    - i. Twenty-four (24) hour legal update Penal Code course;
    - ii. Sixteen (16) hour legal update constitutional procedure course; and
    - iii. Forty (40) hour basic officer skills course within one (1) year prior to applying for certification;
- (e) Requires all police officers to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of the officer's police department, of forty (40) hours' duration, at a school certified or recognized by the council which may include a four (4) hour course which meets the requirements of paragraph (j) of this subsection. This in-service training requirement shall be waived for the period of time that a peace officer is serving on active duty in the United States Armed Forces. This waiver shall be retroactive for peace officers from the date of September 11, 2001;
- (f) Complies with all provisions of law applicable to police officers or police departments, including transmission of data to the centralized criminal history record information system as required by KRS 17.150 and transmission of reports as required by KRS 15.391;
- (g) Complies with all rules and regulations, appropriate to the size and location of the police department issued by the cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510;
- (h) Possesses a written policy and procedures manual related to domestic violence for law enforcement agencies that has been approved by the cabinet. The policy shall comply with the provisions of KRS 403.715 to 403.785. The policy shall include a purpose statement; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for Health and Family

Services, Department for Community Based Services; victim rights, assistance, and service responsibilities; and duties related to timely completion of records;

- (i) Possesses by January 1, 2017, a written policy and procedures manual related to sexual assault examinations that meets the standards provided by, and has been approved by, the cabinet, and which includes:
    - 1. A requirement that evidence collected as a result of an examination performed under KRS 216B.400 be taken into custody within five (5) days of notice from the collecting facility that the evidence is available for retrieval;
    - 2. A requirement that evidence received from a collecting facility relating to an incident which occurred outside the jurisdiction of the police department be transmitted to a police department with jurisdiction within ten (10) days of its receipt by the police department;
    - 3. A requirement that all evidence retrieved from a collecting facility under this paragraph be transmitted to the Department of Kentucky State Police forensic laboratory within thirty (30) days of its receipt by the police department;
    - 4. A requirement that a suspect standard, if available, be transmitted to the Department of Kentucky State Police forensic laboratory with the evidence received from a collecting facility; and
    - 5. A process for notifying the victim from whom the evidence was collected of the progress of the testing, whether the testing resulted in a match to other DNA samples, and if the evidence is to be destroyed. The policy may include provisions for delaying notice until a suspect is apprehended or the office of the Commonwealth's attorney consents to the notification, but shall not automatically require the disclosure of the identity of any person to whom the evidence matched; and
  - (j) Requires all police officers to successfully complete by December 31, 2022, and every two (2) years thereafter, a training course certified by the council of not less than four (4) hours in emergency vehicle operation.
- (2) A unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund only if the police department of the unit of government remains in compliance with the requirements of this section.
  - (3) Deputies employed by a sheriff's office shall be eligible to participate in the distribution of funds from the Law Enforcement Foundation Program fund regardless of participation by the sheriff.
  - (4) Failure to meet a deadline established in a policy adopted pursuant to subsection (1)(i) of this section for the retrieval or submission of evidence shall not be a basis for a dismissal of a criminal action or a bar to the admissibility of the evidence in a criminal action.

➔Section 6. KRS 15.382 is amended to read as follows:

A person certified after December 1, 1998, under KRS 15.380 to 15.404 ***or qualified under the requirements set forth in subsection (1)(d)6. of Section 5 of this Act*** shall, at the time of becoming certified, meet the following minimum qualifications:

- (1) Be a citizen of the United States;
- (2) Be at least twenty-one (21) years of age;
- (3)
  - (a) Be a high school graduate, regardless of whether the school is accredited or certified by a governing body, provided that the education received met the attendance and curriculum standards of Kentucky law at the time of graduation, as determined by the Kentucky Department of Education; or
  - (b) Possess a High School Equivalency Diploma;
- (4) Possess a valid license to operate a motor vehicle;
- (5) Be fingerprinted for a criminal background check;
- (6) Not have been convicted of any felony;
- (7) Not be prohibited by federal or state law from possessing a firearm;
- (8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;

- (9) Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;
- (10) Have passed a medical examination as defined by the council by administrative regulation and provided by a licensed physician, physician assistant, or advanced practice registered nurse to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (13) Have been interviewed by the employing agency;
- (14) Not have had certification as a peace officer permanently revoked in another state;
- (15) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.310 to 15.510; and
- (17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.310 to 15.510.

➔Section 7. KRS 15.386 is amended to read as follows:

The following certification categories shall exist:

- (1) "Precertification status" means that the officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in KRS 15.382, but has not successfully completed a basic training course, except those peace officers covered by KRS 15.400. Upon the council's verification that the minimum qualifications have been met, the officer shall have full peace officer powers as authorized under the statute under which he or she was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his or her enforcement powers shall automatically terminate, unless that officer is actively enrolled and participating in a basic training course or, after having begun a basic training course, is on an approved extension of time due to injury or extenuating circumstances;
- (2) "Certification status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he or she was appointed or employed;
- (3) (a) "Inactive status" means that unless the certification is in revoked status:
  1. The person has been separated on or after December 1, 1998, from the agency by which he or she was employed or appointed and has no peace officer powers; or

2. The person is on military active duty for a period exceeding three hundred sixty-five (365) days.
- (b) The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he or she meets the requirements of KRS 15.400(1) *or* (2) or has successfully completed a basic training course approved and recognized by the council, has not committed an act for which his or her certified status may be revoked pursuant to KRS 15.391 and successfully completes in-service training as prescribed by the council, as follows:
1. If the person has been on inactive status for a period of less than three (3) years, and the person was not in training deficiency status at the time of separation, he or she shall complete:
    - a. The twenty-four (24) hour legal update Penal Code course;
    - b. The sixteen (16) hour legal update constitutional procedure course; and
    - c. The mandatory training course approved by the Kentucky Law Enforcement Council, pursuant to KRS 15.334, for the year in which he or she returns to certification status; or
  2. If the person has been on inactive status for a period of three (3) years or more, or the person was in training deficiency status at the time of separation, he or she shall complete:
    - a. The twenty-four (24) hour legal update Penal Code course;
    - b. The sixteen (16) hour legal update constitutional procedure course;
    - c. The mandatory training course approved by the Kentucky Law Enforcement Council, pursuant to KRS 15.334, for the year in which he or she returns to certification status; and
    - d. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:
      - i. Basic officer skills;
      - ii. Orientation for new police chiefs; or
      - iii. Mandatory duties of the sheriff.
- (c) A person returning from inactive to active certification after June 26, 2007, under KRS 15.380 to 15.404, shall meet the following minimum qualifications:
1. Be a citizen of the United States;
  2. Possess a valid license to operate a motor vehicle;
  3. Be fingerprinted for a criminal background check;
  4. Not have been convicted of any felony;
  5. Not be prohibited by federal or state law from possessing a firearm;
  6. Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;
  7. Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;
  8. Have been interviewed by the employing agency; and
  9. Not have had certification as a peace officer permanently revoked in another state;
- (4) "Training deficiency status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has failed to meet all in-service training requirements. The officer's enforcement powers shall automatically terminate, and he or she shall not exercise peace officer powers in the Commonwealth until he or she has corrected the in-service training deficiency;
- (5) "Revoked status" means that the officer has no enforcement powers and his or her certification has been revoked by the Kentucky Law Enforcement Council under KRS 15.391; and
- (6) "Denied status" means that a person does not meet the requirements to achieve precertification status or certification status.

The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

➔Section 8. KRS 15.388 is amended to read as follows:

- (1) Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of KRS 15.382 for peace officers or KRS 15.3971 for court security officers.
- (2) If the person is certified, the council shall continue certified status.
- (3) If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked or denied as provided by KRS 15.380 to 15.404.
- (4) If the person is not certified and not on inactive status, but has successfully completed an applicable basic training course *or received a basic training credit under subsection (1)(d)6. of Section 5 of this Act* approved and recognized by the council, the council shall designate the person as being in certified status unless the certification is revoked or denied as provided by KRS 15.380 to 15.404.
- (5) If the person is not certified and not on inactive status, and has not successfully completed an applicable basic training course approved and recognized by the council, the council shall designate the person as being in precertification status.
- (6) A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.
- (7) A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under KRS 15.380 to 15.404.
- (8) If the certified peace officer has successfully completed the basic training required by KRS 15.404 and transfers from a peace officer or court security officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.
- (9) If the certified court security officer has successfully completed the basic training required by KRS 15.3975 and transfers from a court security officer position from a current employer to a court security officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.
- (10) A certified court security officer who has met the requirements of KRS 15.3971 shall not transfer from a court security officer position to a peace officer position unless the certified court security officer meets all the requirements of a certified peace officer under KRS 15.382 and 15.404(1). If the certified court security officer has met the minimum qualifications of KRS 15.382, successfully completed the basic training required for certified peace officers under KRS 15.404(1), and transfers from a court security officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

➔Section 9. KRS 15.392 is amended to read as follows:

- (1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency or his designee shall file with the council a summary report that provides the relevant information about the person's separation from service.
- (2) If the person separated from service has successfully completed basic training at a school certified or recognized by the council *or has received a basic training credit under subsection (1)(d)6. of Section 5 of this Act*, the council shall place the certification on inactive status. Placement of certification on inactive status shall not prevent the council from subsequently instituting an action to revoke an officer's certification in appropriate cases in accordance with KRS 15.391 for any reason justifying revoked or denied status pursuant to KRS 15.386, the council shall revoke the person's certification.

- (3) If the person has been separated from service or has not successfully completed basic training at a school certified or recognized by the council and fails to meet the requirements of KRS 15.400(1) *or* (2), the certification shall lapse.
- (4) If the person has been separated due to death, the certification shall be retired.

➔Section 10. 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) 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 March 15, 2011, by a law enforcement agency subject to KRS 15.380 to 15.404; or
  - (c) 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 *or comply with the requirements set forth in subsection (1)(d)6. of Section 5 of this Act*. 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 11. KRS 15.404 is amended to read as follows:

- (1)
  - (a) Any peace officers employed or appointed after December 1, 1998, who have not successfully completed basic training at a school certified or recognized by the Kentucky Law Enforcement Council, shall within one (1) year of their appointment or employment, successfully complete a basic training course, as established by KRS 15.440, at a school certified or recognized by the Kentucky Law Enforcement Council *or receive a basic training credit approved by the Kentucky Law Enforcement Council under subsection (1)(d)6. of Section 5 of this Act*.
  - (b) In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing basic training within one (1) year, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days, in which to complete the training.
  - (c) Any peace officer who fails to successfully complete basic training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her precertification status shall lapse. Further, the peace officer shall be prohibited from serving as a peace officer for a period of one (1) year from the date that his or her precertification lapses.
- (2)
  - (a) All peace officers with active certification status shall successfully complete forty (40) hours of annual in-service training that has been certified or recognized by the Kentucky Law Enforcement Council, that is appropriate to the officer's rank and responsibility and the size and location of his department.
  - (b) In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing the in-service training within one (1) year, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days, in which to complete the training. If the officer is unable to complete the in-service training due to injury or illness that prevents him or her from working as a peace officer, the one hundred eighty (180) day extension shall begin on the date that the officer returns to work.

- (c) Any peace officer who fails to successfully complete in-service training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her certification status shall be changed to training deficiency status.
  - (d) When a peace officer is deficient in required training, the commissioner of the department or his or her designee shall notify the council, which shall notify the peace officer and his or her agency.
  - (e) The requirements of this subsection shall be waived for the period of time that a peace officer is serving on active duty in the United States Armed Forces.
  - (f) This waiver shall be retroactive for peace officers from the date of September 11, 2001.
- (3) An officer who has lost his or her law enforcement powers due solely to his or her failure to meet the in-service training requirements of this section may regain his or her certification status and law enforcement powers upon successful completion of the training deficiency.

**Signed by Governor March 22, 2021.**

## CHAPTER 74

### ( SB 71 )

AN ACT relating to motor vehicles.

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

➔Section 1. KRS 281.010 is amended to read as follows:

As used in this chapter:

- (1) *"Automobile club" means a person that, for consideration, promises to assist its members or subscribers in matters relating to the assumption of or reimbursement of the expense or a portion thereof for towing of a motor vehicle; emergency road service; matters relating to the operation, use, and maintenance of a motor vehicle; and the supplying of services which includes, augments, or is incidental to theft or reward services, discount services, arrest bond services, lock and key services, trip interruption services, and legal fee reimbursement services in defense of traffic-related offenses;*
- (2) "Automobile utility trailer" means any trailer or semitrailer designed for use with and towed behind a passenger motor vehicle;
- ~~(3)(2)~~ "Automobile utility trailer certificate" means a certificate authorizing a person to engage in the business of automobile utility trailer lessor;
- ~~(4)(3)~~ "Automobile utility trailer lessor" means any person operating under an automobile utility trailer certificate who is engaged in the business of leasing or renting automobile utility trailers, but shall not include the agents of such persons;
- ~~(5)(4)~~ "Broker" means a person selected by the cabinet through a request for proposal process to coordinate human service transportation delivery within a specific delivery area. A broker may also provide transportation services within the specific delivery area for which the broker is under contract with the cabinet;
- ~~(6)(5)~~ "Bus" means a motor vehicle operating under a bus certificate transporting passengers for hire between points over regular routes;
- ~~(7)(6)~~ "Bus certificate" means a certificate granting authority for the operation of one (1) or more buses;
- ~~(8)(7)~~ "Cabinet" means the Kentucky Transportation Cabinet;
- ~~(9)(8)~~ "Certificate" means a certificate of compliance issued under this chapter to motor carriers;
- ~~(10)(9)~~ "Charter bus" means a motor vehicle operating under a charter bus certificate providing for-hire intrastate transportation of a group of persons who, pursuant to a common purpose under a single contract at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin;

- ~~(11)~~~~(10)~~ "Charter bus certificate" means a certificate granting authority for the operation of one (1) or more charter buses;
- ~~(12)~~~~(11)~~ "Commissioner" means the commissioner of the Department of Vehicle Regulation;
- ~~(13)~~~~(12)~~ "CTAC" means the Coordinated Transportation Advisory Committee created in KRS 281.870;
- ~~(14)~~~~(13)~~ "Department" means the Department of Vehicle Regulation;
- ~~(15)~~~~(14)~~ "Delivery area" means one (1) or more regions established by the cabinet in administrative regulations promulgated under KRS Chapter 13A for the purpose of providing human service transportation delivery in that region;
- ~~(16)~~~~(15)~~ "Disabled persons vehicle carrier" means a motor carrier for hire, transporting passengers including the general public who require transportation in disabled persons vehicles;
- ~~(17)~~~~(16)~~ "Disabled persons vehicle" means a motor vehicle operating under a disabled persons vehicle certificate especially equipped for the transportation of passengers with disabilities in accordance with 49 C.F.R. pt. 38, and is designed or constructed with not more than fifteen (15) regular seats. It shall not mean an ambulance as defined in KRS 311A.010. It shall not mean a motor vehicle equipped with a stretcher;
- ~~(18)~~~~(17)~~ "Disabled persons vehicle certificate" means a certificate granting authority for the operation of one (1) or more disabled persons vehicles transporting passengers for hire;
- ~~(19)~~~~(18)~~ "Driveaway" means the transporting and delivering of motor vehicles, except semitrailers and trailers, whether destined to be used in either a private or for-hire capacity, under their own power or by means of a full mount method, saddle mount method, the tow bar method, or any combination of them over the highways of this state from any point of origin to any point of destination for hire. "Driveaway" does not include the transportation of such vehicles by the full mount method on trailers or semitrailers;
- ~~(20)~~~~(19)~~ "Driveaway certificate" means a certificate granting authority for the operation of one (1) or more motor carrier vehicles operating as a driveaway;
- ~~(21)~~~~(20)~~ "Driver" means the person physically operating the motor vehicle;
- (22) "Flatbed/rollback service" means a form of towing service which involves moving vehicles by loading them onto a flatbed platform;**
- ~~(23)~~~~(21)~~ "Highway" means all public roads, highways, streets, and ways in this state, whether within a municipality or outside of a municipality;
- ~~(24)~~~~(22)~~ "Household goods" has the same meaning as in 49 C.F.R. sec. 375.103;
- ~~(25)~~~~(23)~~ "Household goods carrier" has the same meaning as "household goods motor carrier" in 49 C.F.R. sec. 375.103;
- ~~(26)~~~~(24)~~ "Household goods certificate" means a certificate granting authority for the operation of one (1) or more household goods vehicles;
- ~~(27)~~~~(25)~~ "Human service transportation delivery" means the provision of transportation services to any person that is an eligible recipient in one (1) of the following state programs:
- (a) Nonemergency medical transportation under KRS Chapter 205;
  - (b) Mental health, intellectual disabilities, or comprehensive care under KRS Chapter 202A, 202B, 210, or 645;
  - (c) Work programs for public assistance recipients under KRS Chapter 205;
  - (d) Adult services under KRS Chapter 205, 209, 216, or 273;
  - (e) Vocational rehabilitation under KRS Chapter 151B or 157; or
  - (f) Blind industries or rehabilitation under KRS Chapter 151B or 163;
- ~~(28)~~~~(26)~~ "Interstate commerce" has the same meaning as in 49 C.F.R. sec. 390.5;
- ~~(29)~~~~(27)~~ "Intrastate commerce" has the same meaning as in 49 C.F.R. sec. 390.5;
- ~~(30)~~~~(28)~~ "Limousine" means a motor vehicle operating under a limousine certificate that is designed or constructed with not more than fifteen (15) regular seats;



- ~~(31)~~~~(29)~~ "Limousine certificate" means a certificate granting authority for the operation of one (1) or more limousines transporting passengers for hire;
- ~~(32)~~~~(30)~~ "Mobile application" means an application or a computer program designed to run on a smartphone, tablet computer, or other mobile device that is used by a TNC to connect drivers with potential passengers;
- ~~(33)~~~~(31)~~ "Motor carrier" means any person in either a private or for-hire capacity who owns, controls, operates, manages, or leases, except persons leasing to authorized motor carriers, any motor vehicle for the transportation of passengers or property upon any highway, and any person who engages in the business of automobile utility trailer lessor, **vehicle towing**, driveaway, or U-Drive-It;
- ~~(34)~~~~(32)~~ "Motor carrier vehicle" means a motor vehicle used by a motor carrier to transport passengers or property;
- ~~(35)~~~~(33)~~ "Motor carrier vehicle license" means a license issued by the department for a motor carrier vehicle authorized to operate under a certificate;
- ~~(36)~~~~(34)~~ "Motor carrier license plate" means a license plate issued by the department to a motor carrier authorized to operate under a certificate other than a household goods, property, TNC, or U-Drive-It certificate;
- ~~(37)~~~~(35)~~ "Motor vehicle" means any motor-propelled vehicle used for the transportation of passengers or property on a public highway, including any such vehicle operated as a unit in combination with other vehicles;
- ~~(38)~~~~(36)~~ "Passenger" means an individual or group of people;
- ~~(39)~~~~(37)~~ "Permit" means a temporary permit of compliance issued under this chapter for a specified period not to exceed ten (10) days, and for a specific vehicle, to any motor carrier, including one who is a nonresident of the Commonwealth, who operates a motor vehicle and is not entitled to an exemption from the payment of fees imposed under KRS 186.050 because of the terms of a reciprocal agreement between the Commonwealth and the state in which the vehicle is licensed;
- ~~(40)~~~~(38)~~ "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and includes any trustee, assignee, or personal representative thereof;
- ~~(41)~~~~(39)~~ "Platoon" means a group of two (2) individual commercial motor vehicles traveling in a unified manner at electronically coordinated speeds at following distances that are closer than would ordinarily be allowed under KRS 189.340(8)(b);
- ~~(42)~~~~(40)~~ "Prearranged ride" means the period of time that begins when a transportation network company driver accepts a requested ride through a digital network or mobile application, continues while the driver transports the rider in a personal vehicle, and ends when the transportation network company services end;
- ~~(43)~~~~(41)~~ "Pre-trip acceptance liability policy" means the transportation network company liability insurance coverage for incidents involving the driver for a period of time when a driver is logged into a transportation network company's digital network or mobile application but is not engaged in a prearranged ride;
- ~~(44)~~~~(42)~~ "Property" means general or specific commodities, including hazardous and nonhazardous materials;
- ~~(45)~~~~(43)~~ "Property certificate" means a certificate granting authority for the transportation of property, other than household goods, not exempt under KRS 281.605;
- ~~(46)~~ **"Recovery":**
- (a) ***Means a form of towing service which involves moving vehicles by the use of a wheel-lift device, such as a lift, crane, hoist, winch, cradle, jack, automobile ambulance, tow dolly, or any other similar device as requested by a state or local law enforcement agency; and***
- (b) ***Includes:***
1. ***Relocating a vehicle or cargo from a place where towing is not possible to a place where towing is possible; and***
2. ***The cleanup of debris or cargo, and returning an area to pre-event condition;***
- ~~(47)~~~~(44)~~ "Regular route" means the scheduled transportation of passengers between designated points over designated routes under time schedules that provide a regularity of services;

- (48)~~(45)~~ "Regular seat" means a seat ordinarily and customarily used by one (1) passenger and, in determining such seating capacity, the manufacturer's rating may be considered;
- (49) ***"Storage facility" means any lot, facility, or other property used to store motor vehicles that have been removed from another location by a tow truck;***
- (50)~~(46)~~ "Street hail" means a request for service made by a potential passenger using hand gestures or verbal statement;
- (51)~~(47)~~ "Subcontractor" means a person who has signed a contract with a broker to provide human service transportation delivery within a specific delivery area and who meets human service transportation delivery requirements, including proper operating authority;
- (52)~~(48)~~ "Tariff" means the listing of compensation received by a motor carrier for household goods that includes the manner in which and the amount of fares an authorized motor carrier may charge;
- (53)~~(49)~~ "Taxicab" means a motor vehicle operating under a taxicab certificate that is designed or constructed with not more than eight (8) regular seats and may be equipped with a taximeter;
- (54)~~(50)~~ "Taxicab certificate" means a certificate granting authority for the operation of one (1) or more taxicabs transporting passengers for hire;
- (55)~~(51)~~ "Taximeter" means an instrument or device approved by the department that automatically calculates and plainly indicates the charge to a passenger for hire who is being charged on the basis of mileage;
- (56) ***"Tow truck" means a motor vehicle equipped to provide any form of towing service, including recovery service or flatbed/rollback service;***
- (57) ***"Tow truck operator" means an individual who operates a tow truck as an employee or agent of a towing company;***
- (58) ***"Towing" means:***
- (a) ***Emergency towing, which is the towing of a motor vehicle, with or without the owner's consent, because of:***
    1. ***A motor vehicle accident on a public highway;***
    2. ***An incident related to an emergency; or***
    3. ***An incident that necessitates the removal of the motor vehicle from a location for public safety reasons;***
  - (b) ***Private property towing, which is the towing of a motor vehicle, without the owner's consent, from private property:***
    1. ***On which the motor vehicle was illegally parked; or***
    2. ***Because of an exigent circumstance necessitating its removal to another location; and***
  - (c) ***Seizure towing, which is the towing of a motor vehicle for law enforcement purposes involving the:***
    1. ***Maintenance of the chain of custody of evidence;***
    2. ***Forfeiture of assets; or***
    3. ***Delinquency of highway fuel tax, weight distance tax, or any other taxes and fees administered by the Transportation Cabinet;***
- (59) ***"Towing company":***
- (a) ***Means a service or business operating as a motor carrier that:***
    1. ***Tows or otherwise moves motor vehicles by means of a tow truck; or***
    2. ***Owns or operates a storage lot;***
  - (b) ***Includes a tow truck operator acting on behalf of a towing company when appropriate in the context; and***

- (c) *Does not include an automobile club, car dealership, insurance company, repossession company, lienholders and entities hired by lienholders for the purpose of repossession, local government, or any other entity that contracts with a towing company;*
- ~~(60)(52)~~ "Transportation network company" or "TNC" means a person or entity that connects passengers through its digital network or mobile application to its drivers for the provision of transportation network company services;
- ~~(61)(53)~~ "Transportation network company certificate" or "TNC certificate" means a certificate granting the authority for the operation of one (1) or more transportation network company vehicles transporting passengers for hire;
- ~~(62)(54)~~ "Transportation network company driver" or "TNC driver" means an individual who operates a motor vehicle that is owned or leased by the individual, or a motor vehicle for which the driver is an insured driver and has the permission of the owner or lessee of the motor vehicle, and used to provide transportation network company services;
- ~~(63)(55)~~ "Transportation network company service" or "TNC service" means a prearranged passenger transportation service offered or provided through the use of a transportation network company mobile application or digital network to connect potential passengers with transportation network company drivers;
- ~~(64)(56)~~ "Transportation network company vehicle" or "TNC vehicle" means a privately owned or leased motor vehicle, designed or constructed with not more than eight (8) regular seats, operating under a transportation network company certificate;
- ~~(65)(57)~~ "U-Drive-It" means any person operating under a U-Drive-It certificate who leases or rents a motor vehicle for consideration to be used for the transportation of persons or property, but for which no driver is furnished, and the use of which motor vehicle is not for the transportation of persons or property for hire by the lessee or rentee; and
- ~~(66)(58)~~ "U-Drive-It certificate" means a certificate granting authority for the operation of one (1) or more U-Drive-Its.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 2 to 10 of this Act:*

- (1) *"Lienholder" means a person, including a secured party, with a lien indicated on a certificate of title issued by any state;*
- (2) *"Motor vehicle renting company" has the same meaning as in KRS 281.687; and*
- (3) *"Owner" when referring to a motor vehicle, means:*
  - (a) *The person or entity to whom a motor vehicle is registered;*
  - (b) *The person to whom a motor vehicle is leased, if the terms of the lease require the lessee to maintain and repair the vehicle; or*
  - (c) *A motor vehicle rental company, if the vehicle was rented pursuant to a rental agreement.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *This section applies to any towing company that engages in, or offers to engage in, emergency towing.*
- (2)
  - (a) *Prior to the removal of a towed motor vehicle from a tow truck, a towing company that engages in emergency towing shall take photographs, video, or other visual documentation to document evidence of any vehicle damage, debris, or damaged cargo or property.*
  - (b) *A towing company operating under this section may document, at the scene, any complications to the recovery process in writing or by using any of the methods outlined in paragraph (a) of this subsection, if:*
    1. *Law enforcement does not object; and*
    2. *It can be performed in a safe manner.*
- (3) *Except as provided in subsection (4) of this section, a towing company, while providing an emergency tow, shall not stop, or cause a person to stop, at the scene of an accident or near a disabled motor vehicle, for the purpose of:*

- (a) *Soliciting an engagement for emergency towing services;*
  - (b) *Moving a motor vehicle from a public street, road, or highway; or*
  - (c) *Accruing charges in connection with paragraph (a) or (b) of this subsection.*
- (4) *A towing company may stop, or cause a person to stop, at the scene of an accident or near a disabled motor vehicle under the circumstances of subsection (3) of this section if the:*
- (a) *Towing company is requested to stop or to perform a towing service by a law enforcement officer;*
  - (b) *Towing company is summoned to the scene or requested to stop by the owner or operator of a disabled motor vehicle;*
  - (c) *Owner of a disabled motor vehicle has provided consent to the towing company to stop or perform a towing service; or*
  - (d) *Towing company has reasonable belief that a motorist is in need of immediate aid. A towing company shall not offer towing services under this paragraph unless a condition of paragraph (a), (b), or (c) of this subsection has been met.*
- (5) (a) *Except as provided in subsections (6) and (7) of this section, the owner or operator of a disabled motor vehicle, in consultation with law enforcement or with authorized state or local government personnel, may:*
- 1. *Summon to the disabled motor vehicle's location the towing company of the owner's or operator's choice, either directly or through an insurance company's or an automobile club's emergency service arrangement; and*
  - 2. *Designate the location to which the disabled motor vehicle is to be towed.*
- (b) *If the location designated by the owner or operator is not a storage facility owned or operated by the towing company, the owner or operator shall arrange for payment to the towing company at the time the towing company is summoned.*
- (6) *Subsection (5) of this section shall not apply:*
- (a) *In the event of a declared emergency; or*
  - (b) *If the owner or operator of a disabled motor vehicle:*
    - 1. *Is incapacitated or otherwise unable to summon a towing company; or*
    - 2. *Defers to law enforcement or to authorized state or local government personnel as to the towing company to be summoned or the location to which the disabled motor vehicle is to be towed.*
- (7) *The authority of an owner or operator of a disabled motor vehicle to summon the towing company of the owner's or operator's choice under subsection (5) of this section shall be superseded by a law enforcement officer or by authorized state or local government personnel if:*
- (a) *The towing company the owner or operator chooses is unable to respond to the location of the disabled motor vehicle in a timely fashion; or*
  - (b) *The disabled motor vehicle is a hazard, impedes the flow of traffic, or may not legally remain in the motor vehicle's location in the opinion of the law enforcement officer or authorized state or local government official.*
- (8) *If a disabled motor vehicle is causing or poses a safety hazard, the towing company may move the disabled motor vehicle to a safe location after being authorized by a law enforcement officer or by authorized state or local government personnel. The owner of the disabled vehicle shall be responsible for the costs of the tow.*
- (9) *A disabled vehicle shall not be removed from a scene that is under the control of a law enforcement agency without authorization from the law enforcement agency.*
- (10) *If a towing company is summoned for emergency towing by the owner or operator of a disabled motor vehicle, the towing company shall make a record, to the extent available, consisting of:*

- (a) *The first and last name and telephone number of the individual who summoned the towing company to the scene; and*
  - (b) *The color, make, model, year, vehicle identification number, and license plate number of the disabled motor vehicle.*
- (11) *If a towing company is summoned for emergency towing by a law enforcement officer or by authorized state or local government personnel, the towing company shall make a record, to the extent available, consisting of:*
- (a) *The identity of the law enforcement agency or authorized state, county, or municipal agency requesting the emergency towing; and*
  - (b) *The color, make, model, year, vehicle identification number, and license plate number of the disabled motor vehicle.*
- (12) *A towing company shall maintain a record created under subsection (10) or (11) of this section and provide the record to a law enforcement agency upon request from the time the towing company appears at the location of the disabled motor vehicle until the time the motor vehicle is towed and released to an authorized third party. A towing company shall retain the record created under subsection (10) or (11) of this section for a period of two (2) years from the date the disabled motor vehicle was towed and, throughout the two (2) year period, make the record available for inspection and copying, not later than forty-eight (48) hours after receiving a written request from a law enforcement agency, the Attorney General, the disabled motor vehicle's owner, or an authorized agent of the disabled motor vehicle's owner. If the disabled motor vehicle was involved in a collision, the records shall be available for inspection by any individual involved in the underlying collision, his or her respective insurance companies, or his or her legal representatives. Records maintained under this subsection shall be kept in paper or electronic form.*
- (13) *A towing company that performs emergency towing under this section shall, upon taking possession of the motor vehicle, secure a towed motor vehicle properly and take all reasonable efforts to prevent further damage, including weather damage, or theft of a towed motor vehicle, including the motor vehicle's cargo and contents until the motor vehicle is out of the towing company's possession. A towing company shall not be responsible for damage that occurred prior to taking possession of the motor vehicle for towing.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *This section applies to any towing company that engages in, or offers to engage in, private property towing.*
- (b) *This section does not apply to the towing of a motor vehicle from a tow-away zone that is not located on private property.*
- (2) *Prior to removing a motor vehicle from a tow truck under this section, a towing company that engages in or offers to engage in private property towing shall take photographs, video, or other visual documentation to document evidence of any vehicle damage, debris, or damaged cargo or property, or complications to the recovery process.*
- (3) *A private property owner may establish a tow-away zone on the owner's property. A property owner that establishes a tow-away zone under this subsection shall post at the location of the tow-away zone a sign that is clearly visible to the public. The sign shall include a statement that the area is a tow-away zone, pertinent contact information, and a description of any persons authorized to park or prohibited from parking in the area.*
- (4) *A towing company that tows a motor vehicle under this section shall ensure that the motor vehicle is towed to a storage facility located within twenty-five (25) miles of the location of the tow-away zone from which the motor vehicle was removed or, if no storage facility is located within twenty-five (25) miles of the location of the tow-away zone, to the storage facility nearest to the tow-away zone.*
- (5) *If the owner or operator of a motor vehicle parked in violation of a tow-away zone arrives at the location of the tow-away zone or private property while the motor vehicle is being towed, the towing company shall give the owner or operator either oral or written notification that the owner or operator may pay a fee in an amount not greater than fifty percent (50%) of the amount of the fee the towing company normally charges for the release of a motor vehicle. Upon the owner's or operator's payment of the amount specified, the towing company shall release the motor vehicle to the owner or operator and give the owner or operator a*

*receipt showing the full amount of the fee the towing company normally charges for the release of a motor vehicle and the amount of the fee paid by the owner or operator.*

- (6) *A towing company shall provide notice to the law enforcement agency having jurisdiction in the location of the private property not later than two (2) hours after completing a tow of a motor vehicle from private property.*
- (7) *A towing company that performs private property towing shall secure a towed motor vehicle properly and take all reasonable efforts to prevent further damage, including weather damage, or theft of a towed motor vehicle, including the motor vehicle's cargo and contents until the motor vehicle is out of the towing company's possession. A towing company shall not be responsible for damage that occurred prior to taking possession of the motor vehicle for towing.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *This section applies to any towing company that engages in, or offers to engage in, emergency towing.*
- (2) *Prior to attaching a motor vehicle to the tow truck, the towing company shall furnish the vehicle's owner or operator, if the owner or operator is present at the scene of the disabled vehicle and upon the owner's or operator's request, a rate sheet listing all rates for towing services, including but not limited to all rates for towing and associated fees, cleanup, labor, storage, and any other services provided by the towing company.*
- (3)
  - (a) *Any towing company or storage facility shall post a rate sheet at its place of business and shall make the rate sheet available upon a customer's request.*
  - (b) *Any charge in excess of the rate sheets provided under this subsection shall be deemed excessive.*
- (4) *An itemized invoice of actual towing charges assessed by a towing company for a completed tow shall be made available to the owner of the motor vehicle or the owner's agent no later than one (1) business day after:*
  - (a) *The tow is completed; or*
  - (b) *The towing company has obtained all necessary information to be included on the invoice, including any charges submitted by subcontractors used by the towing company to complete the tow and recovery.*
- (5) *The itemized invoice required under subsection (4) of this section shall contain the following information:*
  - (a) *The date and time the motor vehicle was towed;*
  - (b) *The location to which the motor vehicle was towed;*
  - (c) *The name, address, and telephone number of the towing company;*
  - (d) *A description of the towed motor vehicle, including the color, make, model, year, and vehicle identification number of the motor vehicle;*
  - (e) *The license plate number and state of registration for the towed motor vehicle;*
  - (f) *The cost of the original towing service;*
  - (g) *The cost of any vehicle storage fees, expressed as a daily rate;*
  - (h) *Other fees, including documentation fees and motor vehicle search fees; and*
  - (i) *A list of the services that were performed under a warranty or that were otherwise performed at no cost to the owner of the motor vehicle.*
- (6) *Any service or fee in addition to the services or fees described in subsection (5)(f), (g), or (h) of this section shall be set forth individually as a single line item on the invoice required by this section, with an explanation and the exact charge for the service or the exact amount of the fee.*
- (7) *A copy of each invoice and receipt submitted by a tow truck operator in accordance with this section shall:*
  - (a) *Be retained by the towing company for a period of two (2) years from the date of issuance; and*
  - (b) *Throughout the two (2) year period described in this subsection, be made available for inspection and copying not later than forty-eight (48) hours after receiving a written request for inspection from:*
    - 1. *A law enforcement agency;*

2. *The Attorney General;*
3. *A city attorney, county attorney, or the prosecuting attorney having jurisdiction in the location of any of the towing company's business locations;*
4. *The disabled motor vehicle's owner or lienholder;*
5. *An agent of the disabled motor vehicle's owner or lienholder; or*
6. *Any individual involved in the underlying collision, his or her respective insurance companies, or his or her legal representatives, if the disabled motor vehicle was involved in a collision.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *Within one (1) business day of the removal, a towing company shall contact the cabinet in order to ascertain the identity of the owner and any lienholder of any motor vehicle registered in Kentucky which it has towed and, within ten (10) days of the removal, shall, by certified mail, provide notice to the owner and any lienholder at the address or addresses of record, when a motor vehicle has been:*
  - (a) *Towed under Section 4 or 5 of this Act;*
  - (b) *Involuntarily towed or transported pursuant to order of police, other public authority, or private person or business for any reason;*
  - (c) *Stolen or misappropriated and its removal from the public ways has been ordered by police, other public authority, or by private person or business; or*
  - (d) *In any other situation, involuntarily towed or transported by order of police, other authority, or by private person or business. If the lienholder is a registered organization listed in the business records of the Secretary of State, the cabinet shall provide the address listed for the lienholder.*
- (2) *The cabinet shall, within two (2) business days, provide the towing company the name and address of the owner and lienholder of any motor vehicle requested pursuant to subsection (1) of this section.*
- (3)
  - (a) *If a vehicle described in subsection (1) of this section is placed in a garage or other storage facility, the owner of the facility shall provide the notice required in subsection (1) of this section, by certified mail, to the owner and any lienholder at the address or addresses of record of the motor vehicle within ten (10) days of recovery of, or taking possession of, the motor vehicle.*
  - (b) *Any notice sent under this subsection shall comply with the notification provisions of subsection (4) of this section and shall include an estimated itemized invoice pursuant to subsection (5) of Section 5 of this Act that specifies the amount of charges for towing, recovery, storage, transporting, and other applicable charges due on the vehicle.*
  - (c) *If the owner of the storage facility fails to provide notice as provided in this section, the motor vehicle storage facility shall forfeit all storage fees accrued after ten (10) days from the date of tow.*
  - (d) *This subsection shall not apply to a garage or storage facility owned or operated by a government entity.*
- (4) *Any notification required under subsection (1) or (2) of this section shall include:*
  - (a) *The date and time the vehicle was towed;*
  - (b) *The location from which the vehicle was towed;*
  - (c) *The name, address, and telephone number where the vehicle will be located;*
  - (d) *The location, address, and phone number where payment and business transactions take place if different from the business address;*
  - (e) *The name, address, and phone number of the towing company or storage facility;*
  - (f) *A description of the towed vehicle which shall at a minimum include the make, model, year, vehicle identification number, and color of the towed vehicle;*
  - (g) *The license plate number and state of registration of the towed vehicle; and*
  - (h) *A copy of the rate sheet required in subsection (2) of Section 5 of this Act, if the vehicle was towed by a towing company operating under this chapter and vehicles are being held in a storage facility or garage.*

- (5) *If a vehicle described in subsection (1) of this section is determined to be a corporately owned motor vehicle, the notices required under subsections (1) and (2) of this section shall be sent to the corporate address listed on the registration. A motor vehicle under this subsection shall be held for up to forty-five (45) days to allow the motor vehicle owner or lienholder to retrieve the towed motor vehicle. The rate charged shall be the standard daily rate of the towing company or storage facility. If at any time more than one (1) motor vehicle owned by the same corporation is under the control of a towing company or storage facility, each motor vehicle shall be processed under a separate transaction.*
- (6) *A towing company or storage facility that has met the provisions of this section may sell the towed vehicle in accordance with Section 11 of this Act.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *This section applies to towing companies that tow and store motor vehicles, and to storage facilities that store vehicles towed by a towing company, regardless of whether the towing company and the storage facilities are affiliates.*
- (2) *Upon payment of all costs incurred against a motor vehicle towed and stored under this chapter, the towing company or storage facility shall release the motor vehicle to:*
- (a) *A properly identified owner or lienholder of the motor vehicle; or*
  - (b) *An authorized representative of the insurance company or its contracted service provider insuring the motor vehicle if the:*
    1. *Motor vehicle is covered by an active policy of insurance and the insurance representative provides proof of coverage; or*
    2. *Owner of the motor vehicle approves release of the vehicle to the insurance company representative.*
- (3) (a) *Prior to payment of fees and release of the motor vehicle, a storage facility or towing company shall not refuse the right of physical inspection of the towed vehicle during posted business hours by:*
1. *An owner;*
  2. *A lienholder;*
  3. *A representative of the insurance company that insures the motor vehicle; or*
  4. *A contracted service provider of the insurance company.*
- (b) *The inspection of a vehicle that is being held as evidence by a law enforcement agency shall only occur if authorized by the investigating law enforcement agency. The law enforcement agency may impose any or all of the following restrictions:*
1. *Restrict the inspection to visual and touchless only; or*
  2. *Require any persons or entities outlined in paragraph (a) of this subsection to be accompanied by a law enforcement officer.*
- (4) *A towing company or storage facility shall accept payment made by any of the following means from an individual seeking to release a motor vehicle:*
- (a) *Cash;*
  - (b) *Check from an insurer or its agent;*
  - (c) *Credit card;*
  - (d) *Debit card;*
  - (e) *Money order; or*
  - (f) *Check drawn by a bank or other financial institution.*
- (5) *Upon receiving payment of all costs incurred against a motor vehicle, a towing company or storage facility shall provide to the person making payment an itemized receipt in accordance with subsections (4) and (5) of Section 5 of this Act to the extent the information is known or available.*



- (6) *A towing company or storage facility shall be open for business or accessible by telephone during posted business hours. A towing company or storage facility shall provide a telephone number available on a twenty-four (24) hour basis to receive calls and messages from callers, including calls made outside posted business hours. All calls made to a towing company or storage facility shall be returned within twenty-four (24) hours from the time received. However, if adverse weather, an emergency situation, or another act over which the towing company or storage facility has no control prevents the towing company or storage facility from returning calls within twenty-four (24) hours, the towing company or storage facility shall return all calls received as quickly as possible.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *A towing company or storage facility shall not charge a fee for towing, cleanup services, storage of a motor vehicle, or a combination thereof that is in excess of the rate sheets required in Section 5 of this Act.*
- (2) *All services rendered by a towing company or storage facility, including warranty or no-cost services, shall be recorded on an invoice. The storage facility, towing company, or the owner or operator of a tow truck, shall maintain the records for two (2) years, including rate sheets, and shall make the records available for inspection and copying upon written request from law enforcement or the cabinet. Records maintained under this section shall be kept in paper or electronic form.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *A towing company shall not:*
- (a) *Falsely represent that the towing company represents or is approved by any law enforcement agency, or any organization that provides emergency road service for disabled motor vehicles;*
- (b) *Require an owner or operator of a disabled motor vehicle to preauthorize more than twenty-four (24) hours of storage or repair work as a condition to providing towing service for the disabled vehicle;*
- (c) *Charge more than one (1) towing fee when the owner or operator of a disabled motor vehicle requests transport of the motor vehicle to a repair facility owned or operated by the towing company; or*
- (d) *Tow a motor vehicle to a repair facility, unless the owner of the motor vehicle or the owner's designated representative gives consent and the consent is given prior to the removal of the motor vehicle from the location from which the motor vehicle is to be towed. This paragraph shall not apply to a storage facility that has a repair facility on the same site so long as the motor vehicle is not moved into the repair facility without consent.*
- (2) *A towing company or storage facility shall not:*
- (a) *Upon payment of all costs incurred against a motor vehicle towed and stored under this chapter, refuse to release the motor vehicle to a properly identified owner or lienholder of the motor vehicle or to an authorized representative of the insurance company insuring the motor vehicle or the insurance company's contracted provider, if the motor vehicle is covered by an active policy of insurance. Motor vehicle release under this paragraph shall not apply to any case in which a law enforcement agency has ordered the motor vehicle not to be released or in any case in which a judicial order prohibits its release;*
- (b) *Refuse to permit a properly identified owner or lienholder of a motor vehicle or a representative of the insurance company insuring the motor vehicle if the motor vehicle is covered by an active policy of insurance to inspect the motor vehicle during posted business hours before all costs incurred against the motor vehicle are paid or the motor vehicle is released; or*
- (c) *Charge a storage fee for a stored motor vehicle with respect to any day on which release of the motor vehicle or inspection of the motor vehicle by the owner, lienholder, or insurance company is not permitted during posted business hours by the towing company or storage facility.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

*The cabinet shall be held harmless for any mistakes, errors, delays, or property damage to any motor vehicle in relation to the towing or storage of a vehicle under Sections 2 to 10 of this Act.*

➔Section 11. KRS 359.230 is amended to read as follows:

- (1)
  - (a) If the occupant is in default for a period of more than forty-five (45) days, the operator may enforce a lien by selling the property stored in the leased space at a public or private sale, for cash.
  - (b) Proceeds shall then be applied to satisfy the lien, with any surplus disbursed as provided in subsection (5) of this section.
- (2) Before conducting a sale under subsection (1) of this section, the operator shall:
  - (a) Notify the occupant of the default by regular or verified electronic mail at the occupant's last known address;
  - (b) Send a second notice of default by verified mail or verified electronic mail to the occupant at the occupant's last known address which includes:
    1. A statement that the contents of the occupant's leased space are subject to the operator's lien;
    2. A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date those additional charges shall become due;
    3. A demand for payment of the charges due within a specified time, not less than fourteen (14) days after the date of the notice;
    4. A statement that unless the claim is paid within the time stated, the contents of the occupant's leased space shall be sold at a specified time and place; and
    5. The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice; and
  - (c) At least three (3) days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the jurisdiction where the sale is to be held.
- (3) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.
- (4) The sale under this section shall be held at the self-service storage facility, the location of the self-contained storage unit where the personal property is stored, or a publicly accessible Web site.
- (5) If a sale is held under this section, the operator shall:
  - (a) Satisfy the lien from the proceeds of the sale;
  - (b) Hold the balance, if any, for delivery to any other recorded lienholders who present claims within sixty (60) days. Notwithstanding Article 9 of KRS Chapter 355, claims shall be satisfied on a first come first served basis; and
  - (c) Deliver, upon expiration of sixty (60) days, the balance of any remaining proceeds to the occupant.
- (6) A purchaser in good faith of any personal property sold under KRS 359.200 to 359.250 takes the property free and clear of any rights of:
  - (a) Persons against whom the lien was valid; and
  - (b) Other lienholders.
- (7) If the operator complies with the provisions of KRS 359.200 to 359.250, the operator's liability:
  - (a) To the occupant shall be limited to the net proceeds received from the sale of the personal property;
  - (b) To other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by that other lien; and
  - (c) To the occupant or valid lienholders shall be relieved upon full distribution of proceeds in accordance with the provisions of KRS 359.200 to 359.250.
- (8) If an occupant is in default, the operator may deny the occupant access to the leased space.
- (9)
  - (a) Unless otherwise specifically provided, all notices required by KRS 359.200 to 359.250 shall be sent by verified mail or verified electronic mail.
  - (b)
    1. Notices sent to the operator shall be sent to the operator's principal office, as listed on the rental agreement.

2. Notices to the occupant shall be sent to the occupant at the occupant's last known address.
- (c) Notices shall be deemed delivered when deposited with the United States Postal Service, properly addressed as provided in paragraph (b) of this subsection, with postage paid, or sent by verified electronic mail.
- (10) Provided, however, unless the rental agreement specifically provides otherwise and until a lien sale under KRS 359.200 to 359.250, the exclusive care, custody, and control of all personal property stored in the leased space shall remain vested in the occupant.
- (11) If the rental agreement specifies a limit on the value of the personal property that may be stored in the occupant's leased space, the limit shall be deemed to be the maximum value of the stored personal property.
- (12) If the occupant is in default for more than sixty (60) days and the personal property stored in the leased space is a motor vehicle as defined in KRS 376.268, the operator may, in lieu of a sale authorized in this chapter, have the vehicle or watercraft towed or removed from the self-service storage facility, and the towing company shall execute the notice provisions as specified in *Section 6 of this Act* [KRS 376.275].

➔Section 12. KRS 376.275 is amended to read as follows:

- (1) ~~[When a motor vehicle has been involuntarily towed or transported pursuant to order of police, other public authority, or private person or business for any reason or when the vehicle has been stolen or misappropriated and its removal from the public ways has been ordered by police, other public authority, or by private person or business, or in any other situation where a motor vehicle has been involuntarily towed or transported by order of police, other authority, or by private person or business, the police, other authority, private person or business shall attempt to ascertain from the Transportation Cabinet the identity of the registered owner of the motor vehicle or lessor of a motor carrier as defined in KRS Chapter 281 and within ten (10) business days of the removal shall, by certified mail, attempt to notify the registered owner at the address of record of the make, model, license number and vehicle identification number of the vehicle and of the location of the vehicle, and the requirements for securing the release of said motor vehicle.~~
- ~~(2) If a vehicle described in subsection (1) of this section is placed in a garage or other storage facility, the owner of the facility shall attempt to provide the notice provided in subsection (1) of this section, by certified mail, to the registered owner at the address of record of the motor vehicle or lessor of a motor carrier as defined in KRS Chapter 281 within ten (10) business days of recovery of, or taking possession of the motor vehicle. The notice shall contain the information as to the make, model, license number and vehicle identification number of the vehicle, the location of the vehicle and the amount of reasonable charges for towing, recovery, storage, transporting, and other applicable charges due on the vehicle. When the owner of the facility fails to provide notice as provided herein, the motor vehicle storage facility shall forfeit all storage fees accrued after ten (10) business days from the date of tow. This subsection shall not apply to a garage or storage facility owned or operated by a government entity.~~
- ~~(3)~~ (a) Any person engaged in the business of storing or towing motor vehicles, who has ~~[substantially]~~ complied with the *notification* ~~[aforementioned]~~ requirements of *Section 6 of this Act* ~~[this section]~~, shall have a lien on the motor vehicle and its contents, except as set forth in subsection ~~(2)~~ ~~(4)~~ of this section, for the *applicable and reasonable charges assessed in accordance with Sections 5 and 8 of this Act* ~~[reasonable or agreed charges for towing, recovery, storage, transporting, and other applicable charges due on the vehicle]~~, as long as it remains in his *or her* possession.
- (b) ~~[Prior to payment of fees and release of a vehicle, a towing or storage company shall not refuse the right of physical inspection of the towed vehicle by the owner or an insurance company representative. Release of the vehicle shall occur to the owner or insurance company representative upon payment and consent of the release from the owner or the owner's authorized representative. Each additional service shall be set forth individually as a single line item in the bill with an explanation and the exact charge for the service.~~
- ~~(c)~~ If, after a period of forty-five (45) days, the *applicable and reasonable charges assessed in accordance with Sections 5 and 8 of this Act* ~~[reasonable or agreed charges for towing, recovery, storage, transporting, and other applicable charges due on a motor vehicle and its contents]~~ have not been paid, the motor vehicle and its contents, except as set forth in subsection ~~(2)~~ ~~(4)~~ of this section, may be sold to pay the charges after the owner *and any lienholder* ~~have~~ ~~[has]~~ been notified by certified mail *at the addresses specified in subsection (1) of Section 6 of this Act*, ten (10) days prior to the time and place of the sale. If the proceeds of the sale of any vehicle pursuant to this section are insufficient to satisfy accrued charges ~~[for towing, transporting, and storage]~~, the sale and collection of proceeds shall

not constitute a waiver or release of responsibility for payment of unpaid ~~towing, transporting, and storage~~ charges by the owner or responsible casualty insurer of the vehicle. A lien on a vehicle under this subsection shall be subject to prior recorded liens, ***unless released by any existing lienholder pursuant to paragraph (c) of this subsection.***

- (c)~~(d)~~ A lien holder having a prior recorded lien listed on the title issued by the Commonwealth of Kentucky shall be notified by certified mail within the first ***ten (10)***~~***fifteen (15)***~~ days of impoundment ***in accordance with Section 6 of this Act. Such notification, in addition to the requirements of Section 6 of this Act***~~***The letter***~~ shall include the make, model, license number, vehicle identification number, owner's name and last known address, and tentative date of sale for the vehicle, ***and state that the towing company or storage facility seeks to obtain a new title free and clear of any liens, excluding tax liens.*** If the above-referenced certified letter is not sent within the ***ten (10)***~~***fifteen (15)***~~ days by the towing and storage company, then only ***ten (10)***~~***fifteen (15)***~~ days of storage may be charged. The lien holder has the right to take possession of the motor vehicle after showing proof of lien still enforced, and paying the reasonable or agreed towing and storage charges on the motor vehicle. ***If a lienholder does not exercise the right to take possession of the motor vehicle under this paragraph within forty-five (45) days of notification, and all lienholders agree in writing, the towing company or storage facility may obtain a new title under Section 14 of this Act free and clear of any liens, excluding tax liens.*** Nothing in this section shall allow the transfer of a vehicle subject to a lien, except as provided in KRS 186A.190.
- (d) ***If there are no lienholders required to be notified under Sections 2 to 10, 11, and 12 of this Act, and the owner does not exercise the right to take possession of the motor vehicle under this section within forty-five (45) days of notification required under Section 6 of this Act, the tow company or storage facility may obtain a new title under Section 14 of this Act free and clear of any liens, excluding tax liens.***
- (2)~~(4)~~ Subsection (1)~~(3)~~ of this section shall not apply to the following contents of a motor vehicle, which shall be released to the vehicle owner or the owner's designated agent upon request, if the request is made within forty-five (45) days of the date the vehicle was towed:
- (a) Prescription medication in its proper container;
  - (b) Personal medical supplies and equipment or records;
  - (c) Educational materials, including but not limited to calculators, books, papers, and school supplies;
  - (d) Documents, files, electronic devices, or equipment which may be able to store personal information or information relating to a person's employment or business;
  - (e) Firearms and ammunition. Notwithstanding the provisions of subsection (3)~~(5)~~ of this section, firearms and ammunition which are not claimed by the owner of the vehicle within forty-five (45) days of the date the vehicle was towed shall be transferred to the Department of Kentucky State Police for disposition as provided by KRS 16.220;
  - (f) Cargo in the possession of persons engaged in transportation in interstate commerce as registered under KRS 186.020;
  - (g) Cargo in the possession of an integrated intermodal small package carrier as defined by KRS 281.605(12);
  - (h) Child restraint systems or child booster seats; and
  - (i) Checks, checkbooks, debit or credit cards, money orders, stocks, or bonds.
- (3)~~(5)~~ Except as provided ~~for~~ in subsection (2)~~(e)~~~~(4)(e)~~ of this section, any contents exempted under subsection (2)~~(c)~~, (d), (f), and (g)~~(4)~~ of this section that are not claimed by the owner of the vehicle within forty-five (45) days of the date the vehicle was towed may be sold or otherwise legally disposed of by the storage or towing company. ***Any contents exempted under subsection (2)(a), (b), (h), and (i) of this section that are not claimed by the owner of the vehicle within forty-five (45) days of the date the vehicle was towed shall not be sold, but shall be otherwise legally disposed of by the storage or towing company.***
- (4)~~(6)~~ The storage or towing company shall not be responsible for contents in a vehicle's trunk or other locked compartment to which the storage or towing company is without access, unless the towing company intentionally opens the area without the owner's consent.

(5)(7) ~~The provisions of~~ This section shall not apply when a local government causes a vehicle to be towed pursuant to KRS 82.605 to 82.640 or if state government causes a vehicle to be towed.

➔Section 13. KRS 189.725 is amended to read as follows:

- (1) Any owner or attendant of a privately owned parking lot may have **a towing company remove** ~~removed~~ from the lot any unauthorized **parked** vehicle ~~parked~~. **A towing company** ~~and any person~~ engaged to remove such vehicle shall have a lien on the vehicle in accordance with **Section 12 of this Act** ~~KRS 376.275~~.
- (2) Every operator of a parking lot covered by ~~the provisions of~~ subsection (1) **of this section** shall post signs stating thereon that the parking lot is privately owned and unauthorized vehicles will be towed away at the owner's expense.

➔Section 14. KRS 186A.145 is amended to read as follows:

- (1) **Except as provided in subsections (2) and (3) of this section**, a county clerk shall not process an application for Kentucky title and registration from or to any Kentucky resident who has a delinquent motor vehicle ad valorem property tax account.
- (2) This **section** ~~provision~~ shall not apply to transactions involving:
  - (a) Licensed Kentucky motor vehicle dealers;
  - (b) **A person who is engaged in the business of storing or towing motor vehicles, applying for a new title under subsection (1)(c) of Section 12 of this Act; or**
  - (c) **A secured party applying for a repossession title under KRS 186.045(6).**
- (3) (a) **For any vehicle obtained as the result of a claim on a motor vehicle insurance policy, an insurer and its agent shall not be responsible for the payment of any delinquent motor vehicle ad valorem property taxes owed by any previous owner, when:**
  1. **Applying for a regular or salvage title; or**
  2. **Transferring ownership of the vehicle to another party.**
 (b) **The owner of a motor vehicle that was transferred to an insurer or its agent under paragraph (a) of this subsection shall remain responsible for any delinquent motor vehicle ad valorem property taxes owed prior to the transfer.**
- (4) **An insurer shall not be exempt from any motor vehicle ad valorem property taxes owed on any vehicle that it owns:**
  - (a) **As a part of its business operations; or**
  - (b) **On January 1, that was obtained as the result of a claim on a motor vehicle insurance policy.**

Signed by Governor March 22, 2021.

## CHAPTER 75

### ( HB 95 )

AN ACT relating to prescription insulin.

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

➔Section 1. KRS 304.17A-148 is amended to read as follows:

- (1) All health benefit plans issued or renewed on or after **the effective date of this Act** ~~July 15, 1998~~, shall provide coverage for equipment, supplies, outpatient self-management training and education, including medical nutrition therapy, and all medications necessary for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and noninsulin-using diabetes if prescribed by a health care provider legally authorized to prescribe the items.

- (2) Diabetes outpatient self-management training and education shall be provided by a certified, registered, or licensed health care professional with expertise in diabetes, as deemed necessary by a health care provider.
- (3) (a) ***Except as provided in paragraph (b) of this subsection***, the benefits provided in this section shall be subject to the same annual deductibles or coinsurance established for all other covered benefits within a given health benefit plan.
- (b) ***Cost sharing for a covered prescription insulin drug shall not exceed thirty dollars (\$30) per thirty (30) day supply of each prescription insulin drug, regardless of the amount or type of insulin needed to meet the covered person's insulin needs.***
- (c) Private third-party payors may not reduce or eliminate coverage due to the requirements of this section.
- (d) ***Except as provided in Section 2 of this Act, paragraph (b) of this subsection shall not apply to governmental plans, as defined in KRS 304.17A-005, that are self-insured.***
- (e) ***Nothing in this subsection shall prevent an insurer from establishing cost-sharing requirements for covered prescription insulin drugs below the amount specified in paragraph (b) of this subsection.***
- (4) ***As used in this section, "cost sharing" has the same meaning as in KRS 304.17A-164.***

➔Section 2. KRS 18A.225 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) The term "employee" for purposes of this section means:
1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567; or is eligible to participate in a retirement plan established by an employer who ceases participating in the Kentucky Employees Retirement System pursuant to KRS 61.522 whose employees participated in the health insurance plans administered by the Personnel Cabinet prior to the employer's effective cessation date in the Kentucky Employees Retirement System;
  2. Any certified or classified employee of a local board of education;
  3. Any elected member of a local board of education;
  4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, County Employees Retirement System, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(4)(c), unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and
  5. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;
- (b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;
- (c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and
- (d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.

- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.
- (b) The policy or policies shall be approved by the commissioner of insurance and may contain the provisions the commissioner of insurance approves, whether or not otherwise permitted by the insurance laws.
- (c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection (20) of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program.
- (d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.
- (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.
- (f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.
- (g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.

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



Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.

- (12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.
- (13)
  - (a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.
  - (b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.
  - (c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.
- (14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months pursuant to KRS 304.17A-132.
- (15) Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for the diagnosis and treatment of autism spectrum disorders consistent with KRS 304.17A-142.
- (16) Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining amino acid-based elemental formula pursuant to KRS 304.17A-258.
- (17) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- (18) If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- (19) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.
- (20) Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:
  - (a) The regional rating bid scenario shall not include a request for bid on a statewide option;
  - (b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;
  - (c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;
  - (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance

with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and

- (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.
- (21) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.
- (22) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section shall comply with the provisions of KRS 304.17A-270 and 304.17A-525.
- (23) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to 304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to 304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to uniform health insurance claim forms, KRS 304.17A-580 and 304.17A-641 pertaining to emergency medical care, KRS 304.99-123, and any administrative regulations promulgated thereunder.
- (24) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 1, 2019, to public employees pursuant to this section shall comply with KRS 304.17A-138.
- (25) *Any fully insured health benefit plan or self-insured plan issued or renewed on or after the effective date of this Act, to public employees pursuant to this section shall comply with Section 1 of this Act.*

➔Section 3. This Act takes effect January 1, 2022.

**Signed by Governor March 22, 2021.**

## CHAPTER 76

### ( HB 210 )

AN ACT related to adoption leave.

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

➔Section 1. KRS 337.015 is amended to read as follows:

- (1) Upon receiving written request by an employee, every employer shall grant reasonable personal leave not to exceed six (6) weeks, *or if the employer has established a policy providing time off for birth parents that is greater than six (6) weeks, that period of time shall be the minimum period of leave available to adoptive parents*, when the reception of an adoptive child under the age of *ten (10)* ~~seven (7)~~ is the reason for such request.
- (2) *If an employer provides paid leave or any other benefits to employees who are birth parents following the birth of a child, it shall also provide the same type, amount, and duration of paid leave and other benefits to employees following the adoption of a child.*
- (3) *This section shall not apply to an adoption by a fictive kin, stepparent, stepsibling, blood relative, including a relative of halfblood, first cousin, aunt, uncle, nephew, niece, and a person of a preceding generation as denoted by prefixes of grand, great, or great-great, or a foster parent who adopts a foster child who is already in their care.*

**Signed by Governor March 23, 2021.**

## CHAPTER 77

## ( HB 7 )

AN ACT relating to the Advisory Council for Recovery Ready Communities.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

- (1) *The Advisory Council for Recovery Ready Communities is hereby created and shall be attached to the Office of Drug Control Policy within the Justice and Public Safety Cabinet for administrative purposes.*
- (2) *The Advisory Council for Recovery Ready Communities shall consist of the following members:*
  - (a) *One (1) representative from the Kentucky League of Cities, appointed by the Governor;*
  - (b) *One (1) representative from the Kentucky Association of Counties, appointed by the Governor;*
  - (c) *One (1) representative from the Kentucky Chamber of Commerce, appointed by the Governor;*
  - (d) *One (1) representative from the Recovery Consortium of Kentucky, appointed by the Governor;*
  - (e) *One (1) representative from the Kentucky School Boards Association, appointed by the Governor;*
  - (f) *One (1) representative that represents the leadership of active law enforcement officers in Kentucky, appointed by the Governor;*
  - (g) *One (1) representative that is a practicing physician with an active license in Kentucky representing the medical profession, appointed by the Governor;*
  - (h) *One (1) representative from the Kentucky Pharmacists Association, appointed by the governor;*
  - (i) *One (1) representative from a family advocate organization who shall have experience in substance use recovery disorders, appointed by the Governor;*
  - (j) *One (1) representative from a faith community organization who shall have experience in substance use recovery disorders, appointed by the Governor*
  - (k) *Two (2) individuals in recovery from a substance use disorder, one (1) of whom has served time in jail or prison due to a substance use disorder, appointed by the Governor;*
  - (l) *The Chief Justice of the Supreme Court, or his or her designee;*
  - (m) *The Attorney General, or his or her designee;*
  - (n) *The commissioner of the Department for Public Health, or his or her designee;*
  - (o) *The commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities, or his or her designee;*
  - (p) *The commissioner of the Department of Corrections, or his or her designee;*
  - (q) *The commissioner of the Department of Workforce Investment, or his or her designee;*
  - (r) *The public advocate, or his or her designee;*
  - (s) *The President of the Senate, or his or her designee;*
  - (t) *The Speaker of the House, or his or her designee; and*
  - (u) *One (1) representative from the Kentucky Association of Regional Programs, appointed by the Governor.*

*The Governor shall designate a chairperson.*

- (3) *Appointed members of the Advisory Council for Recovery Ready Communities shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of duties in accordance with KRS 45.101 and administrative regulations promulgated thereunder.*
- (4) *The Governor shall appoint advisory council members who reflect, inasmuch as possible, the political, geographic, gender, age, and racial diversity of the population of the Commonwealth.*
- (5) *The Advisory Council for Recovery Ready Communities shall:*

- (a) *Establish a Kentucky Recovery Ready Community Certification Program for cities and counties. The purpose of the certification program is to provide a quality measure of a city's or county's substance use disorder recovery programs and to assure citizens and businesses that a city or county is committed to ensuring the availability of high quality recovery programs in its community that can help lead to a highly skilled community workforce;*
  - (b) *Establish guidelines, protocols, standards, and an application and approval process for cities and counties related to the Kentucky Recovery Ready Community Certification Program;*
  - (c) *Ensure that the certification process evaluates a city's or county's availability of high quality substance use treatment programs in their communities for persons in active, post, and recovered addiction status;*
  - (d) *Request and utilize federal, state, and private funds, including funds from philanthropic sources;*
  - (e) *Improve procedures for ensuring accountability and measuring success of recovery programs that receive state, federal, and philanthropic funds; and*
  - (f) *Other duties and responsibilities as designated by the Governor.*
- (6) *The Justice and Public Safety Cabinet may contract with any public or private agency or any individual for research, the gathering of information, the printing and publication of reports, consulting, or for any other purpose necessary to discharge the duties of the advisory council.*
- (7) *The Justice and Public Safety Cabinet, in collaboration with the Advisory Council for Recovery Ready Communities created under subsection (1) of this section, may promulgate administrative regulations pursuant to KRS Chapter 13A to carry out this section.*

**Signed by Governor March 23, 2021.**

## CHAPTER 78

### ( HB 273 )

AN ACT relating to public records and declaring an emergency.

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

➔Section 1. KRS 61.878 is amended to read as follows:

- (1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:
- (a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;
  - (b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;
  - (c)
    1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;
    2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:
      - a. In conjunction with an application for or the administration of a loan or grant;

- b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;
  - c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or
  - d. For the grant or review of a license to do business.
3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;
- (d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;
  - (e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;
  - (f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;
  - (g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;
  - (h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;
  - (i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;
  - (j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;
  - (k) All public records or information the disclosure of which is prohibited by federal law or regulation;
  - (l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, including any information acquired by the Department of Revenue in tax administration that is prohibited from divulgence or disclosure under KRS 131.190;
  - (m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:
    - a. Criticality lists resulting from consequence assessments;
    - b. Vulnerability assessments;
    - c. Antiterrorism protective measures and plans;

- d. Counterterrorism measures and plans;
  - e. Security and response needs assessments;
  - f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;
  - g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and
  - h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.
2. As used in this paragraph, "terrorist act" means a criminal act intended to:
    - a. Intimidate or coerce a public agency or all or part of the civilian population;
    - b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or
    - c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.
  3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.
  4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.
  5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law;
- (n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law;
  - (o) Records of a procurement process under KRS Chapter 45A or 56. This exemption shall not apply after:
    1. A contract is awarded; or
    2. The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited; ~~and~~
  - (p) Communications of a purely personal nature unrelated to any governmental function; **and**
  - (q) ***Except as provided in KRS 61.168, photographs or videos that depict the death, killing, rape, or sexual assault of a person. However, such photographs or videos shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, or a mutually agreed upon location, at the request of;***
    1.
      - a. ***Any victim depicted in the photographs or videos, his or her immediate family, or legal representative;***
      - b. ***Any involved insurance company or its representative; or***
      - c. ***The legal representative of any involved party;***

2. *Any state agency or political subdivision investigating official misconduct; or*
  3. *A legal representative for a person under investigation for, charged with, pled guilty to, or found guilty of a crime related to the underlying incident. The person under investigation for, charged with, pled guilty to, or found guilty of a crime related to the underlying incident or their immediate family shall not be permitted to have access to the photographs or videos.*
- (2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.
  - (3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, lay-offs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.
  - (4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.
  - (5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.
  - (6) *When material is made available pursuant to a request under subsection (1)(q) of this section, the public agency shall not be required to make a copy of the recording except as provided in KRS 61.169, and the requesting parties shall not be limited in the number of times they may view the material.*

➔Section 2. This Act may be cited as the Bailey Holt-Preston Cope Victims Privacy Act.

➔Section 3. Whereas victims and victims' families are subjected to emotional distress, embarrassment, and invasion of privacy when videos or photographs depicting violence against them are played in public forums, 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 23, 2021.**

## CHAPTER 79

( SB 129 )

AN ACT relating to education.

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

➔Section 1. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

- (1) (a) The Kentucky Board of Education shall create an accountability system to classify districts and schools in accordance with the academic standards and student assessment program developed pursuant to KRS 158.6453.
- (b) The accountability system shall include an annual meaningful differentiation of all public schools in the state using multiple measures that describe the overall performance of each district, school, and student subgroup. Performance shall be based on a combination of academic and school quality indicators and measures, hereinafter called "state indicators." The state indicators shall exclusively include:
  1. Student assessment results;
  2. Progress toward achieving English proficiency by limited English proficiency students;

3. Quality of school climate and safety;
  4. High school graduation rates;
  5. Postsecondary readiness for each high school student, which shall be included as an academic indicator, and shall be measured by:
    - a. Meeting or exceeding a college readiness benchmark score on the college admissions examination used as the statewide assessment in KRS 158.6453(5)(b)5. or a college placement examination approved by the Council on Postsecondary Education. The college readiness benchmark score shall be established by the Council on Postsecondary Education; or
    - b. Achievement of college credit, postsecondary articulated credit, apprenticeship time toward a credential or associate degree, or any industry-recognized certifications, licensures, or credentials, with more weight in accountability for industry-recognized certifications, licensures, or credentials identified as high demand in accordance with the process described in paragraph (e) of this subsection. Eligible industry-recognized certifications, licensures, or credentials shall not be limited to those earned in conjunction with a minimum sequence of courses. Each high school shall publicly report the credits, hours, and credentials on an annual basis; and
  6. Any other factor mandated by the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor.
- (c)
1. Beginning with data from the 2020-2021 and 2021-2022 school years, the accountability system performance for each district, school, and student subgroup determined by the state indicators shall be based on a combination of annual performance, hereinafter called "status," and improvement over time, hereinafter called "change."
  2. Status and change shall receive equal weight in determining overall performance. For all students as a group and separately for individual subgroups, status shall be determined, beginning with the data from the 2020-2021 academic year, by using the current year performance and change shall be determined, beginning with the data from the 2021-2022 academic year, by using the difference in performance from the prior to current year, except change shall be based on the difference in performance for the prior three (3) years for the purpose of determining the lowest-performing five percent (5%) of schools under KRS 160.346(2) and (3).
  3. For each state indicator, there shall be five (5) status levels ranging from very high to very low and five (5) change levels ranging from increased significantly to declined significantly.
  4. The percentile cut scores for status and change levels shall be based on distribution and shall be approved by the Kentucky Department of Education and the Local Superintendents Advisory Council. The cut scores shall remain in place for at least six (6) years unless existing cut scores no longer support meaningful differentiation of schools as required by the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor.
- (d)
- Beginning in the fall of 2022, the Kentucky Department of Education shall develop an online display of the accountability system results hereinafter called a "dashboard." A color-coded performance level for each state indicator shall be displayed in a straightforward manner on the dashboard for overall performance, status, and change by district, school, and individual subgroups. Overall performance shall aggregate all available data for the state indicators.
- (e)
- Based on data from the Kentucky Center for Education and Workforce Statistics, each local workforce investment board, in conjunction with local economic development organizations from its state regional sector, shall annually compile a list of industry-recognized certifications, licensures, and credentials specific to the state and regional workforce area, rank them by demand for the state and regional area, and provide the list to the Kentucky Workforce Innovation Board. The Kentucky Workforce Innovation Board, in conjunction with the Kentucky Department of Education, may revise the lists before the Kentucky Department of Education disseminates the lists to all school districts to be used as postsecondary readiness indicators.
- (f)
1. The Kentucky Department of Education shall pay for the cost of an assessment taken by a high school student for attaining an industry-recognized certification, credential, or licensure if the



student consecutively completes at least two (2) related career pathway courses approved by the department prior to taking the assessment.

2. If a high school student has not completed the two (2) course requirement described in subparagraph 1. of this paragraph but meets performance-based experience eligibility and passes an assessment, the department shall provide a weighted reimbursement amount to the school district for the cost of the assessment based on the level of demand of the certificate, credential, or license earned. The Kentucky Board of Education shall promulgate regulations establishing the performance-based experience eligibility requirements and weighted reimbursement amounts.
    - (g) Prior to promulgating administrative regulations to revise the accountability system, the board shall seek advice from the School Curriculum, Assessment, and Accountability Council; the Office of Education Accountability; the Education Assessment and Accountability Review Subcommittee; and the *department's technical advisory committee* ~~[National Technical Advisory Panel on Assessment and Accountability]~~.
- (2) A student's test scores shall be counted in the accountability measure of:
    - (a) 1. The school in which the student is currently enrolled if the student has been enrolled in that school for at least a full academic year as defined by the Kentucky Board of Education; or
      2. The school in which the student was previously enrolled if the student was enrolled in that school for at least a full academic year as defined by the Kentucky Board of Education; and
    - (b) The school district if the student is enrolled in the district for at least a full academic year as defined by the Kentucky Board of Education; and
    - (c) The state if the student is enrolled in a Kentucky public school prior to the beginning of the statewide testing period.
  - (3) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the *department's technical advisory committee* ~~[National Technical Advisory Panel on Assessment and Accountability]~~, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish more rigorous action, intervention, and appropriate consequences for schools that fail to exit comprehensive support and improvement status described in KRS 160.346. The consequences shall be designed to improve the academic performance and learning environment of identified schools and may include but not be limited to:
    - (a) A review and audit process to determine the appropriateness of a school's or district's classification and to recommend needed assistance;
    - (b) School and district improvement plans;
    - (c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;
    - (d) Education assistance from highly skilled certified staff; and
    - (e) Observation of school personnel.
  - (4) All students who drop out of school during a school year shall be included in a school's annual average school graduation rate calculation.
  - (5) After receiving the advice of the Education Assessment and Accountability Review Subcommittee, the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the *department's technical advisory committee* ~~[National Technical Advisory Panel on Assessment and Accountability]~~, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a three (3) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when one (1) or more schools in the district fail to exit comprehensive support and improvement status after three (3) consecutive years of implementing the turnaround intervention process described in KRS 160.346.
  - (6) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the *department's technical advisory committee* ~~[National Technical Advisory Panel on Assessment and Accountability]~~,

~~Panel on Assessment and Accountability~~, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a process whereby a school or school district shall be allowed to appeal any performance judgment made by the department under this section or KRS 160.346 of a principal, superintendent, school, or school district which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the three (3) year assessment period which are beyond the control of the appellant school or school district.

(7) *Advice and recommendations provided by the department's technical advisory committee shall be summarized and reported by the department by July 1 and December 1 of each year to the Office of Education Accountability. The report shall include:*

(a) *Advice and recommendations provided by panel members relating to:*

1. *Development and modification to the assessment and accountability system;*
2. *The development of administrative regulations governing the assessment and accountability system;*
3. *The setting of standards used in the assessment and accountability system; and*
4. *KRS 158.6453, 158.6455, 158.782, or 158.860; and*

(b) *Any documentation used by the panel in support of the panel's advice and recommendations.*

*Upon receipt of the report, the Office of Education Accountability shall forward the report to the Education Assessment and Accountability Review Subcommittee and the co-chairs of the Interim Joint Committee on Education.*

➔Section 2. KRS 156.160 is amended to read as follows:

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453 and distributed to local school districts and schools. The administrative regulations shall provide that:

1. If a school offers American sign language, the course shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;
2. If a school offers the Reserve Officers Training Corps program, the course shall be accepted as meeting the physical education requirement for high school graduation notwithstanding other provisions of law; and
3. Every public middle and high school's curriculum shall include instruction on the Holocaust and other cases of genocide, as defined by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, that a court of competent jurisdiction, whether a court in the United States or the International Court of Justice, has determined to have been committed by applying rigorous standards of due process;

(b) Courses of study or educational experiences available to students in all middle and high schools to fulfill the prerequisites for courses in advanced science and mathematics as defined in KRS 158.845;

(c) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(d) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. The minimum requirements shall not include achieving any postsecondary readiness indicator as described in KRS 158.6455 or any minimum score on a statewide

assessment administered under KRS 158.6453. Student scores from any assessment administered under KRS 158.6453 that are determined by the *department's technical advisory committee* ~~[National Technical Advisory Panel]~~ to be valid and reliable at the individual level shall be included on the student transcript. The *department's technical advisory committee* ~~[National Technical Advisory Panel]~~ shall submit its determination to the commissioner of education and the Legislative Research Commission;

- (e) The requirements for an alternative high school diploma for students with disabilities whose individualized education program indicates that, in accordance with 20 U.S.C. sec. 1414(d)(1)(A):
  - 1. The student cannot participate in the regular statewide assessment; and
  - 2. An appropriate alternate assessment has been selected for the student based upon a modified curriculum and an individualized course of study;
- (f) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;
- (g) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;
- (h) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his or her initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;
- (i) A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a three (3), four (4), five (5), or six (6) year-old child is enrolled in a public school, public preschool, or Head Start program;
- (j)
  - 1. Beginning with the 2010-2011 school year, a dental screening or examination by a dentist, dental hygienist, physician, registered nurse, advanced practice registered nurse, or physician assistant that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a dental screening or examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a five (5) or six (6) year-old child is enrolled in a public school.
  - 2. A child shall be referred to a licensed dentist if a dental screening or examination performed by anyone other than a licensed dentist identifies the possibility of dental disease;
- (k) The transportation of children to and from school;
- (l) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;
- (m) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;
- (n) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts;

- (o) The disposal of real and personal property owned by local boards of education; and
  - (p) The development and implementation of procedures, for all students who are homeless children and youths as defined in 42 U.S.C. sec. 11434a(2), to do the following:
    - 1. Awarding and accepting of credit, including partial credit, for all coursework satisfactorily completed by a student while enrolled at another school;
    - 2. Allowing a student who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;
    - 3. Awarding a diploma, at the student's request, by a district from which the student transferred, if the student transfers schools at any time after the completion of the student's second year of high school and the student is ineligible to graduate from the district to which the student transfers, but meets the graduation requirements of the district from which the student transferred; and
    - 4. Exempting the student from all coursework and other requirements imposed by the local board of education that are in addition to the minimum requirements for high school graduation established by the Kentucky Board of Education pursuant to paragraph (d) of this subsection in the district to which the student transfers, if the student transfers schools at any time after the completion of the student's second year of high school and the student is ineligible to graduate both from the district to which the student transfers and the district from which the student transferred.
- (2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include but are not limited to the following:
- 1. An alternative approach will achieve the same result required by the administrative regulation;
  - 2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
  - 3. There is a finding of good cause for the waiver.
- (b) The following shall not be subject to waiver:
- 1. Administrative regulations relating to health and safety;
  - 2. Administrative regulations relating to civil rights;
  - 3. Administrative regulations required by federal law; and
  - 4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.
- (c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.
- (3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.
- (4) Any public school that violates the provisions of KRS 158.854 shall be subject to a penalty to be assessed by the commissioner of education as follows:
- (a) The first violation shall result in a fine of no less than one (1) week's revenue from the sale of the competitive food;
  - (b) Subsequent violations shall result in a fine of no less than one (1) month's revenue from the sale of the competitive food;

- (c) "Habitual violations," which means five (5) or more violations within a six (6) month period, shall result in a six (6) month ban on competitive food sales for the violating school; and
- (d) Revenue collected as a result of the fines in this subsection shall be transferred to the food service fund of the local school district.

➔Section 3. KRS 158.6453 is amended to read as follows:

(1) As used in this section:

- (a) "Accelerated learning" means an organized way of helping students meet individual academic goals by providing direct instruction to eliminate student performance deficiencies or enable students to move more quickly through course requirements and pursue higher level skill development;
- (b) "Constructed-response items" or "performance-based items" means individual test items that require the student to create an answer rather than select a response and may include fill-in-the-blank, short-answer, extended-answer, open-response, and writing-on-demand formats;
- (c) "Criterion-referenced test" means a test that is aligned with defined academic content standards and measures an individual student's level of performance against the standards;
- (d) "End-of-course examination" means the same as defined in KRS 158.860;
- (e) "Formative assessment" means a process used by teachers and students during instruction to adjust ongoing teaching and learning to improve students' achievement of intended instructional outcomes. Formative assessments may include the use of commercial assessments, classroom observations, teacher-designed classroom tests and assessments, and other processes and assignments to gain information about individual student learning;
- (f) "Interim assessments" means assessments that are given periodically throughout the year to provide diagnostic information and to show individual student performance against content standards;
- (g) "Summative assessment" means an assessment given at the end of the school year, semester, or other period of time to evaluate students' performance against content standards within a unit of instruction or a course; and
- (h) "Writing" means a purposeful act of thinking and expression that uses language to explore ideas and communicate meaning to others. Writing is a complex, multifaceted act of communication.

(2) (a) Beginning in fiscal year 2017-2018, and every six (6) years thereafter, the Kentucky Department of Education shall implement a process for reviewing Kentucky's academic standards and the alignment of corresponding assessments for possible revision or replacement to ensure alignment with transition readiness standards necessary for global competitiveness and with state career and technical education standards.

(b) The revisions to the content standards shall:

- 1. Focus on critical knowledge, skills, and capacities needed for success in the global economy;
  - 2. Result in fewer but more in-depth standards to facilitate mastery learning;
  - 3. Communicate expectations more clearly and concisely to teachers, parents, students, and citizens;
  - 4. Be based on evidence-based research;
  - 5. Consider international benchmarks; and
  - 6. Ensure that the standards are aligned from elementary to high school to postsecondary education so that students can be successful at each education level.
- (c) 1. The department shall establish four (4) standards and assessments review committees, with each committee composed of a minimum of six (6) Kentucky public school teachers and a minimum of two (2) representatives from Kentucky institutions of higher education, including at least one (1) representative from a public institution of higher education. Each committee member shall teach in the subject area that his or her committee is assigned to review and have no prior or current affiliation with a curriculum or assessment resources vendor.

2. One (1) of the four (4) committees shall be assigned to focus on the review of language arts and writing academic standards and assessments, one (1) on the review of mathematics academic standards and assessments, one (1) on the review of science academic standards and assessments, and one (1) on the review of social studies academic standards and assessments.
- (d)
1. The department shall establish twelve (12) advisory panels to advise and assist each of the four (4) standards and assessments review committees.
  2. Three (3) advisory panels shall be assigned to each standards and assessments review committee. One (1) panel shall review the standards and assessments for kindergarten through grade five (5), one (1) shall review the standards and assessments for grades six (6) through eight (8), and one (1) shall review the standards and assessments for grades nine (9) through twelve (12).
  3. Each advisory panel shall be composed of at least one (1) representative from a Kentucky institution of higher education and a minimum of six (6) Kentucky public school teachers who teach in the grade level and subject reviewed by the advisory panel to which they are assigned and have no prior or current affiliation with a curriculum or assessment resources vendor.
- (e) The commissioner of education and the president of the Council on Postsecondary Education shall also provide consultants for the standards and assessments review committees and the advisory panels who are business and industry professionals actively engaged in career fields that depend on the various content areas.
- (f)
1. The standards and assessments process review committee is hereby established and shall be composed of the commissioner of education or designee as a nonvoting member and nine (9) voting representatives of public schools, of whom at least two (2) shall be parents of public school students, appointed by the Governor and confirmed by the Senate in accordance with KRS 11.160 as follows:
    - a. One (1) language arts teacher;
    - b. One (1) math teacher;
    - c. One (1) science teacher;
    - d. One (1) social studies teacher;
    - e. Two (2) school principals;
    - f. Two (2) school superintendents; and
    - g. One (1) school board member.
  2. On making appointments to the committee, the Governor shall ensure broad geographical urban and rural representation and representation of elementary, middle, and high school levels; ensure equal representation of the two (2) sexes, inasmuch as possible; and ensure that appointments reflect the minority racial composition of the Commonwealth.
  3. The review of the committee shall be limited to the procedural aspects of the review process undertaken prior to its consideration.
  4. Notwithstanding KRS 12.028, the committee shall not be subject to reorganization by the Governor.
- (g)
1. The review process implemented under this subsection shall be an open, transparent process that allows all Kentuckians an opportunity to participate. The department shall ensure the public's assistance in reviewing and suggesting changes to the standards and alignment adjustments to corresponding state assessments by establishing a Web site dedicated to collecting comments by the public and educators. An independent third party, which has no prior or current affiliation with a curriculum or assessment resources vendor, shall be selected by the department to collect and transmit the comments to the department for dissemination to the appropriate advisory panel for review and consideration.
  2. Each advisory panel shall review the standards and assessments for its assigned subject matter and grade level and the suggestions made by the public and educators. After completing its review, each advisory panel shall make recommendations for changes to the standards and

- alignment adjustments for assessments to the appropriate standards and assessments review committee.
3. Each standards and assessments review committee shall review the findings and make recommendations to revise or replace existing standards and to adjust alignment of assessments.
  4. The recommendations shall be published on the Web site established in this subsection for the purpose of gathering additional feedback from the public. The commissioner shall subsequently present the recommendations and the public feedback to the Interim Joint Committee on Education.
  5. The commissioner shall subsequently provide a report to the standards and assessments process review committee summarizing the process conducted under this subsection and the resulting recommendations. The report shall include but not be limited to the timeline of the review process, public feedback, and responses from the Interim Joint Committee on Education.
  6. After receiving the commissioner's report, the standards and assessments process review committee shall either concur that stakeholders have had adequate opportunity to provide input on standards and the corresponding alignment of state assessments or find the input process deficient. If the process is found deficient, the recommendations may be returned to the appropriate standards and assessments review committee for review as described in subparagraph 3. of this paragraph. If the process is found sufficient, the recommendations shall be forwarded without amendment to the Kentucky Board of Education.
- (h) The Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS Chapter 13A as may be needed for the administration of the review process, including staggering the timing and sequence of the review process by subject area and remuneration of the review committees and advisory panels described in paragraphs (c) and (d) of this subsection.
- (i)
1. The Kentucky Board of Education shall consider for approval the revisions to academic standards for a content area and the alignment of the corresponding state assessment once recommendations are received from the standards and assessments process review committee. Existing state academic standards shall remain in place until the board approves new standards.
  2. Any revision to, or replacement of, the academic standards and assessments as a result of the review process conducted under this subsection shall be implemented in Kentucky public schools no later than the second academic year following the review process. Existing academic standards shall be used until new standards are implemented.
  3. The Department of Education shall disseminate the academic content standards to the schools and teacher preparation programs.
- (j) The Department of Education shall provide or facilitate statewide training sessions for existing teachers and administrators on how to:
1. Integrate the revised content standards into classroom instruction;
  2. Better integrate performance assessment of students within their instructional practices; and
  3. Help all students use higher-order thinking and communication skills.
- (k) The Education Professional Standards Board in cooperation with the Kentucky Board of Education and the Council on Postsecondary Education shall coordinate information and training sessions for faculty and staff in all of the teacher preparation programs in the use of the revised academic content standards. The Education Professional Standards Board shall ensure that each teacher preparation program includes use of the academic standards in the pre-service education programs and that all teacher interns will have experience planning classroom instruction based on the revised standards.
- (l) The Council on Postsecondary Education in cooperation with the Kentucky Department of Education and the postsecondary education institutions in the state shall coordinate information sessions regarding the academic content standards for faculty who teach in the various content areas.
- (3) (a) The Kentucky Board of Education shall be responsible for creating and implementing a balanced statewide assessment program that measures the students', schools', and districts' achievement of the goals set forth in KRS 158.645 and 158.6451, to ensure compliance with the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor, and to ensure school accountability.

- (b) The board shall revise the annual statewide assessment program as needed in accordance with revised academic standards and corresponding assessment alignment adjustments approved by the board under subsection (2) of this section.
  - (c) The statewide assessments shall not include any academic standards not approved by the board under subsection (2) of this section.
  - (d) The board shall seek the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; the Education Assessment and Accountability Review Subcommittee, and the ~~department's technical advisory committee~~ ~~National Technical Advisory Panel on Assessment and Accountability~~ in the development of the assessment program. The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.
- (4) (a) The academic components of the statewide assessment program shall be composed of annual student summative tests, which may include a combination of multiple competency-based assessment and performance measures approved by the Kentucky Board of Education.
- (b) The annual student summative tests shall:
1. Measure individual student achievement in language, reading, English, mathematics, science, and social studies at designated grades;
  2. Provide teachers and parents a valid and reliable comprehensive analysis of skills mastered by individual students;
  3. Provide diagnostic information that identifies strengths and academic deficiencies of individual students in the content areas;
  4. Provide information to teachers that can enable them to improve instruction for current and future students;
  5. Provide longitudinal profiles for students; and
  6. Ensure school and district accountability for student achievement of the goals set forth in KRS 158.645 and 158.6451, except the statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.
- (5) The state student assessments shall include the following components:
- (a) Elementary and middle grades requirements are:
1. A criterion-referenced test each in mathematics and reading in grades three (3) through eight (8) that is valid and reliable for an individual student and that measures the depth and breadth of Kentucky's academic content standards;
  2. A criterion-referenced test each in science and social studies that is valid and reliable for an individual student as necessary to measure the depth and breadth of Kentucky's academic content standards to be administered one (1) time within the elementary and middle grades, respectively;
  3. An on-demand assessment of student writing to be administered one (1) time within the elementary grades and one (1) time within the middle grades; and
  4. An editing and mechanics test relating to writing, using multiple choice and constructed response items, to be administered one (1) time within the elementary and the middle grades, respectively;
- (b) High school requirements are:
1. A criterion-referenced test in mathematics, reading, and science that is valid and reliable for an individual student and that measures the depth and breadth of Kentucky's academic content standards to be administered one (1) time within the high school grades;
  2. A criterion-referenced test in social studies that is valid and reliable for an individual student as necessary to measure the depth and breadth of Kentucky's academic content standards to be administered one (1) time within the high school grades;
  3. An on-demand assessment of student writing to be administered one (1) time within the high school grades;



4. An editing and mechanics test relating to writing, using multiple choice and constructed response items, to be administered one (1) time within the high school grades; and
  5. A college admissions examination to assess English, reading, mathematics, and science in the spring of grade ten (10) and the spring of grade eleven (11);
- (c) The Kentucky Board of Education shall add any other component necessary to comply with the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor, as determined by the United States Department of Education;
  - (d) The criterion-referenced components required in this subsection shall be composed of constructed response items and multiple choice items;
  - (e) The Kentucky Board of Education may incorporate end-of-course examinations into the assessment program to be used in lieu of requirements for criterion-referenced tests required under paragraph (b) of this subsection; and
  - (f) The results of the assessment program developed under this subsection shall be used by schools and districts to determine appropriate instructional modifications for all students in order for students to make continuous progress, including that needed by advanced learners.
- (6) Each school district shall administer the statewide student assessment during the last fourteen (14) days of school in the district's instructional calendar. The Kentucky Board of Education may change the testing window to allow for innovative assessment systems or other online test administration and shall promulgate administrative regulations that minimize the number of days of testing and outline the procedures to be used during the testing process to ensure test security, including procedures for testing makeup days, and to comply with federal assessment requirements.
  - (7) A student enrolled in a district-operated or district-contracted alternative program shall participate in the appropriate assessments required by this section.
  - (8) A local school district may select and use commercial interim or formative assessments or develop and use its own formative assessments to provide data on how well its students are growing toward mastery of Kentucky academic standards, so long as the district's local school board develops a policy minimizing the reduction in instructional time related to the administration of the interim assessments. Nothing in this section precludes teachers from using ongoing teacher-developed formative processes.
  - (9) Each school that enrolls primary students shall use diagnostic assessments and prompts that measure readiness in reading and mathematics for its primary students as determined by the school to be developmentally appropriate. The schools may use commercial products, use products and procedures developed by the district, or develop their own diagnostic procedures. The results shall be used to inform the teachers and parents or guardians of each student's skill level.
  - (10) The state board shall ensure that a technically sound longitudinal comparison of the assessment results for the same students shall be made available.
  - (11) The following provisions shall apply to the college admissions examinations described in subsection (5)(b)5. of this section:
    - (a) The cost of both college admissions examinations administered to students in high school shall be paid for by the Kentucky Department of Education. The costs of additional college admissions examinations shall be the responsibility of the student;
    - (b) If funds are available, the Kentucky Department of Education shall provide a college admissions examination preparation program to all public high school juniors. The department may contract for necessary services; and
    - (c) Accommodations provided to a student with a disability taking the college admissions assessments under this subsection shall consist of:
      1. Accommodations provided in a manner allowed by the college admissions assessment provider when results in test scores are reportable to a postsecondary institution for admissions and placement purposes, except as provided in subparagraph 2. of this paragraph; or
      2. Accommodations provided in a manner allowed by a student's individualized education program as defined in KRS 158.281 for a student whose disability precludes valid assessment of his or her academic abilities using the accommodations provided under subparagraph 1. of this paragraph

when the student's scores are not reportable to a postsecondary institution for admissions and placement purposes.

- (12) Kentucky teachers shall have a significant role in providing feedback about the design of the assessments, except for the college admissions exams described in subsection (5)(b)5. of this section. The assessments shall be designed to:
- (a) Measure grade appropriate core academic content, basic skills, and higher-order thinking skills and their application;
  - (b) Provide valid and reliable scores for schools. If scores are reported for students individually, they shall be valid and reliable;
  - (c) Minimize the time spent by teachers and students on assessment; and
  - (d) Assess Kentucky academic standards only.
- (13) The results from assessment under subsections (3) and (5) of this section shall be reported to the school districts and schools no later than seventy-five (75) days following the last day the assessment can be administered. Assessment reports provided to the school districts and schools shall include an electronic copy of an operational subset of test items from each assessment administered to their students and the results for each of those test items by student and by school.
- (14) The Department of Education shall gather information to establish the validity of the assessment and accountability program. It shall develop a biennial plan for validation studies that shall include but not be limited to the consistency of student results across multiple measures, the congruence of school scores with documented improvements in instructional practice and the school learning environment, and the potential for all scores to yield fair, consistent, and accurate student performance level and school accountability decisions. Validation activities shall take place in a timely manner and shall include a review of the accuracy of scores assigned to students and schools, as well as of the testing materials. The plan shall be submitted to the Commission by July 1 of the first year of each biennium. A summary of the findings shall be submitted to the Legislative Research Commission by September 1 of the second year of the biennium.
- (15) The Department of Education and the state board shall offer optional assistance to local school districts and schools in developing and using continuous assessment strategies needed to assure student progress. The continuous assessment shall provide diagnostic information to improve instruction to meet the needs of individual students.
- (16) The Administration Code for Kentucky's Assessment Program shall include prohibitions of inappropriate test preparation activities by school district employees charged with test administration and oversight, including but not limited to the issue of teachers being required to do test practice in lieu of regular classroom instruction and test practice outside the normal work day. The code shall include disciplinary sanctions that may be taken toward a school or individuals.
- (17) The Kentucky Board of Education, after the Department of Education has received advice from the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the *department's technical advisory committee* [~~National Technical Advisory Panel on Assessment and Accountability~~], shall promulgate an administrative regulation under KRS Chapter 13A to establish the components of a reporting structure for assessments administered under this section. The reporting structure shall include the following components:
- (a) A school report card that clearly communicates with parents and the public about school performance. The school report card shall be sent to the parents of the students of the districts, and information on electronic access to a summary of the results for the district shall be published in the newspaper with the largest circulation in the county. It shall include but not be limited to the following components reported by race, gender, and disability when appropriate:
    1. Student academic achievement, including the results from each of the assessments administered under this section;
    2. For Advanced Placement, Cambridge Advanced International, and International Baccalaureate, the courses offered, the number of students enrolled, completing, and taking the examination for each course, and the percentage of examinees receiving a score of three (3) or better on AP examinations, a score of "e" or better on Cambridge Advanced International examinations, or a

- score of four (4) or better on IB examinations. The data shall be disaggregated by gender, race, students with disabilities, and economic status;
3. Nonacademic achievement, including the school's attendance, retention, graduation rates, and student transition to postsecondary;
  4. School learning environment, including measures of parental involvement; and
  5. Any other school performance data required by the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor;
- (b) An individual student report to parents for each student in grades three (3) through eight (8) summarizing the student's skills in reading, science, social studies, and mathematics. The school's staff shall develop a plan for accelerated learning for any student with identified deficiencies or strengths; and
- (c) A student's highest scores on the college admissions assessments administered under subsection (5)(b)5. of this section.
- (18) (a) Beginning in fiscal year 2017-2018, and every six (6) years thereafter, the Kentucky Department of Education shall implement a comprehensive process for reviewing and revising the academic standards in visual and performing arts and practical living skills and career studies for all levels and in foreign language for middle and high schools. The department shall develop review committees for the standards for each of the content areas that include representation from certified specialist public school teachers and postsecondary teachers in those subject areas.
- (b) The academic standards in practical living skills for elementary, middle, and high school levels shall include a focus on drug abuse prevention, with an emphasis on the prescription drug epidemic and the connection between prescription opioid abuse and addiction to other drugs, such as heroin and synthetic drugs.
- (c) The department shall provide to all schools guidelines for programs that incorporate the adopted academic standards in visual and performing arts and practical living and career studies. The department shall provide to middle and high schools guidelines for including a foreign language program. The guidelines shall address program length and time, courses offered, staffing, resources, and facilities.
- (d) The Kentucky Department of Education, in consultation with certified public school teachers of visual and performing arts, may develop program standards for the visual and performing arts.
- (19) The Kentucky Department of Education shall provide to all schools guidelines for including an effective writing program within the curriculum. Each school-based decision making council or, if there is no school council, a committee appointed by the principal, shall adopt policies that determine the writing program for its school and submit it to the Department of Education for review and comment. The writing program shall incorporate a variety of language resources, technological tools, and multiple opportunities for students to develop complex communication skills for a variety of purposes.
- (20) (a) The Kentucky Department of Education, in consultation with the review committees described in subsection (18) of this section, shall develop a school profile report to be used by all schools to document how they will address the adopted academic standards in their implementation of the programs as described in subsection (18) of this section, which may include student opportunities and experiences in extracurricular activities. The department shall include the essential workplace ethics program on the school profile report.
- (b) By October 1 of each year, each school principal shall complete the school profile report, which shall be signed by the members of the school council, or the principal if no school council exists, and the superintendent. The report shall be electronically transmitted to the Kentucky Department of Education, and the original shall be maintained on file at the local board office and made available to the public upon request. The department shall include a link to each school's profile report on its Web site.
- (c) If a school staff member, student, or a student's parent has concerns regarding deficiencies in a school's implementation of the programs described in subsection (18) of this section, he or she may submit a written inquiry to the school council.

➔Section 4. KRS 164A.055 is amended to read as follows:

- (1) As used in this section:
- (a) "Board" means the board of directors of the  ~~Kentucky Higher Education Student Loan Corporation acting in the capacity of the board of~~ Asset Resolution Corporation; and
  - (b) "Corporation" means the Asset Resolution Corporation created in this section.
- (2) There is hereby created *and established* an *independent de jure municipal corporation and political subdivision* ~~instrumentality~~ of the Commonwealth to be known as Asset Resolution Corporation for the purpose of promoting higher educational opportunities for the citizens of the Commonwealth by providing debt resolution services for student loan obligations ~~held by the United States Department of Education or other third-party entities~~ and any other *student service- or education-*related activity to the extent such activity is not limited or prohibited by statute or other governing authority.
- (3) The corporation shall be attached to the Kentucky Higher Education Student Loan Corporation for administrative and reporting purposes and shall be governed, managed, and administered as a separate and distinct instrumentality of the Commonwealth in accordance with this section.
- (4) The Kentucky Higher Education Student Loan Corporation and its facilities shall be used and employed in the administration of the corporation, including but not limited to the keeping of records and the employment of staff to assist in the performance of the designated activities of the corporation.
- (5) The board shall have the power and authority to:
- (a) Sue and be sued;
  - (b) Promulgate administrative regulations and adopt procedures to implement this section;
  - (c) Make and enter into contracts necessary for the administration of the corporation;
  - (d) Adopt a corporate seal and change and amend it from time to time;
  - (e) Make, execute, and effectuate any and all agreements or other documents with the United States Department of Education, this Commonwealth, any federal or state agency, or any person, corporation, association, partnership, or other organization or entity and perform other acts necessary or appropriate for the effectuation of its rights and duties pursuant to this section;
  - (f) Delegate to the Kentucky Higher Education Student Loan Corporation general supervision and direction over the administrative function of the corporation and its employees in carrying out the policies, programs, administrative regulations, and directives of the board;
  - (g) Carry out the duties and obligations of the corporation pursuant to this section, and to have any and all other powers as may be reasonably necessary for the effectuation of the purposes of the corporation; ~~and~~
  - (h) Adopt bylaws for the conduct of its business, including the designation of directors, and prescribe rules, regulations, and policies in connection with the performance of its functions and duties; ~~and~~
  - (i) *Employ consultants, attorneys, counselors, and such employees as may be required in the judgment of the corporation and to fix and pay their compensation and benefits;*
  - (j) *Provide any service to schools or students related to student education loans, including but not limited to the areas of financial awareness, counseling, default aversion or prevention, servicing, and collecting; and*
  - (k) *Provide support services for postsecondary education and workforce development training and programs to students, families, schools, and training centers.*
- (6) Board members, except officers or employees of the state, shall receive compensation for their services in the amount of one hundred dollars (\$100) per day for attendance at each board meeting and shall be entitled to payment of any reasonable and necessary expenses actually incurred in discharging their duties under this section.

➔Section 5. The following KRS section is repealed:

158.6454 National Technical Advisory Panel on Assessment and Accountability.

Signed by Governor March 23, 2021.

## CHAPTER 80

## ( HB 303 )

AN ACT relating to underground facility protection.

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

➔Section 1. KRS 367.4903 is amended to read as follows:

As used in KRS 367.4903 to 367.4917:

- (1) "Underground facility" means an underground line or system used for producing, storing, conveying, transmitting, or distributing telecommunications, electricity, gas, petroleum, petroleum products, cable television, hazardous liquids, water, steam, or sewerage, including storm drainage;
- (2) "Damage" means weakening of structural or lateral support or penetration of a facility coating, housing, or other protective device. It also means the partial or complete dislocation or severance of underground facilities or rendering any underground facility permanently inaccessible by the placement of a permanent structure having one (1) or more stories;
- (3) "Demolition" means any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of mechanized equipment, or discharge of explosives;
- (4) "Excavator" means any entity or individual, other than those exempted by KRS 367.4915, engaged in excavation, demolition, or timber harvesting using mechanized equipment;
- (5) "Operator" means any entity or individual owning or operating underground facilities to serve the public, **but does not include any entity or individual owning or operating underground storage tanks that are subject to Subchapter 60 of KRS Chapter 224**;
- (6) "Excavation" means any activity that results in the movement, placement, probing, boring, or removal of earth, rock, or other material in or on the ground by the use of any tools or equipment, by the discharge of explosives, or by the harvesting of timber using mechanized equipment. Forms of excavating include but are not limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling, pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by use of hand tools to a depth of six (6) inches or less below existing grade shall not constitute excavation;
- (7) "Emergency" means there exists substantial likelihood that loss of life or property, the inability to restore interrupted utility service, an imminent danger to health or the environment, or the blockage of public transportation facilities will result before procedures required under KRS 367.4909 to 367.4913 can be completed;
- (8) "Protection notification center" means an operator-provided notification center through which an excavator can contact the operator to enable the operator to provide the excavator with the approximate location of underground facilities;
- (9) "Kentucky Contact Center" means Kentucky Underground Protection, Inc., organized as a nonprofit corporation and a multimember protection notification center providing a single telephone contact number and designated by the Kentucky Public Service Commission to be the sole recipient of 811 dialed calls through which an excavator may contact all Kentucky Contact Center members and all affected **member** operators may receive information to enable them to provide the excavator with the approximate location of underground facilities;
- (10) "Routine road maintenance" means preservation, including road repairs and resurfacing, and the replacement of signs, posts, and guardrails at the exact same location when no additional penetration of existing grade is necessary, but does not include road construction, installation of signs, posts, and guardrails, or any activity that requires penetration of existing grade;
- (11) "Approximate location," when referring to an underground facility, means:
  - (a) For underground metallic facilities and underground nonmetallic facilities with metallic tracer wire, a distance not to exceed the combined width of the underground facility plus **twenty-four (24)** ~~eighteen (18)~~ inches measured from the outer edge of each side of the underground facility; or

- (b) For *unmapped or untenable facilities* ~~[nonmetallic facilities without metallic tracer wire]~~, the underground facility shall be located as accurately as possible from field location records and shall require notification from the operator of the inability to accurately locate the facility;
- (12) "Working day" means *every day, except Saturday, Sunday, and holidays established by federal or state statute. For purposes of measuring any period of time prescribed or allowed under the Underground Facility Damage Prevention Act of 1994, a working day shall commence at 12:01 a.m. eastern time and end at 12 midnight eastern time excluding the day the locate request was made* ~~[a twenty-four (24) hour period commencing from the time of receipt of the notification by the Kentucky Contact Center except Saturday, Sunday, and holidays established by federal or state statute];~~
- (13) "Nonintrusive excavating" means excavation using hand tools or equipment that uses air or water pressure as the direct means to break up soil for removal by hand tools or vacuum excavation;
- (14) "Mechanized equipment" means mechanical power equipment, including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, skidders, and yarders;
- (15) "Normal excavation locate request" means a notification made to a protection notification center where a request for locating utility facilities is processed;
- (16) "Emergency locate request" means a notification made to a protection notification center by an excavator to alert facility owners or operators of the need to begin immediate excavation in response to an emergency;
- (17) "Design information request" means a notification made to a protection notification center by a person providing professional services and making a request in preparation for bidding, preconstruction engineering, or other advance planning efforts. A design information request may not be used for excavation purposes;
- (18) "Large project *request*" means an area of excavation occurring on or after July 1, 2016, measuring more than two thousand (2,000) feet in length. Multiple excavation notifications in an area may be considered together in determining if the excavations are part of a large project; ~~[and]~~
- (19) "Commission" means the Kentucky Public Service Commission;
- (20) "*Person*" means an individual, an entity, a foreign entity, or other legal or commercial entity;
- (21) "*Positive response*" means an automated or written communication system provided by each protection notification center for all locate requests the center receives pursuant to Section 2 of this Act that allows excavators, locators, operators, and other interested parties to determine the status of locating an underground facility and requires response and verification by operators and excavators to comply with their respective requirements of the Underground Facility Damage Prevention Act of 1994;
- (22) "*Unique identification number*" or "*locate request number*" means a unique number that any protection notification center or operator pursuant to Section 4 of this Act has assigned to a locate request for excavation;
- (23) "*Locator*" means any entity or individual that locates lines or facilities for an operator;
- (24) "*Second notice*" means a notice that is made by an excavator to a notification center when an operator has failed to comply with the positive response requirements under subsection (5) of Section 2 of this Act;
- (25) "*Tolerance zone*" means a strip of land at least four (4) feet wide but not wider than the width of the underground facility plus two (2) feet on either side of the outer limits of the facility;
- (26) "*Untenable facility*" means an underground facility that cannot be located from the surface using locating methods which meet industry standards and that requires additional efforts and extended time;
- (27) "*Work site contact*" means an individual that will be present at the excavation site when the excavation will occur; and
- (28) "*Fiber-to-the-premises*" means a service that provides network connectivity between a location and a subscriber using fiber.

➔Section 2. KRS 367.4909 is amended to read as follows:

- (1) Each operator shall provide protection notification center access to excavators.
- (2) Voluntary operator membership in the Kentucky Contact Center shall satisfy the requirement of subsection (1) of this section.

- (3) Each operator member of the Kentucky Contact Center shall provide and update as needed to the Kentucky Contact Center the general location of its underground facilities, the operator identity and business address, and emergency notification telephone numbers.
- (4) Each operator shall report to the commission excavation damage to an underground facility used in the transportation of gas or hazardous liquid within thirty (30) calendar days of being informed of the damage. Each report of excavation damage shall be made by electronic mail or as otherwise prescribed by the commission.
- (5) An operator shall respond to facility locate requests **and provide a positive response** as follows:
- (a) To a normal excavation locate request, within two (2) working days after receiving notification from an excavator **or any time prior to the scheduled excavation start date if agreed upon as provided in subsection (7) of Section 5 of this Act, excluding large project requests, design information requests, emergency locate requests, and unmapped or untonable facilities** ~~excluding large projects~~;
  - (b) To an emergency locate request, as quickly as possible but not to exceed forty-eight (48) hours after receiving notification from an excavator;
  - (c) To a design information request, within ten (10) working days after receiving notification from the person making the request; ~~and~~
  - (d) To a large project request, **within two (2) working days the operator shall notify the excavator that an excavation area has been determined to be a large project, and the operator shall respond to the request** within five (5) working days from the later of receiving notification from an excavator or **prior to the scheduled excavation start date for that location if agreed upon as provided in subsection (7) of Section 5 of this Act**;
  - (e) **To an unmapped or untonable facility request, within two (2) working days the operator shall notify the excavator that an excavation area has been determined to be an unmapped or untonable project, and the operator shall respond to the request within five (5) working days for a normal locate request or eight (8) working days for a large project request from the later of receiving notification from an excavator or prior to the scheduled excavation start date if agreed upon as provided in subsection (7) of Section 5 of this Act; and**
  - (f) **To a fiber-to-the-premises broadband deployment excavation request, in locations not already served by fiber-to-the-premises, within four (4) working days.**
- (6) **Within one (1) working day after receiving a second notice request from an excavator pursuant to subsection (12) of Section 3 of this Act, an operator shall locate its facility and update the positive response system.**
- (7) An operator shall, ~~after~~ ~~upon~~ receiving an emergency locate request, ~~or~~ a normal excavation locate request, **an unmapped or untonable locate request, or a large project request as provided in subsection (5) of this section**:
- (a) Inform the excavator of the approximate location and description of any of the operator's **underground** facilities that may be damaged or pose a safety concern because of excavation or demolition;
  - (b) ~~Inform the excavator of any other information that would assist in locating and avoiding contact with or damage to underground facilities;~~
  - ~~(c)~~ ~~Unless permanent facility markers are provided, provide temporary markings to inform the excavator of the ownership and approximate location of the underground facility; and~~
  - ~~(c)~~ ~~(d)~~ **Provide a positive response to the requesting party** ~~Notify the requesting party if underground facilities are not in conflict with the excavation or demolition~~.
- ~~(8)~~ ~~(7)~~ Upon receiving a design information request, an operator shall contact the person making the request within the time period specified in subsection (5) of this section. The operator shall:
- (a) Designate with temporary underground facility markers the location of all underground facilities owned by the operator within the area of the design information request as defined in KRS 367.4903;
  - (b) Provide to the person making the design information request a description of all underground facilities owned by the operator in the area of the design information request and the location of the facilities,

which may include drawings marked with a scale, dimensions, and reference points for underground utilities already built in the area or other facility records that are maintained by the operator; or

- (c) Allow the person making the design information request or an authorized person to inspect the drawings or other records for all underground facilities with the proposed area of excavation at a location that is acceptable to the operator.
- ~~(9)(8)~~ An operator may reject a design information request ***and not be held in violation of subsection (6) of this section*** based upon security considerations or if producing the information will place the operator at a competitive disadvantage, pending the operator obtaining additional information confirming the legitimacy of the notice. The operator shall notify the person making the design information request and may request additional information.
- ~~(10)(9)~~ Temporary underground facility markers shall consist of paint, chalk, flags, stakes, or any combination thereof and shall conform to the following standards of the American Public Works Association uniform color code:
- |  |                                   |
|--|-----------------------------------|
| (a) Electric power distribution and transmission             | Safety Red                        |
| (b) Municipal electric systems                               | Safety Red                        |
| (c) Gas distribution and transmission                        | High visibility safety yellow     |
| (d) Oil distribution and transmission                        | High visibility safety yellow     |
| (e) Dangerous materials, product lines                       | High visibility safety yellow     |
| (f) Telecommunication systems and cable television           | Safety alert orange               |
| (g) Temporary survey markings                                | Safety pink                       |
| (h) Police and fire communications                           | Safety alert orange               |
| (i) Water systems  | Safety precaution blue            |
| (j) Sewer and storm drainage systems                         | Safety green                      |
| (k) Proposed excavation or construction boundaries           | White                             |
| (l) Reclaimed water, slurry, and irrigation facilities       | Purple                            |
| <b><i>(m) Fiber optic and critical telecommunication</i></b> | <b><i>Safety alert orange</i></b> |
- ~~(11)(10)~~ If extraordinary circumstances exist, an operator shall notify the excavator of the operator's inability to comply with this section. ***Notification under this subsection shall temporarily relieve the operator of complying with subsections (5) and (6) of this section until the operator can recover from the extraordinary circumstances.*** Extraordinary circumstances include ***weather that makes it impossible for any combination of facility markers identified in subsection (10) of this section to be used,*** extreme weather conditions, force majeure, disasters, or civil unrest that make timely response difficult or impossible.
- ~~(12)(11)~~ All underground facilities installed after January 1, 2013, shall include a means to accurately identify and locate the underground facilities from the surface. This subsection does not apply to the repair of existing facilities.

➔Section 3. KRS 367.4911 is amended to read as follows:

- (1) (a) Each excavator, or person responsible for an excavation, planning excavation, or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, ***unless a future start date is agreed upon as provided in subsection (7) of Section 5 of this Act,*** notify each affected ***operator's designated protection notification center***~~operator~~ of the excavator's intended work and work schedule~~[-Contacting the applicable protection notification centers shall satisfy this requirement].~~
- (b) ~~[An excavator may commence work before -]The two (2) full working days provided for in paragraph (a) of this subsection have elapsed if all affected operators have notified the person~~~~[-that the location of all the affected operators' facilities have been marked or that they have no facilities in the area of the proposed excavation, demolition, or timber harvesting].~~
- (2) Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.



- (3) Each excavator shall provide each applicable protection notification center with adequate information regarding:
- (a) *Name and phone number of the excavator or person requesting the underground facility locate;*
  - (b) *Approximate location and type of work being performed by the excavator, including if the request involves a fiber-to-the-premises broadband deployment excavation;*
  - (c) *Name and phone number of work site contact;*
  - (d) *Estimated start date and start time of excavation; and* ~~[The name of the individual making the notification;~~
  - ~~(b) The excavator's name, address, and a telephone number;~~
  - ~~(e)~~(e) *The excavation or demolition site location or locations, each of which shall not exceed **five thousand (5,000)** ~~two thousand (2,000)~~ feet in length unless the excavator and operator agree to a larger area, the city or community, county and street address, including the nearest cross street;*
  - ~~(d) The type and extent of excavation or demolition to be performed;~~
  - ~~(e) A contact name and telephone number of the person responsible for the work to be performed].~~
- (4) If more than one (1) excavator will operate at the same site, each excavator shall notify the protection notification centers individually. Notification by an excavator will serve as notification for any of that excavator's employees. Failure by an excavator to notify the protection notification center does not relieve individual employees of responsibility.
- (5) The excavator shall inform and provide to excavation or demolition site employees:
- (a) The underground facility location provided by each operator;
  - (b) Any related safety information provided by each operator; and
  - (c) The locate request identification number assigned by each protection notification center.
- (6) The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.
- (7) If, after the *response time* ~~two (2) day period~~ provided by KRS 367.4909(5) ~~(a)~~, the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify ~~at the~~ protection notification center. ***When an excavator has complied with subsection (1) of this section and evidence of an unmarked underground facility is uncovered, the operator shall have six (6) business hours to identify the underground facility.***
- (8) The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition continues or if:
- (a) The markings of any underground facility have been removed or are no longer visible; or
  - (b) The excavator has changed the work plan or location previously filed.
- (9) (a) Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage shall cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage.
- (b) If the underground facility damage causes concern for public or workplace safety, the excavator shall notify appropriate public safety agencies of the location and nature of the safety concern.
  - (c) If the underground facility damage results in the escape of any flammable, toxic, or corrosive gas or liquid, the excavator shall cease excavation or demolition activities and immediately report to the appropriate authorities by calling the 911 emergency telephone number.
- (10) When excavation or demolition is necessary within the *tolerance zone* ~~[approximate location of the underground facility]~~, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility, ***except that mechanized equipment may be used:***
- (a) ***To remove the pavement or other manmade hard surface if used during the initial penetration only to the depth necessary and if an individual other than the equipment operator visually monitors the excavation activity;***

- (b) *To remove indigenous rock if used during the initial penetration only to the extent necessary, if an individual other than the equipment operator visually monitors the excavation activity, and if the excavation is planned to avoid damage to the underground facility. However, if the underground facility contains flammable, toxic, corrosive, or hazardous products, the excavator shall notify the facility owner of the excavator's intent prior to removing indigenous rock;*
  - (c) *To remove materials that are more than twelve (12) inches in any direction from the outer edge of the located facility if the excavator visually identifies the precise location of the underground facility or visually confirms that no facility is present within the depth of the excavation, if an individual other than the equipment operator visually monitors the excavation activity, and if the excavation is planned to avoid damage to the underground facility; and*
  - (d) *To place shores into an existing excavation or remove shores from an existing excavation.*
- (11) Upon request by an operator or when the proposed excavation location cannot be accurately identified, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in *subsection (10)(k) of Section 2 of this Act* ~~KRS 367.4909(9)(k)~~. After marking the boundaries, the excavator shall contact the protection notification center or centers. The requirements of *subsections (5) to (11) of Section 2 of this Act* ~~KRS 367.4909(5) to (10)~~ are reestablished upon the operator receiving notification of this marking from the protection notification center or centers. This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.
- (12) *If an operator has failed to give a positive response within the timeframes provided in subsection (5) of Section 2 of this Act, the excavator shall submit a second notice to the protection notification center. If one (1) working day after receiving a second notice request as provided in subsection (6) of Section 2 of this Act, the operator has still failed to give a positive response, an excavator that has fully complied with this section shall not be deemed liable for any damages to an underground facility that would have been located if the operator had complied with the operator's duties under Section 2 of this Act, except for damages to a person or an underground facility due to negligence or intentional misconduct of an excavator. This subsection shall not apply to any underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq.*

➔Section 4. KRS 367.4913 is amended to read as follows:

- (1) ~~All~~~~Each~~ protection notification ~~centers~~~~center~~ shall:
- (a) *Provide locate request services during working days and provide an emergency contact number for incidents occurring outside the working day* ~~Operate the protection notification center during all working days~~;
  - (b) *Provide a positive response system for excavators, locators, operators, and other interested parties to determine the status of locating an underground facility;*
  - (c) *Provide any excavation request with an identification number and the names of the facility owners or operators who will be notified for each locate request* ~~Provide a locate request identification number to the excavator for each excavation or demolition location request~~;
  - ~~(d)~~~~(e)~~ Promptly after receiving an excavation or demolition work notification from an excavator, provide to each of its affected operator members the excavator information required by KRS 367.4911(3);
  - ~~(e)~~~~(d)~~ Maintain a list of all its operator ~~members~~~~member's identities~~, *their* business ~~addresses~~~~address~~ and *their* business and emergency telephone numbers and *provide* ~~record~~ this information in accordance with KRS 64.012 with the county clerk of each county where the operator member has underground facilities. The county clerk shall provide this information upon request for the actual cost of providing a copy, to be paid by the requesting party to the county clerk. The county clerk shall assume no liability associated with the receipt of this information from the protection notification center or for subsequent provision of this same information to the requesting party;
  - ~~(f)~~~~(e)~~ Make the operator members information list available to any person for inspection at its place of business without charge or provide a copy of the list to any person for any county upon request for a fee not to exceed the actual cost of providing a copy;
  - ~~(g)~~~~(f)~~ Define and adopt policies and procedures for processing design information requests; ~~and~~

- (h)~~(g)~~ Provide the person making a design information request a list of identified operators that will receive notification and notify those operators;
- (i) **Maintain the following information provided by excavators for all requests to locate facilities for at least five (5) years from the date of the request:**
1. **Name and phone number of the excavator or person requesting the underground facility locate;**
  2. **Location and type of work being performed by the excavator;**
  3. **Name and phone number of work site contact;**
  4. **Name, address, and phone number of underground facility operators; and**
  5. **Estimated start date and start time of excavation;**
- (j) **Provide contact information for the protection notification center on its Web site or pursuant to paragraph (e) of this subsection; and**
- (k) **Provide public awareness education and damage prevention programs in the manner and amount determined by each protection notification center.**
- (2) The Kentucky Contact Center shall be governed by a board of directors ~~composed of representatives of member operators~~ who are elected by the membership. Board seats **shall be composed of no more than twenty-one (21) voting members and six (6) nonvoting members** and may be filled by representatives of the following:
- (a) A natural gas provider;
  - (b) An electric provider;
  - (c) A telecommunications provider;
  - (d) A water/sewer provider;
  - (e) An interstate pipeline operator;
  - (f) A municipal utility operator;~~and~~
  - (g) **A commercial excavator;**
  - (h) **An oil and gas operator; and**
  - (j) **At least one (1) but not more than six (6) advisory, nonvoting members representing the following:**
    1. **Public Service Commission;**
    2. **Kentucky Transportation Cabinet;**
    3. **Home Builders Association of Kentucky;**
    4. **National Electrical Contractors Association;**
    5. **Associated General Contractors of Kentucky; or**
    6. **Kentucky Association of Master Contractors**~~[An advisory, nonvoting representative of one (1) of the following:~~
      1. ~~Home Builders Association of Kentucky;~~
      2. ~~National Electrical Contractors Association;~~
      3. ~~Associated General Contractors of Kentucky; or~~
      4. ~~Kentucky Association of Plumbing, Heating Cooling Contractors].~~
- (3) **Nonvoting members shall be elected by a majority of the voting members and shall serve for one (1) year terms which expire on December 31. Nonvoting members are eligible for reappointment by a majority of the voting members.**
- (4) The Kentucky Contact Center's board of directors shall establish the method to calculate the cost of service provided by the center.

(5)(4) The Kentucky Contact Center shall serve all Kentucky counties.

➔Section 5. KRS 367.4917 is amended to read as follows:

- (1) An excavator who fails to comply with any provision of KRS 367.4911, or an operator who fails to comply with any provision of KRS 367.4909~~[, shall be guilty of endangering underground facilities and]~~ may be subject to a **civil penalty**~~[fine]~~ of two hundred~~[ and]~~ fifty dollars (\$250) for the first **violation**~~[offense]~~, no more than one thousand dollars (\$1,000) for the second **violation**~~[offense within one (1) year]~~, and no more than three thousand dollars (\$3,000) for the third and any subsequent **violation**. ***A violation shall be considered a first violation under this subsection if more than three hundred sixty-five (365) days have elapsed since the last incident attributable to a person in violation of Section 2 or Section 3 of this Act. If a person commits a violation in the course and scope of employment, the penalties shall be imposed on the employer***~~[offense]~~.
- (2) A protection notification center that fails to comply with any provision of KRS 367.4913 shall be subject to a **civil penalty**~~[fine]~~ of one thousand dollars (\$1,000) for each **violation**~~[offense]~~.
- (3) A person that knowingly provides false notice to a utility notification center of an emergency as defined in KRS 367.4903 shall be subject to a **civil penalty**~~[fine]~~ of one thousand dollars (\$1,000) for each **violation**~~[offense]~~.
- (4) Any person who violates any provision of the Underground Facility Damage Prevention Act of 1994, KRS 367.4901 to 367.4917, that involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material shall be subject to a **civil penalty, in addition to the civil penalty in subsection (1) of this section**,~~[fine]~~ not to exceed one thousand dollars (\$1,000) for each **violation**~~[offense]~~. The penalties of this subsection are not in conflict with and are in addition to civil damages for personal injury or property damage.
- (5)
  - (a) Except as provided in subsection (6) of this section, all **civil penalties**~~[fines]~~ recovered for a violation of this section shall be paid to the general fund of the state, county, city, or fire protection agency which issued the citation.
  - (b) In the event that more than one (1) government agency was involved, the court shall direct an apportionment of the **civil penalties**~~[fines]~~.
  - (c) Failure to comply with the provisions of the Underground Facility Damage Prevention Act of 1994, KRS 367.4901 to 367.4917, may be determined at the conclusion of an investigation and shall be based on evidence available to state, county, or city officials, law enforcement, or fire protection agencies which issue the citation.
- (6) The commission shall have statewide authority to enforce and assess civil penalties provided for in this section and to seek injunctive relief for any violation that results in damage to an underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. Once the commission initiates an investigation or undertakes an enforcement action against a person for an alleged violation, no other state, county, city, or fire protection agency shall initiate or continue any enforcement action against the person for the same alleged violation. Any action to recover penalties assessed pursuant to this subsection shall be brought in the Franklin Circuit Court. All penalties recovered by the commission shall be paid into the State Treasury and credited to the account of the commission.
- (7) ***The commission shall make available on its Web site a written agreement form for an operator and an excavator to agree to a date or series of dates by which time the locate request must be completed if different from those dates established in Section 2 of this Act. The form shall contain but is not limited to the parties' names, the locate request number, the date requested, and the location. The parties shall make the executed agreement form available upon request of the commission.***
- (8) The commission may promulgate administrative regulations in accordance with KRS Chapter 13A to enforce the Underground Facility Damage Prevention Act of 1994. The commission shall exercise its authority under the Underground Facility Damage Prevention Act of 1994 in accordance with the rules and procedures set forth in KRS Chapter 278 and all applicable administrative regulations promulgated by the commission.

➔Section 6. This Act takes effect January 1, 2022.

**Signed by Governor March 23, 2021.**

## CHAPTER 81

## ( HB 421 )

AN ACT relating to reorganization.

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

➔Section 1. KRS 42.0147 is amended to read as follows:

~~{(1)—}The Office of the Inspector General is established within the Office of the Secretary of the Finance and Administration Cabinet and shall be responsible for conducting various investigations within the executive branch in accordance with KRS 45.131.~~

~~{(2)—The Division of Special Investigations is established within the Office of the Inspector General and shall be headed by a director appointed by the secretary pursuant to KRS 12.050, who shall report to the executive director of the office. The division shall investigate alleged violations of the tax laws and recommend criminal prosecution of the laws when warranted.}~~

➔Section 2. KRS 42.0171 is amended to read as follows:

- (1) The Office of Administrative Services established in KRS 42.0145 shall be generally responsible for all internal administrative and human resource functions of the cabinet, including but not limited to providing administrative assistance; managing and preparing the cabinet's budget; performing general accounting; managing fiscal, personnel, and payroll functions of the cabinet; providing statewide postal and printing services; providing administrative support to boards and commissions; and performing any additional administrative functions and duties the secretary may assign.
- (2) There shall be established in the Office of Administrative Services :
  - (a) **The *Office of Budget and Fiscal Management, headed by an executive director who shall report directly to the executive director of the Office of Administrative Services, and consisting of the:***
    1. ***Division of Budget; and***
    2. ***Division of Fiscal Management; and***~~{Division of Budget and Planning, the Division of Human Resources, the Division of Administrative Support Services, the Division of Postal Services, and the Division of Fleet Management, each of which shall be headed by a division director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor, and who shall be responsible to the executive director of the Office of Administrative Services. There may be, if needed, sections assigned to specific areas of work, responsible directly to the executive director of the Office of Administrative Services.}~~
  - (b) ***The following divisions which shall be headed by a division director who shall report to the executive director of the Office of Administrative Services:***
    1. ***Division of Human Resources;***
    2. ***Division of Postal Services; and***
    3. ***Division of Fleet Management.***
- (3) ***Executive directors and division directors appointed under this section shall be appointed by the secretary with the approval of the Governor under KRS 12.050. Each division shall be headed by a division director appointed by the secretary of the Finance and Administration Cabinet. There may be, if needed, sections assigned to specific areas of work, responsible directly to the executive director of the Office of Administrative Services.***

➔Section 3. KRS 42.724 is amended to read as follows:

- (1) There is hereby created within the Finance and Administration Cabinet an agency of state government known as the Commonwealth Office of Technology.
- (2) The Commonwealth Office of Technology shall be headed by an executive director, also known as the chief information officer, appointed by the secretary of the Finance and Administration Cabinet and approved by the

Governor. Duties and functions of the executive director shall include serving on the Governor's Executive Cabinet and those established in KRS 42.730.

- (3) The Commonwealth Office of Technology shall consist of the following ~~five (5)~~ offices, each headed by an executive director and organized into divisions headed by a division director:
- (a) ~~Office of Project Management;~~
  - (b) Office of **Infrastructure Services**~~[IT Services and Delivery]~~, consisting of the:
    1. Division of Network Services; *and*
    2. Division of Platform Services;~~and~~
    - ~~3. Division of Field Services;~~
  - (b)(c) Office of ~~IT~~ Architecture and Governance, consisting of the:
    1. Division of Enterprise **Solutions**~~[Portfolios]~~;
    2. Division of **Mainframe Services**~~[Applications]~~;
    3. Division of **Geographic Information Systems**~~[Support Services]~~; and
    4. Division of **Governance and Strategy**~~[Enterprise Governance]~~;
  - (c)(d) Office of the Chief Information Security Officer. The office shall ensure the efficiency and effectiveness of information technology security functions and responsibilities; and
  - (d)(e) **Office of Client Support Services, consisting of the:**
    1. **Division of Field Services; and**
    2. **Division of Support Services**~~[Office of KY Business One Stop]~~.

- (4) Executive directors and division directors appointed under this section shall be appointed by the secretary with the approval of the Governor.

➔Section 4. KRS 42.650 is amended to read as follows:

- (1) The Division of **Geographic Information Systems**~~[Enterprise Portfolios]~~ is hereby established in the Office of ~~IT~~ Architecture and Governance within the Commonwealth Office of Technology in the Finance and Administration Cabinet.
- (2) The Division of **Geographic Information Systems**~~[Enterprise Portfolios]~~ shall be headed by a division director, whose appointment is subject to KRS 12.050. The division director may employ personnel, pursuant to the provisions of KRS Chapter 18A, as required to perform the functions of the office.
- (3) The division may solicit, receive, and consider proposals for funding from any state agency, federal agency, local government, university, nonprofit organization, or private person or corporation. The division may also solicit and accept money by grant, gift, donation, bequest, legislative appropriation, or other conveyance.
- (4) The division shall:
  - (a) Establish a central statewide geographic information clearinghouse to maintain map inventories, information on current and planned geographic information systems applications, information on grants available for the acquisition or enhancement of geographic information resources, and a directory of geographic information resources available within the state or from the federal government;
  - (b) Coordinate multiagency geographic information system projects, including overseeing the development and maintenance of statewide base maps and geographic information systems;
  - (c) Provide access to both consulting and technical assistance, and education and training, on the application and use of geographic information technologies to state and local agencies;
  - (d) Maintain, update, and interpret geographic information and geographic information systems standards, under the direction of the council;
  - (e) Provide geographic information system services, as requested, to agencies wishing to augment their geographic information system capabilities;

- (f) In cooperation with other agencies, evaluate, participate in pilot studies, and make recommendations on geographic information systems hardware and software;
  - (g) Assist the council with review of agency information resource plans and participate in special studies as requested by the council;
  - (h) Provide staff support and technical assistance to the Geographic Information Advisory Council; and
  - (i) Prepare proposed legislation and funding proposals for the General Assembly which will further solidify coordination and expedite implementation of geographic information systems.
- (5) The division may promulgate necessary administrative regulations for the furtherance of this section.

➔Section 5. KRS 42.738 is amended to read as follows:

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

- (k) The information technology lead of the Department for Public Health, Cabinet for Health and Family Services;
  - (l) A representative from an institution of postsecondary education appointed by the Governor from a list of three (3) names submitted by the president of the Council on Postsecondary Education;
  - (m) The executive director of the Center for Rural Development, or the executive director's designee;
  - (n) A representative from a municipal government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky League of Cities;
  - (o) A representative from a county government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Counties;
  - (p) A representative from a municipal police department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Chiefs of Police;
  - (q) A representative from a local fire department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Fire Chiefs;
  - (r) A representative from a county sheriff's department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Sheriffs' Association;
  - (s) A representative from a local Emergency Medical Services agency to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Board of Emergency Medical Services; and
  - (t) A representative from a local 911 dispatch center to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Chapter of the National Emergency Number Association/Association of Public Safety Communications Officials.
- (6) Appointed members of the committee shall serve for a two (2) year term. Members who serve by virtue of an office shall serve on the committee while they hold that office.
  - (7) The committee shall meet quarterly, or as often as necessary for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at committee meetings.
  - (8) The committee shall be attached to the Commonwealth Office of Technology for administrative purposes only. Members shall not be paid and shall not be reimbursed for travel expenses.
  - (9) The Public Safety Working Group is hereby created for the primary purpose of fostering cooperation, planning, and development of the public safety frequency spectrum as regulated by the Federal Communications Commission, including the 700 MHz public safety band. The group shall endeavor to bring about a seamless, coordinated, and integrated public safety communications network for the safe, effective, and efficient protection of life and property. The Public Safety Working Group membership and other working group memberships deemed necessary shall be appointed by the chair of the Kentucky Wireless Interoperability Executive Committee.
  - (10) The committee may establish additional working groups as determined by the committee.
- ➔Section 6. KRS 42.742 is amended to read as follows:
- (1) The Geographic Information Advisory Council's duties shall include the following:
    - (a) Recommending the development and adoption of policies and procedures related to geographic information and geographic information systems;
    - (b) Providing input and recommendations for the development of a strategy for the maintenance and funding of a statewide base map and geographic information system;
    - (c) Recommending standards on geographic information and geographic information systems for inclusion in the statewide architecture;
    - (d) Contributing to the development and delivery of a statewide geographic information plan;
    - (e) Overseeing the development of operating policies and procedures for the management of the council and any standing or ad hoc committees and associated advisory groups; and
    - (f) Promoting collaboration and the sharing of data and data development, as well as other aspects of geographic information systems.



- (2) The Division of **Geographic Information Systems**~~[Enterprise Portfolios]~~ shall provide necessary staff support services to the council. All cabinets, departments, divisions, agencies, and officers of the Commonwealth shall furnish the council necessary assistance, resources, information, records, or advice as it may require to fulfill its duties.

➔Section 7. KRS 42.744 is amended to read as follows:

- (1) All entities in Kentucky that create or purchase digital ortho-rectified aerial imagery, remotely sensed imagery, LiDAR, digital elevation models, or any other form of nonlicensed raster-based datasets of locations in Kentucky using public funds, in whole or in part, shall provide a copy of the information to the Commonwealth Office of Technology, Division of **Geographic Information Systems**~~[Enterprise Portfolios]~~, without cost, in order to allow the Commonwealth Office of Technology to effectively discharge its statutory responsibility to maintain an accurate and complete central statewide geographic information clearinghouse for official state use. The imagery provided to the Commonwealth Office of Technology shall be added to Kentucky's secure Geospatial Data Warehouse for official government use only.
- (2) Subsection (1) of this section shall not apply to roads, land parcels, structure locations, or other vector-based datasets acquired with public funding.
- (3) The Commonwealth Office of Technology shall not disclose to the general public or make available for distribution, download, or purchase any data that an entity providing data under subsection (1) of this section has requested remain confidential.

➔Section 8. KRS 116.200 is amended to read as follows:

- (1) (a) On or before January 1, 2011, each city clerk, except in consolidated local governments and urban-county governments, shall provide the clerk of the county or counties in which the city is located with a list of all properties within the city and a map of the city boundaries for the county clerk to maintain a roster of voters who are eligible to vote in city elections. A county clerk may accept the list of city properties in an electronic format and the city clerk may provide a copy of the city's boundary map maintained by the Kentucky Commonwealth Office of Technology, Division of **Geographic Information Systems**~~[Enterprise Portfolios]~~; and
- (b) Documentation of any change to the boundaries of a city shall be reported to the county clerk in accordance with KRS 81A.470 and 81A.475.
- (2) (a) On or before January 1, 2011, each school district board shall provide the clerk of the county in which the school district is located with maps and written descriptions of the boundaries of each school board district located in the county for the county clerk to maintain a roster of voters who are eligible to vote in school board elections.
- (b) Documentation of any change to a school district's boundaries shall be reported to the county clerk within sixty (60) days of the change, or immediately if the change is within sixty (60) days of the August 1 deadline established in KRS 160.210(4)(d).
- (3) Each county clerk shall code all registered voters in that county in such a manner that precinct election officers may determine the voter's eligibility to vote in city and school board elections prior to each primary and regular election for city officers in that county, each regular election for school board members in that county, and each special election in which a ballot question is presented to the residents of a city or a school board district.
- (4) Notwithstanding KRS 64.012, the county clerk shall not charge a fee to a city or school district providing any information required by subsections (1)(a) and (2)(a) of this section.
- (5) Nothing in this section shall prohibit a county clerk from requesting additional information from the city, school district board, or any other reliable source to ascertain whether a registered voter resides within a city or a school district boundary.

➔Section 9. KRS 131.020 is amended to read as follows:

- (1) The Department of Revenue, headed by a commissioner appointed by the secretary with the approval of the Governor, shall be organized into the following functional units:
- (a) Office of the Commissioner, which shall consist of:

1. The Division of Protest Resolution, headed by a division director who shall report directly to the commissioner. The division shall administer the protest functions for the department from office resolution through court action;~~and~~
  2. The Division of Taxpayer Ombudsman, headed by a division director who shall report to the commissioner. The division shall perform those duties set out in KRS 131.083;
  3. *The Special Investigations Division, headed by a division director who shall report directly to the commissioner. The division shall investigate alleged violations of the tax laws and recommend criminal prosecution of the laws when warranted; and*
  4. *The Division of Information Management, headed by a division director who shall report directly to the commissioner. The division shall provide project management, planning, analysis, application development, implementation, security, support, and maintenance for new and existing legacy systems of the department;*
- (b) Office of Tax Policy and Regulation, headed by an executive director who shall report directly to the commissioner. The office shall be responsible for:
1. Providing oral and written technical advice on Kentucky tax law;
  2. Drafting proposed tax legislation and regulations;
  3. Testifying before legislative committees on tax matters;
  4. Analyzing tax publications;
  5. Providing expert witness testimony in tax litigation cases;
  6. Providing consultation and assistance in protested tax cases; and
  7. Conducting training and education programs;
- (c) Office of **Registration and Operations**~~(Processing and Enforcement)~~, headed by an executive director who shall report directly to the commissioner. The office shall be responsible for processing documents, depositing funds, collecting debt payments, and coordinating, planning, and implementing a data integrity strategy. The office shall consist of the:
1. Division of Operations, which shall be responsible for opening all tax returns, preparing the returns for data capture, coordinating the data capture process, depositing receipts, maintaining tax data, and assisting other state agencies with similar operational aspects as negotiated between the department and the other agency; *and*
  2. ~~Division of Collections, which shall be responsible for initiating all collection enforcement activity related to due and owing tax assessments, including protest resolution, and for assisting other state agencies with similar collection aspects as negotiated between the department and the other state agency;~~
  3. ~~Division of Registration~~ ~~and Data Integrity~~, which shall be responsible for registering businesses for tax purposes, ensuring that the data entered into the department's tax systems is accurate and complete, and assisting the taxing areas in proper procedures to ensure the accuracy of the data over time;~~and~~
  4. ~~Division of Application Development and Support, which shall be responsible for providing project management, planning, analysis, application development, implementation, security, support and maintenance for new and legacy systems of the Department of Revenue;~~
- (d) Office of Property Valuation, headed by an executive director who shall report directly to the commissioner. The office shall consist of the:
1. Division of Local Support, which shall be responsible for providing supervision, assistance, and training to the property valuation administrators and sheriffs within the Commonwealth;
  2. Division of State Valuation, which shall be responsible for providing assessments of public service companies and motor vehicles, and providing assistance to property valuation administrators and sheriffs with the administration of tangible and omitted property taxes within the Commonwealth; and

3. Division of Minerals Taxation and Geographical Information System Services, which shall be responsible for providing geographical information system mapping support, ensuring proper filing of severance tax returns, ensuring consistency of unmined coal assessments, and gathering and providing data to properly assess minerals to the property valuation administrators within the Commonwealth;
  - (e) Office of Sales and Excise Taxes, headed by an executive director who shall report directly to the commissioner. The office shall administer all matters relating to sales and use taxes and miscellaneous excise taxes, including but not limited to technical tax research, compliance, taxpayer assistance, tax-specific training, and publications. The office shall consist of the:
    1. Division of Sales and Use Tax, which shall administer the sales and use tax; and
    2. Division of Miscellaneous Taxes, which shall administer various other taxes, including but not limited to alcoholic beverage taxes; cigarette enforcement fees, stamps, meters, and taxes; gasoline tax; bank franchise tax; inheritance and estate tax; insurance premiums and insurance surcharge taxes; motor vehicle tire fees and usage taxes; and special fuels taxes;
  - (f) Office of Income Taxation, headed by an executive director who shall report directly to the commissioner. The office shall administer all matters related to income and corporation license taxes, including technical tax research, compliance, taxpayer assistance, tax-specific training, and publications. The office shall consist of the:
    1. Division of Individual Tax, which shall administer the following taxes or returns: individual income, fiduciary, and employer withholding; and
    2. Division of Corporation Tax, which shall administer the corporation income tax, corporation license tax, pass-through entity withholding, and pass-through entity reporting requirements; ~~and~~
  - (g) Office of Field Operations, headed by an executive director who shall report directly to the commissioner. The office shall manage the regional taxpayer service centers and the field audit program; *and*
  - (h) *Office of Enforcement, headed by an executive director who shall report directly to the commissioner. The office shall initiate all collection enforcement activity related to due and owing tax assessments, including protest resolution, and shall assist other state agencies with similar collection aspects as negotiated between the department and other state agencies. The office shall consist of the Division of Collections.*
- (2) The functions and duties of the department shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the department shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the department, and to attempt to fairly and equitably resolve tax controversies at the administrative level.
  - (3) The department shall maintain an accounting structure for the one hundred twenty (120) property valuation administrators' offices across the Commonwealth in order to facilitate use of the state payroll system and the budgeting process.
  - (4) Except as provided in KRS 131.190(4), the department shall fully cooperate with and make tax information available as prescribed under KRS 131.190(3) to the Governor's Office for Economic Analysis as necessary for the office to perform the tax administration function established in KRS 42.410.
  - (5) Executive directors and division directors established under this section shall be appointed by the secretary with the approval of the Governor *under KRS 12.050*.

➔Section 10. The General Assembly confirms Executive Order No. 2020-0994, dated November 25, 2020, to the extent it is not otherwise confirmed or superseded by this Act.

**Signed by Governor March 23, 2021.**

## CHAPTER 82

## ( HB 495 )

AN ACT relating to reorganization.

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

➔Section 1. KRS 12.020 is amended to read as follows:

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

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

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

II. Program cabinets headed by appointed officers:

- (1) Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
    1. *Office of Administrative Services.*
      - a. *Division of Operational Support.*
      - b. *Division of Management Services.*
    2. *Office of Operations.*
      - a. *Division of West Troops.*
      - b. *Division of East Troops.*
      - c. *Division of Special Enforcement.*
      - d. *Division of Commercial Vehicle Enforcement.*
    3. *Office of Technical Services.*
      - a. *Division of Forensic Sciences.*

**b. Division of Information Technology.**

- (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of **Human Resource** Management ~~[and Administrative Services]~~.
    - 1. Division of Human Resource Administration.**
    - 2. Division of Employee Management.**
  - (m) Department of Public Advocacy.
  - (n) **Office of Communications.**
    - 1. Information Technology Services Division.**
  - (o) **Office of Financial Management Services.**
    - 1. Division of Financial Management.**
  - (p) **Grants Management Division.**
- (2) Education and Workforce Development Cabinet:
- (a) Office of the Secretary.
    - 1. Governor's Scholars Program.
    - 2. Governor's School for Entrepreneurs Program.
    - 3. Office of the Kentucky Workforce Innovation Board.
    - 4. Foundation for Adult Education.
    - 5. Early Childhood Advisory Council.
  - (b) Office of Legal and Legislative Services.
    - 1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Administrative Services.
    - 1. Division of Human Resources.
    - 2. Division of Operations and Support Services.
    - 3. Division of Fiscal Management.
  - (e) Office of Technology Services.
  - (f) Office of Educational Programs.
  - (g) Office of the Kentucky Center for Statistics.
  - (h) Board of the Kentucky Center for Statistics.
  - (i) Board of Directors for the Center for School Safety.

- (j) Department of Education.
  - 1. Kentucky Board of Education.
  - 2. Kentucky Technical Education Personnel Board.
- (k) Department for Libraries and Archives.
- (l) Department of Workforce Investment.
  - 1. Office of Vocational Rehabilitation.
    - a. Division of Kentucky Business Enterprise.
    - b. Division of the Carl D. Perkins Vocational Training Center.
    - c. Division of Blind Services.
    - d. Division of Field Services.
    - e. Statewide Council for Vocational Rehabilitation.
  - 2. Office of Unemployment Insurance.
  - 3. Office of Employer and Apprenticeship Services.
    - a. Division of Apprenticeship.
  - 4. Office of Career Development.
  - 5. Office of Adult Education.
  - 6. Unemployment Insurance Commission.
  - 7. Kentucky Apprenticeship Council.
- (m) Foundation for Workforce Development.
- (n) Kentucky Workforce Investment Board.
- (o) Education Professional Standards Board.
  - 1. Division of Educator Preparation.
  - 2. Division of Certification.
  - 3. Division of Professional Learning and Assessment.
  - 4. Division of Legal Services.
- (p) Kentucky Commission on the Deaf and Hard of Hearing.
- (q) Kentucky Educational Television.
- (r) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
  - (a) Office of the Secretary.
    - 1. Office of Legislative and Intergovernmental Affairs.
    - 2. Office of Legal Services.
      - a. Legal Division I.
      - b. Legal Division II.
    - 3. Office of Administrative Hearings.
    - 4. Office of Communication.
    - 5. Mine Safety Review Commission.
    - 6. Office of Kentucky Nature Preserves.
    - 7. Kentucky Public Service Commission.

- (b) Department for Environmental Protection.
  - 1. Office of the Commissioner.
  - 2. Division for Air Quality.
  - 3. Division of Water.
  - 4. Division of Environmental Program Support.
  - 5. Division of Waste Management.
  - 6. Division of Enforcement.
  - 7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
  - 1. Office of the Commissioner.
  - 2. Division of Mine Permits.
  - 3. Division of Mine Reclamation and Enforcement.
  - 4. Division of Abandoned Mine Lands.
  - 5. Division of Oil and Gas.
  - 6. Division of Mine Safety.
  - 7. Division of Forestry.
  - 8. Division of Conservation.
  - 9. Office of the Reclamation Guaranty Fund.
- (d) Office of Energy Policy.
  - 1. Division of Energy Assistance.
- (e) Office of Administrative Services.
  - 1. Division of Human Resources Management.
  - 2. Division of Financial Management.
  - 3. Division of Information Services.
- (4) Public Protection Cabinet.
  - (a) Office of the Secretary.
    - 1. Office of Communications and Public Outreach.
    - 2. Office of Legal Services.
      - a. Insurance Legal Division.
      - b. Charitable Gaming Legal Division.
      - c. Alcoholic Beverage Control Legal Division.
      - d. Housing, Buildings and Construction Legal Division.
      - e. Financial Institutions Legal Division.
      - f. Professional Licensing Legal Division.
    - 3. Office of Administrative Hearings.
    - 4. Office of Administrative Services.
      - a. Division of Human Resources.
      - b. Division of Fiscal Responsibility.
  - (b) Kentucky Claims Commission.

- (c) Kentucky Boxing and Wrestling Commission.
  - (d) Kentucky Horse Racing Commission.
    - 1. Office of Executive Director.
      - a. Division of Pari-mutuel Wagering and Compliance.
      - b. Division of Stewards.
      - c. Division of Licensing.
      - d. Division of Enforcement.
      - e. Division of Incentives and Development.
      - f. Division of Veterinary Services.
  - (e) Department of Alcoholic Beverage Control.
    - 1. Division of Distilled Spirits.
    - 2. Division of Malt Beverages.
    - 3. Division of Enforcement.
  - (f) Department of Charitable Gaming.
    - 1. Division of Licensing and Compliance.
    - 2. Division of Enforcement.
  - (g) Department of Financial Institutions.
    - 1. Division of Depository Institutions.
    - 2. Division of Non-Depository Institutions.
    - 3. Division of Securities.
  - (h) Department of Housing, Buildings and Construction.
    - 1. Division of Fire Prevention.
    - 2. Division of Plumbing.
    - 3. Division of Heating, Ventilation, and Air Conditioning.
    - 4. Division of Building Code Enforcement.
  - (i) Department of Insurance.
    - 1. Division of Insurance Product Regulation.
    - 2. Division of Administrative Services.
    - 3. Division of Financial Standards and Examination.
    - 4. Division of Agent Licensing.
    - 5. Division of Insurance Fraud Investigation.
    - 6. Division of Consumer Protection.
  - (j) Department of Professional Licensing.
    - 1. Real Estate Authority.
- (5) Labor Cabinet.
- (a) Office of the Secretary.
    - 1. Office of General Counsel.
      - a. Workplace Standards Legal Division.
      - b. Workers' Claims Legal Division.



2. Office of Administrative Services.
    - a. Division of Human Resources Management.
    - b. Division of Fiscal Management.
    - c. Division of Professional Development and Organizational Management.
    - d. Division of Information Technology and Support Services.
  3. Office of Inspector General.
- (b) Department of Workplace Standards.
1. Division of Occupational Safety and Health Compliance.
  2. Division of Occupational Safety and Health Education and Training.
  3. Division of Wages and Hours.
- (c) Department of Workers' Claims.
1. Division of Workers' Compensation Funds.
  2. Office of Administrative Law Judges.
  3. Division of Claims Processing.
  4. Division of Security and Compliance.
  5. Division of Information Services.
  6. Division of Specialist and Medical Services.
  7. Workers' Compensation Board.
- (d) Workers' Compensation Funding Commission.
- (e) Occupational Safety and Health Standards Board.
- (f) State Labor Relations Board.
- (g) Employers' Mutual Insurance Authority.
- (h) Kentucky Occupational Safety and Health Review Commission.
- (i) Workers' Compensation Nominating Committee.
- (6) Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Project Development.
    2. Office of Project Delivery and Preservation.
    3. Office of Highway Safety.
    4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    1. Office of Local Programs.
    2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    1. Office of Public Affairs.
    2. Office for Civil Rights and Small Business Development.
    3. Office of Budget and Fiscal Management.

4. Office of Inspector General.
  - (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.
  - (i) Office of Human Resource Management.
  - (j) Office of Information Technology.
  - (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
- (a) Office of the Secretary.
    1. Office of Legal Services.
    2. Department for Business Development.
    3. Department for Financial Services.
      - a. Kentucky Economic Development Finance Authority.
      - b. Finance and Personnel Division.
      - c. IT and Resource Management Division.
      - d. Compliance Division.
      - e. Incentive Administration Division.
      - f. Bluegrass State Skills Corporation.
    4. Office of Marketing and Public Affairs.
      - a. Communications Division.
      - b. Graphics Design Division.
    5. Office of Workforce, Community Development, and Research.
    6. Office of Entrepreneurship.
      - a. Commission on Small Business Advocacy.
- (8) Cabinet for Health and Family Services:
- (a) Office of the Secretary.
    1. Office of the Ombudsman and Administrative Review.
    2. Office of Public Affairs.
    3. Office of Legal Services.
    4. Office of Inspector General.
    5. Office of Human Resource Management.
    6. Office of Finance and Budget.
    7. Office of Legislative and Regulatory Affairs.
    8. Office of Administrative Services.
    9. Office of Application Technology Services.
  - (b) Department for Public Health.
  - (c) Department for Medicaid Services.
  - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (e) Department for Aging and Independent Living.

- (f) Department for Community Based Services.
  - (g) Department for Income Support.
  - (h) Department for Family Resource Centers and Volunteer Services.
  - (i) Office for Children with Special Health Care Needs.
  - (j) Office of Health Data and Analytics.
- (9) Finance and Administration Cabinet:
- (a) Office of the Secretary.
  - (b) Office of the Inspector General.
  - (c) Office of Legislative and Intergovernmental Affairs.
  - (d) Office of General Counsel.
  - (e) Office of the Controller.
  - (f) Office of Administrative Services.
  - (g) Office of Policy and Audit.
  - (h) Department for Facilities and Support Services.
  - (i) Department of Revenue.
  - (j) Commonwealth Office of Technology.
  - (k) State Property and Buildings Commission.
  - (l) Office of Equal Employment Opportunity and Contract Compliance.
  - (m) Kentucky Employees Retirement Systems.
  - (n) Commonwealth Credit Union.
  - (o) State Investment Commission.
  - (p) Kentucky Housing Corporation.
  - (q) Kentucky Local Correctional Facilities Construction Authority.
  - (r) Kentucky Turnpike Authority.
  - (s) Historic Properties Advisory Commission.
  - (t) Kentucky Tobacco Settlement Trust Corporation.
  - (u) Kentucky Higher Education Assistance Authority.
  - (v) Kentucky River Authority.
  - (w) Kentucky Teachers' Retirement System Board of Trustees.
  - (x) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Tourism.
    - 1. Division of Tourism Services.
    - 2. Division of Marketing and Administration.
    - 3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - 1. Division of Information Technology.
    - 2. Division of Human Resources.
    - 3. Division of Financial Operations.

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

- 3. Office of Film and Tourism Development.
  - (g) Office of Legal Affairs.
  - (h) Office of Human Resources.
  - (i) Office of Public Affairs and Constituent Services.
  - (j) Office of Arts and Cultural Heritage.
  - (k) Kentucky African-American Heritage Commission.
  - (l) Kentucky Foundation for the Arts.
  - (m) Kentucky Humanities Council.
  - (n) Kentucky Heritage Council.
  - (o) Kentucky Arts Council.
  - (p) Kentucky Historical Society.
    - 1. Division of Museums.
    - 2. Division of Oral History and Educational Outreach.
    - 3. Division of Research and Publications.
    - 4. Division of Administration.
  - (q) Kentucky Center for the Arts.
    - 1. Division of Governor's School for the Arts.
  - (r) Kentucky Artisans Center at Berea.
  - (s) Northern Kentucky Convention Center.
  - (t) Eastern Kentucky Exposition Center.
  - (11) Personnel Cabinet:
    - (a) Office of the Secretary.
    - (b) Department of Human Resources Administration.
    - (c) Office of Employee Relations.
    - (d) Kentucky Public Employees Deferred Compensation Authority.
    - (e) Office of Administrative Services.
    - (f) Office of Legal Services.
    - (g) Governmental Services Center.
    - (h) Department of Employee Insurance.
    - (i) Office of Diversity, Equality, and Training.
    - (j) Office of Public Affairs.
- III. Other departments headed by appointed officers:
- (1) Council on Postsecondary Education.
  - (2) Department of Military Affairs.
  - (3) Department for Local Government.
  - (4) Kentucky Commission on Human Rights.
  - (5) Kentucky Commission on Women.
  - (6) Department of Veterans' Affairs.
  - (7) Kentucky Commission on Military Affairs.

- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.
- (10) Kentucky Communications Network Authority.

➔Section 2. KRS 15A.020 is amended to read as follows:

- (1) The Justice and Public Safety Cabinet shall have the following departments:
  - (a) Department of Corrections;
  - (b) Department of Criminal Justice Training, which shall have the following divisions:
    - 1. Training Operations Division; and
    - 2. Administrative Division;
  - (c) Department of Juvenile Justice, which shall have the following offices:
    - 1. Office of Program Operations, which shall have the following divisions:
      - a. Division of Western Region;
      - b. Division of Eastern Region; and
      - c. Division of Placement Services;
    - 2. Office of Support Services, which shall have the following divisions:
      - a. Division of Administrative Services;
      - b. Division of Program Services; and
      - c. Division of Medical Services; and
    - 3. Office of Community and Mental Health Services, which shall have the following divisions:
      - a. Division of Professional Development; and
      - b. Division of Community and Mental Health Services;
  - (d) Department of Kentucky State Police, which shall have the following *offices and* divisions:
    - 1. ~~[Administrative Division;]~~*Office of Administrative Services, which shall be headed by an executive director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the commissioner;*
      - a. *Division of Operational Support, which shall be headed by a director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the executive director of the Office of Administrative Services; and*
      - b. *Division of Management Services, which shall be headed by a director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the executive director of the Office of Administrative Services;*
    - 2. *Office of Operations, which shall be headed by an executive director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the commissioner;*
      - a. *Division of West Troops, which shall be headed by a director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the executive director of the Office of Operations;*
      - b. *Division of East Troops, which shall be headed by a director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the executive director of the Office of Operations;*
      - c. *Division of Special Enforcement, which shall be headed by a director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the executive director of the Office of Operations; and*

- d. *Division of Commercial Vehicle Enforcement, which shall be headed by a director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the executive director of the Office of Operations; and*
      - 3. *Office of Technical Services, which shall be headed by an executive director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the commissioner;*
        - a. *Division of Forensic Services, which shall be headed by a director who shall have a minimum of a bachelor's degree in a natural science and at least seven (7) years of experience in an accredited forensic laboratory, who shall be appointed by the commissioner of the Department of Kentucky State Police, and who shall report to the executive director of the Office of Technical Services; and*
        - b. *Division of Information Technology, which shall be headed by a director who shall be appointed by the commissioner of the Department of Kentucky State Police and who shall report to the executive director of the Office of Technical Services;*
- ~~2. Operations Division;~~
- ~~3. Technical Services Division; and~~
- ~~4. Commercial Vehicle Enforcement Division]; and~~
- (e) Department of Public Advocacy, which shall have the following divisions:
- 1. Protection and Advocacy Division;
  - 2. Division of Law Operations;
  - 3. Division of Trial Services;
  - 4. Division of Post-Trial Services; and
  - 5. Division of Conflict Services.
- (2) Each department, except for the Department of Public Advocacy, shall be headed by a commissioner who shall be appointed by the secretary of *the* Justice and Public Safety *Cabinet* with the approval of the Governor as required by KRS 12.040. Each commissioner shall be directly responsible to the secretary and shall have such functions, powers, and duties as provided by law and as the secretary may prescribe. The Department of Public Advocacy shall be headed by the public advocate, appointed as required by KRS 31.020, who shall be directly responsible to the Public Advocacy Commission. The Department of Public Advocacy is an independent state agency which shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Justice and Public Safety Cabinet shall not have control over the Department of Public Advocacy's information technology equipment and use unless granted access by court order.
- (3) The Justice and Public Safety Cabinet shall have the following offices *and divisions*:
- (a) Office of the Secretary, which shall be headed by a deputy secretary appointed pursuant to KRS 12.050 and responsible for the direct administrative support for the secretary and other duties as assigned by the secretary, and which, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (b) Office of *Human Resource* Management~~[and Administrative Services]~~, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible to and report to the secretary and be responsible for all matters relating to human resources, ~~[state and federal grants management, including but not limited to the administration of KRS 15A.060, fiscal functions, management and daily operations of the information processing activities for the cabinet, and management and daily administrative services for the cabinet;]~~ and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
    - 1. *Division of Human Resource Administration, which shall be headed by a director appointed pursuant to KRS 12.050 who shall report to the executive director of the Office of Human Resource Management; and*

2. ***Division of Employee Management, which shall be headed by a director appointed pursuant to KRS 12.050 who shall report to the executive director of the Office of Human Resource Management;***
- (c) Office of Legal Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 and 12.210, that:
1. Shall provide legal representation and services for the cabinet; and
  2. May investigate all complaints regarding the facilities, staff, treatment of juveniles, and other matters relating to the operation of the Justice and Public Safety Cabinet. If it appears that there is a violation of statutes, administrative regulations, policies, court decisions, the rights of juveniles who are subject to the orders of the department, or any other matter relating to the Justice and Public Safety Cabinet, the office shall report to the secretary of the Justice and Public Safety Cabinet who shall, if required, refer the matter to a law enforcement agency, Commonwealth's attorney, county attorney, the Attorney General, or federal agencies, as appropriate. The office may be used to investigate matters in which there is a suspicion of violation of written policy, administrative regulation, or statutory law within the Department of Public Advocacy only when the investigation will have no prejudicial impact upon a person who has an existing attorney-client relationship with the Department of Public Advocacy. Notwithstanding the provisions of this subparagraph, investigation and discipline of KRS Chapter 16 personnel shall continue to be conducted by the Department of Kentucky State Police pursuant to KRS Chapter 16. The office shall conduct no other investigations under the authority granted in this subparagraph. The secretary may, by administrative order, assign the investigative functions in this subparagraph to a branch within the office.

The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such attorneys appointed pursuant to KRS 12.210 and other staff as necessary to perform the duties, functions, and responsibilities of the office;

- (d) Office of Legislative and Intergovernmental Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the provision of support to the Criminal Justice Council, legislative liaison services, and functions and duties vested in the Criminal Justice Council as described in KRS 15A.030. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
- (e) ***Office of Communications, which shall be headed by an executive director appointed by the secretary of the Justice and Public Safety Cabinet pursuant to KRS 12.050 who shall be responsible to report to the secretary and be responsible for all matters relating to communications, and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;***
1. ***Information and Technology Services Division, which shall be headed by a director appointed by the secretary of the Justice and Public Safety Cabinet pursuant to KRS 12.050 who shall report to the executive director of the Office of Communications;***
- (f) ***Office of Financial Management Services, which shall be headed by an executive director appointed by the secretary of the Justice and Public Safety Cabinet pursuant to KRS 12.050 who shall be responsible to report to the secretary and be responsible for all matters relating to fiscal functions, and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;***
1. ***Division of Financial Management, which shall be headed by a director appointed by the secretary of the Justice and Public Safety Cabinet pursuant to KRS 12.050 who shall report to the executive director of the Office of Financial Management Services;***
- (g) ***Grants Management Division, which shall be headed by a director appointed by the secretary of the Justice and Public Safety Cabinet pursuant to KRS 12.050 who shall be responsible to report to the secretary and be responsible for all matters relating to state and federal grants management, and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;***



- (h) Office of the Kentucky State Medical Examiner, which shall be headed by a chief medical examiner appointed pursuant to KRS 72.240 who shall be responsible for all matters relating to forensic pathology and forensic toxicology and other duties as assigned by the secretary. The executive director appointed pursuant to KRS 12.050 shall be responsible for all matters related to the administrative support of the Office of the State Medical Examiner. The executive director shall report directly to the secretary and with the approval of the secretary may employ such administrative support staff as necessary to perform the administrative duties, functions, and responsibilities of the office. The chief medical examiner shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the forensic duties, functions, and responsibilities of the office; and
- (i)~~(f)~~ Office of Drug Control Policy, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the research, coordination, and execution of drug control policy and for the management of state and federal grants, including but not limited to the prevention and treatment related to substance abuse. By December 31 of each year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office.

➔Section 3. KRS 196.026 is amended to read as follows:

The Department of Corrections shall consist of the following organizational units:

- (1) Personnel Division;
- (2) Office of Adult Institutions, which shall have the following divisions:
  - (a) Division of Operations and Program Services;
  - (b) Division of Medical Services;
  - (c) Division of Mental Health Services;
  - (d) Division of Substance Abuse Programming;
  - (e) Division of Correctional Industries;
  - (f) Division of Kentucky State Reformatory;
  - (g) Division of Luther Lockett Correctional Complex;
  - (h) Division of Roederer Correctional Complex;
  - (i) Division of Blackburn Correctional Complex;
  - (j) Division of Kentucky Correctional Institution for Women;
  - (k) Division of Northpoint Training Center Division;
  - (l) Division of Eastern Kentucky Correctional Complex;
  - (m) Division of Bell County Forestry Camp;
  - (n) Division of Kentucky State Penitentiary;
  - (o) Division of Western Kentucky Correctional Complex;
  - (p) Division of Green River Correctional Complex;
  - (q) Division of Little Sandy Correctional Complex;
  - (r) ***Division of Southeast State Correctional Complex;*** and
  - ~~(s)(g)~~ Division of Education.

Each division specified in paragraphs (f) to ~~(r)(g)~~ of this subsection shall be headed by a warden pursuant to KRS 196.160;

- (3) Office of Community Services and Facilities, which shall have the following divisions:
- (a) Division of Probation and Parole;
  - (b) Division of Reentry; and
  - (c) Division of Local Facilities; and
- (4) Office of Support Services, which shall have the following divisions:
- (a) Division of Administrative Services;
  - (b) Division of Corrections Training;
  - (c) Division of Population Management; and
  - (d) Division of Parole and Victim Services.

➔Section 4. KRS 196.070 is amended to read as follows:

- (1) The commissioner of the Department of Corrections shall:
- (a) Supervise and administer the Kentucky State Reformatory, the Kentucky Correctional Institution for Women, the Kentucky State Penitentiary, Northpoint Training Center, the Luther Luckett Correctional Complex, the Eastern Kentucky Correctional Complex, the Green River Correctional Complex, the Western Kentucky Correctional Complex, the Roederer Correctional Complex, *the Southeast State Correctional Complex*, and any minimum security correctional institutions established and operated by the department, or any divisions of those institutions, the private prisons as provided by KRS 197.500, and the prison industry program within those institutions.
  - (b) Supervise the employment of prisoners who have not been paroled or conditionally released, either within or without the walls or enclosures of these institutions.
  - (c) Have the authority to transfer, with the approval of the secretary of the Finance and Administration Cabinet, appropriated funds from the budget of one (1) penal institution to another.
  - (d) Determine minimum, maximum, and conditional release dates of prisoners in accordance with KRS 197.045.
  - (e) Authorize the transfer of prisoners between institutions.
  - (f) Create those positions and employ those personnel necessary to perform the functions of the department.
  - (g) Promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 196.700 to 196.735.
- (2) The commissioner may organize and maintain a training division for employees of the department and others and in connection therewith promulgate administrative regulations covering the course and conduct of the training and the period of time for which any employee or applicant therefor shall attend the school.
- (a) The Division of Corrections Training shall establish, supervise, and coordinate training programs and schools for corrections personnel, jail personnel, and any other justice or nonlaw-enforcement related personnel as prescribed by the secretary and shall issue certification to those employees having successfully met the requirements of the training program.
  - (b) The Division of Corrections Training shall make a continuing study of corrections training standards and design, develop, and deliver preservice and in-service training programs.
  - (c) The Division of Corrections Training shall, by administrative regulations, prescribe minimum qualifications for its instructors and shall approve, issue, or revoke the certification of instructors.

➔Section 5. Notwithstanding KRS 12.028(5), the General Assembly confirms Executive Order 2020-561, dated July 7, 2020, relating to the reorganization of the Justice and Public Safety Cabinet, to the extent not otherwise confirmed or superseded by this Act.

**Signed by Governor March 23, 2021.**

## CHAPTER 83

## ( HB 8 )

AN ACT relating to the Kentucky Employees Retirement System's employers, declaring an emergency, and making an appropriation therefor.

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

→Section 1. KRS 61.565 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) Each employer participating in the State Police Retirement System as provided for in KRS 16.505 to 16.652 and the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute annually to the respective retirement system an amount determined by the actuarial valuation completed in accordance with KRS 61.670 and as specified by this section. Employer contributions for each respective retirement system shall be equal to the sum of the "normal cost contribution" and the "actuarially accrued liability contribution."
- (b) For purposes of this section, the normal cost contribution shall be computed as a percentage of pay and shall be an annual amount that is sufficient when combined with employee contributions to fund benefits earned during the year in the respective system. The amount shall be:
  1. Paid as a percentage of creditable compensation reported for each employee participating in the system and accruing benefits; and
  2. The same percentage of pay for all employees who are participating in the same retirement system, except that separate percentage rates shall be developed in each system for those employers whose employees are participating in hazardous duty retirement coverage as provided by KRS 61.592.
- (c) For purposes of this section, the actuarially accrued liability contribution *for all employers, except for contributions paid by nonhazardous employers in the Kentucky Employees Retirement System on or after July 1, 2021*, shall be:
  1. Computed by amortizing the total unfunded actuarially accrued liability of each system over a closed period of thirty (30) years beginning with the 2019 actuarial valuation using the level percentage of payroll amortization method, except that any increase or decrease in the unfunded actuarially accrued liability occurring after the completion of the 2019 actuarial valuation shall be amortized over a closed period of twenty (20) years beginning with the actuarial valuation in which the increase or decrease in the unfunded actuarially accrued liability is recognized. An increase or decrease in the unfunded actuarially accrued liability may result from, but not be limited to, legislative changes to benefits, changes in actuarial methods or assumptions, or actuarial gains or losses;
  2. Paid as a percentage of payroll on the creditable compensation reported for each employee participating in the system and accruing benefits; and
  3. The same percentage of pay for all employees who are participating in the same retirement system, except that separate percentage rates shall be developed in each system for those employers whose employees are participating in hazardous duty retirement coverage as provided by KRS 61.592.
- (d)
  1. *For purposes of this section, the actuarially accrued liability contribution for nonhazardous employers in the Kentucky Employees Retirement System on or after July 1, 2021:*
    - a. *Shall be an annual dollar amount that is sufficient to amortize the total unfunded actuarially accrued liability of the system over a closed period of thirty (30) years beginning with the 2019 actuarial valuation using the level percentage of payroll amortization method, except that any increase or decrease in the unfunded actuarially accrued liability occurring after the completion of the 2019 actuarial valuation shall be amortized over a closed period of twenty (20) years beginning with the actuarial valuation in which the increase or decrease in the unfunded actuarially accrued liability is recognized. An increase or decrease in the unfunded actuarially accrued liability may result from but not be limited to legislative changes to benefits, changes in actuarial methods or assumptions, or actuarial gains or losses;*

- b. *Shall be prorated to each individual nonhazardous employer in the Kentucky Employees Retirement System by multiplying the annual dollar amount of the actuarially accrued liability contribution for the system as determined by subdivision a. of this subparagraph by the individual employer's percentage of the system's total actuarially accrued liability as of the June 30, 2019, actuarial valuation which shall be determined solely by the system's consulting actuary and assigned to each employer based upon the last participating employer of the member or retiree as of June 30, 2019. The individual employer's percentage of the system's total actuarially accrued liability as of the June 30, 2019, actuarial valuation shall be used to determine the individual employer's prorated dollar amount of the system's actuarially accrued liability contribution in all future fiscal years of the amortization period or periods, except that the employer's percentage shall be adjusted to reflect any employer who voluntarily or involuntarily ceases participation as provided by KRS 61.522 and except as provided by subparagraphs 4. and 5. of this paragraph. For purposes of this subdivision, all executive branch departments, program cabinets and their respective departments, and administrative bodies enumerated in KRS 12.020, and any other executive branch agencies administratively attached to a department, program cabinet, or administrative body enumerated in KRS 12.020, shall be considered a single individual employer and only one (1) value shall be computed for these executive branch employers. For purposes of this subdivision, all employers of the legislative branch, including the Legislative Research Commission and the General Assembly that covers legislators and staff who participate in the Kentucky Employees Retirement System, shall be considered a single individual employer and only one (1) value shall be computed for these employers. For purposes of this subdivision, all employers of the judicial branch, including the Administrative Office of the Courts, the Judicial Form Retirement System, and all master commissioners, shall be considered a single individual employer and only one (1) value shall be computed for these employers;*
- c. *Shall be payable by an individual employer in equal monthly dollar installments during the fiscal year in accordance with the reporting requirements specified by KRS 61.675 so that the individual employer pays its full prorated dollar amount of the actuarially accrued liability contribution as determined by subdivision b. of this subparagraph; and*
- d. *Notwithstanding subdivision b. of this subparagraph for those individual participating employers who are local and district health departments governed by KRS Chapter 212, community mental health centers, and employers whose employees are not subject to KRS 18A.005 to 18A.200, who received or were eligible to receive a distribution of general fund appropriations in the 2018-2020 biennial executive branch budget to assist in paying retirement costs under 2018 Ky. Acts ch. 169, Part I, G., 4., (5); 2018 Ky. Acts ch. 169, Part I, G., 5., (2); or 2018 Ky. Acts ch. 169, Part I, G., 9., (2), shall not, once the initial dollar amounts are established in accordance with this paragraph, be adjusted in terms of dollars paid by the individual employer, except that adjustments shall be made by the system upon completion of an actuarial investigation as provided by KRS 61.670, so long as at least four (4) years have passed since the last adjustment to the actuarially accrued liability contribution for these employers. The provisions of this subdivision shall not be interpreted to mean that employers described by this subdivision may continue paying the dollar value of contributions or employer contribution rates established or paid by the employer in budget periods occurring prior to July 1, 2021.*
2. *Individual employers, solely for purposes of collecting employer contributions from various fund sources during the fiscal year, may convert the actuarially accrued liability contribution established by this paragraph to a percentage of pay and may adjust the percent of pay during the fiscal year in order to pay the required dollar value of actuarially accrued liability contribution required by this paragraph. No provision of this subparagraph shall be construed to reduce an individual employer's actuarially accrued liability contribution as otherwise provided by this paragraph.*
3. *The provisions of this paragraph shall not apply to those employers who cease participation as provided by KRS 61.522.*
4. *In the event an individual Kentucky Employees Retirement System nonhazardous employer who is required to pay an actuarially accrued liability contribution as provided by this*

*paragraph and as calculated from the 2019 actuarial valuation or subsequent valuations, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities, the system shall, except for those employers or entities who pay the costs to cease participation as provided by KRS 61.522, have full authority to assign a portion or all of the total actuarially accrued liability contribution to the merged, new, split, or separate employers or entities, regardless of whether or not the merged, new, split, or separate employers or entities participate in the system. In the case of a district health department established pursuant to KRS Chapter 212, which ceases to operate or which has a county or counties that withdraw from the district health department, the systems shall assign the total actuarially accrued liability contribution based upon the proportion of taxable property of each county as certified by the Department for Public Health in the Cabinet for Health and Family Services in accordance with Section 6 of this Act. The system shall establish by administrative regulations the process of assigning actuarially accrued liability contributions as authorized by this subparagraph.*

5.
    - a. *An employer who is not in the executive, legislative, or judicial branch of Kentucky state government as enumerated in subparagraph 1.b. of this paragraph may on or before July 1, 2021, appeal to the board regarding any current or former employees or retirees the employer believes should not be used to determine the employer's percentage of the system's total actuarially accrued liability. The only appeals that shall be submitted by the employer or considered by the board shall be potential errors where the last participating employer is in dispute, situations where employees of the employer were hired through a contract between the executive branch and the employer for the employee to provide services to the executive branch, or situations where a community mental health center was contracted to provide services at a facility previously operated by the executive branch. The employer shall submit the information required by the board to verify potential errors or contract employees with employers.*
    - b. *The board shall review and issue a final determination regarding any appeals by December 31, 2021. In situations where the board determines the last participating employer was incorrect and should be assigned to another employer, the system shall, effective for employer contributions payable on or after July 1, 2022, assign the cost to the executive branch until such time ownership of the liability can be determined and assigned to the correct employer. In situations where the board determines certain employees of employers were hired through a contract between the executive branch and the employer for an employee or employees to provide services to the executive branch, those liabilities shall, effective for employer contributions payable on or after July 1, 2022, be assigned to the executive branch. In situations where the board determines the community mental health center was contracted to provide services at a facility previously operated by the executive branch, the liabilities for employees providing services at that facility shall be assigned to the executive branch.*
    - c. *No appeal shall be submitted by the employer or considered by the board regarding the assumptions or methodology used by the actuary to determine a particular employer's percentage of the system's total actuarially accrued liability or the use of the last participating employer to assign liabilities to an employer, except as otherwise provided by this subparagraph.*
    - d. *The board shall within thirty (30) days following the final determinations submit to the Public Pension Oversight Board the list of appeals that were approved, the number of employees involved, and any costs that will be transferred to the executive branch effective July 1, 2022.*
- (e) The employer contributions computed under this section shall be determined using:
1. The entry age normal cost funding method;
  2. An asset smoothing method that smooths investment gains and losses over a five (5) year period; and
  3. Other funding methods and assumptions established by the board in accordance with KRS 61.670.

- (2) (a) *Except as limited by subsection (1)(d)1.d. of this section as it relates to the Kentucky Employees Retirement System*, normal cost contribution rates and the actuarially accrued liability contribution shall be determined by the board on the basis of the annual actuarial valuation last preceding the July 1 of a new biennium.
- (b) The board may amend contribution rates as of July 1 of the second year of a biennium for the County Employees Retirement System, if it is determined on the basis of a subsequent actuarial valuation that amended contribution rates are necessary to satisfy the requirements of this section.
- (c) The board shall not have the authority to amend contribution rates as of July 1 of the second year of the biennium for the Kentucky Employees Retirement System and the State Police Retirement System.
- (3) The system shall advise each employer prior to July 1 of any change in the employer contribution rate. Based on the employer contribution rate, each employer shall include in the budget sufficient funds to pay the employer contributions as determined by the board under this section.
- (4) All employers, including the General Assembly, shall pay the full actuarially required contributions, as prescribed by this section, to the Kentucky Employees Retirement System and the State Police Retirement System in fiscal years occurring on or after July 1, 2020.

➔Section 2. KRS 61.510 (Effective April 1, 2021) 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' 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 and 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation":
- (a) 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);
- (b) Includes:
1. Lump-sum bonuses, severance pay, or employer-provided payments for purchase of service credit, which 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);
  2. Cases where compensation includes maintenance and other perquisites, but the board shall fix the value of that part of the compensation not paid in money;
  3. Lump-sum payments for creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, or for any creditable compensation paid in anticipation of settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes, which shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer. This subparagraph shall also include lump-sum payments for reinstated wages pursuant to KRS 61.569, which shall be credited to the period during which the wages were earned or should have been paid by the employer;
  4. 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; and
  5. 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); and
- (c) Excludes:
1. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board;
  2. For employees who begin participating on or after September 1, 2008, lump-sum payments for compensatory time;
  3. For employees who begin participating on or after August 1, 2016, nominal fees paid for services as a volunteer; and
  4. Any salary or wages paid to an employee for services as a Kentucky State Police school resource officer as defined by KRS 158.441;
- (14) "Final compensation" of a member means:
- (a) For a member who begins participating before September 1, 2008, who is employed in a nonhazardous position, the creditable compensation of the member during the five (5) fiscal years he or she 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 employed in a nonhazardous position, 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 or she 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, but prior to January 1, 2014, who is employed in a nonhazardous position, 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, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least sixty (60) months; or
- (e) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, 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 or she 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. If the member does not have three (3) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least thirty-six (36) months;
- (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. For members who began participating in the system prior to January 1, 2014, 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 and are nonrenewable;
  - (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 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. The term "parted employer" shall not include a department, board, or agency that ceased participation in the system pursuant to KRS 61.522;
- (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 *but that may be converted to a dollar value for purposes of subsection (1)(d) of Section 1 of this Act*. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period of time and the unfunded actuarially accrued liability shall be projected to be fully amortized at the conclusion of the set period of years;
- (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 Public Pensions Authority's 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;
- (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;
- (40) "Accumulated employer credit" mean the employer pay credit deposited to the member's account and interest credited on such amounts as provided by KRS 16.583 and 61.597;
- (41) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583 and 61.597, the combined sum of the member's accumulated contributions and the member's accumulated employer credit;
- (42) "Volunteer" means an individual who:
- (a) Freely and without pressure or coercion performs hours of service for an employer participating in one (1) of the systems administered by Kentucky Retirement Systems without receipt of compensation for services rendered, except for reimbursement of actual expenses, payment of a nominal fee to offset the costs of performing the voluntary services, or both; and
  - (b) If a retired member, does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twelve (12) months following the retired member's most recent retirement date;
- (43) "Nominal fee" means compensation earned for services as a volunteer that does not exceed five hundred dollars (\$500) per month. Compensation earned for services as a volunteer from more than one (1)

participating employer during a month shall be aggregated to determine whether the compensation exceeds the five hundred dollars (\$500) per month maximum provided by this subsection;

- (44) "Nonhazardous position" means a position that does not meet the requirements of KRS 61.592 or has not been approved by the board as a hazardous position;
- (45) "Monthly average pay" means the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the deceased member during his or her last twelve (12) months of employment;
- (46) "Authority" means the Kentucky Public Pensions Authority as provided by KRS 61.505; and
- (47) "Executive director" means the executive director of the Kentucky Public Pensions Authority.

➔Section 3. KRS 61.522 (Effective until April 1, 2021) is amended to read as follows:

Notwithstanding any other provision of KRS 61.510 to 61.705 or 78.510 to 78.852 to the contrary:

- (1) For purposes of this section:
  - (a) "Active member" means a member who is participating in the system;
  - (b) "Employer" means the governing body of a department, as defined by KRS 61.510, or a county as defined by KRS 78.510;
  - (c) "Employer's effective cessation date" means:
    - 1. The last day of the system's plan year in the year in which the employer has elected to cease participation in the system, provided the employer has met the requirements of this section and has given the Kentucky Retirement Systems sufficient notice as provided by administrative regulations promulgated by the systems; or
    - 2. For Kentucky Employees Retirement System employers making an election to cease participating under the provisions of subsection (8) of this section, it shall be June 30, 2021; and
  - (d) "Inactive member" means a member who is not participating with the system;
- (2) Any employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System on July 1, 2015, except as limited by subsection (6) of this section, may:
  - (a) Voluntarily cease participation in its respective retirement system subject to the requirements and restrictions of this section;
  - (b) Be required to involuntarily cease participation in the system under the provisions of this section if the board has determined the employer is no longer qualified to participate in a governmental plan or has failed to comply with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852; or
  - (c) If the employer is participating in the Kentucky Employees Retirement System, request an estimate of the cost of voluntarily ceasing participation in the system prior to officially making a request to cease participation. For those Kentucky Employees Retirement System nonhazardous employers who are considering ceasing participating in the system under the provisions of subsection (8) of this section on June 30, 2021, the request for an estimate to voluntarily cease participating must be made prior to December 31, 2019, and the estimate shall be provided to that employer within sixty (60) days of the request, except that no estimate shall be required to be provided prior to January 31, 2020;
- (3) (a) If an employer desires to voluntarily cease participation in the Kentucky Employees Retirement System or the County Employees Retirement System as provided by subsection (2)(a) of this section:
  - 1. The employer shall adopt a resolution requesting to cease participation in the system and shall submit the resolution to the board for its approval. The board shall not be able to deny a resolution to cease participation in the Kentucky Employees Retirement System for any employer who seeks to voluntarily cease participation in the system as provided by subsection (8) of this section;
  - 2. Except as provided by subsection (8)(d) of this section, the cessation of participation in the system shall apply to all employees of the employer;
  - 3. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for

discontinuing participation in the system as determined by the board and as provided by this section;

4. The employer shall provide an alternative retirement program for employees who will no longer be covered by the system, which may include a voluntary defined contribution plan but, for Kentucky Employees Retirement System employers with effective cessation dates occurring on or after June 30, 2020, the alternative retirement program shall not include a defined benefit plan which by its nature can have an unfunded liability;
  5. If the alternative retirement program established by the employer meets the qualification requirements under 26 U.S.C. sec. 401(a) or 26 U.S.C. sec. 403(b) and is capable of accepting trustee-to-trustee transfers of both pre-tax and post-tax contributions, employees of the employer ceasing participation may, except for those employees continuing to participate in the system as provided by subsection (8)(d)2. of this section, seek to transfer his or her account balance to the employer's qualified alternate retirement program within sixty (60) days of the employer's effective cessation date. An employee's election to transfer his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits in the system for the time worked for the employer ceasing participation;
  6. The employer shall pay to the system by lump sum or in installments as provided by subsection (8) of this section, if eligible, the full actuarial cost, except as provided by subsection (8)(g)4. of this section, of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 3. of this paragraph. If the employer makes an election for employees to continue to participate in the system as provided by subsection (8)(d)2. of this section, the cost shall also include the present value of future normal costs of those employees who will continue to participate in the system after the employer's effective cessation date. The full actuarial cost shall not include any employee who seeks a transfer of his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subparagraph 5. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid or the installment payments have commenced; and
  7. Kentucky Employees Retirement System employers ceasing participating under the provisions of subsection (8) of this section who elect to pay their actuarial costs by a lump sum shall make the full lump-sum payment by June 30, 2022, and shall pay interest on the principal amount beginning on July 1, 2021, equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs until the lump-sum payment is made. If the ceasing employer fails to make the full lump-sum payment by June 30, 2022, the ceasing employer shall make installments as provided by subsection (8)(g) of this section, and the ceasing employer shall have the costs recalculated based upon making installment payments as provided by this section and shall be required to make up any missed installment payments as determined by the system.
- (b) If the board determines an employer must involuntarily cease participation in the system as provided by subsection (2)(b) of this section:
1. The cessation of participation in the system shall apply to all employees of the employer;
  2. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section; and
  3. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 2. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid.

A Kentucky Employees Retirement System employer who ceases participation in the systems under this paragraph shall not establish or contribute to on behalf of its employees a defined benefit plan which by its nature can have an unfunded liability;

- (4) Any employee hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System or the County Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that employer;
- (5) If an employer has ceased participation in the system as provided by this section:
- (a) The rights of recipients and the vested rights of inactive members accrued as of the employer's effective cessation date shall not be impaired or reduced in any manner as a result of the employer ceasing participation in the system; and
  - (b) Except as provided by subsection (8)(d)2. of this section, employees of the employer ceasing participation shall accrue benefits through the employer's effective cessation date but shall not accrue any additional benefits in the Kentucky Employees Retirement System or the County Employees Retirement System, including earning years of service credit through the ceased employer, after the employer's effective cessation date for as long as they remain employed by the employer. The day after the employer's effective cessation date, each employee described by this paragraph, except as provided by subsection (8)(d)2. of this section, shall be considered an inactive member with respect to his or her employment with the employer that ceased participation and, subject to the provisions and limitations of KRS 61.510 to 61.705 and 78.510 to 78.852, shall:
    1. Retain his or her accounts with the Kentucky Employees Retirement System or the County Employees Retirement System and have those accounts credited with interest in accordance with KRS 61.510 to 61.705 and 78.510 to 78.852;
    2. Retain his or her vested rights in accordance with paragraph (a) of this subsection; and
    3. Be eligible to take a refund of his or her accumulated account balance in accordance with KRS 61.625 or any other available distribution if eligible;
- (6) (a) Kentucky Employees Retirement System employers who are county attorney offices, Commonwealth's attorney offices, local and district health departments governed by KRS Chapter 212, master commissioners, executive branch agencies whose employees are subject to KRS 18A.005 to 18A.200, state-administered retirement systems, state-supported universities and community colleges, property valuation administration offices, or employers in the legislative or judicial branch of Kentucky state government, shall not be eligible to voluntarily discontinue participation in the Kentucky Employees Retirement System, except that:
1. Any employer who is a nonstock nonprofit corporation organized under KRS Chapter 273 may voluntarily cease participation; and
  2. Local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, and the Kentucky Higher Education Student Loan Corporation may voluntarily cease participation in the Kentucky Employees Retirement System solely under the provisions and requirements of subsection (8) of this section.
- (b) Only the employers in the County Employees Retirement System who are a nonstock nonprofit corporation organized under KRS Chapter 273 may voluntarily cease participation in the County Employees Retirement System;
- (7) For purposes of this section, the full actuarial cost shall be determined by the Kentucky Retirement Systems' consulting actuary separately for the pension fund and the insurance fund using the assumptions and methodology established by the system specifically for determining the full actuarial cost of ceasing participation as of the employer's effective cessation date. For purposes of determining the full actuarial cost, the assumed rate of return used to calculate the cost shall be the lesser of the assumed rate of return utilized in the system's most recent actuarial valuation or the yield on a thirty (30) year United States treasury bond as of the employer's effective cessation date, but shall in no case be lower than:
- (a) Except as provided by paragraphs (b) to (e) of this subsection, the assumed rate of return utilized in the system's most recent actuarial valuation minus three and one-half percent (3.5%);
  - (b) Four and one-half percent (4.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do not make an election for

their employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section;

- (c) ***Five and one quarter percent (5.25%) for university and community college employers*** or three and one-half percent (3.5%) for ***all other***~~those~~ Kentucky Employees Retirement System employers, who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
  - (d) Three and one-half percent (3.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by installment payments and who do not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section; or
  - (e) Three percent (3%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by installment payments and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
- (8) Notwithstanding the provisions of this section, any Kentucky Employees Retirement System employer who is eligible to voluntarily cease participating as provided by subsection (6) of this section may, on or after April 1, 2020, but prior to May 1, 2021, except that in the case of university or community college employers it shall be prior to January 1, 2021, elect to voluntarily cease participating in the systems for its nonhazardous employees by submitting a resolution in accordance with subsection (3)(a)1. of this section. If an employer makes an election to voluntarily cease participation by submitting a resolution as provided by this subsection:
- (a) The board shall accept any election to cease participation on or before June 30, 2021, and the employer's effective cessation date shall be June 30, 2021. Prior to May 1, 2021, or January 1, 2021, in the case of university or community college employers, the employer may rescind a previously submitted election to cease participation;
  - (b) Nonhazardous employees hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that ceasing employer;
  - (c) Nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems on or after January 1, 2014, and who are participating in the hybrid cash balance plan as provided by KRS 61.597, shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, the employee shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section. A nonhazardous employee covered by this paragraph who elects to transfer his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subsection (3)(a)5. of this section, shall, notwithstanding KRS 61.597, receive a transfer of the employee's accumulated account balance, including the entire accumulated employer credit, regardless of the employee's years of service credit;
  - (d)
    1. The employer shall, in the resolution submitted in accordance with subsection (3)(a)1. of this section, make an election as to whether or not nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems prior to January 1, 2014, who are participating in the systems administered by Kentucky Retirement Systems through the employer, will continue to participate in the system after the employer's effective cessation date.
    2. If the employer makes an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees will continue to contribute and earn service credit in the systems for as long as they remain employed by the employer in a regular full-time position that is eligible to participate in the systems, except in the event the employer fails to make installment payments as provided by KRS 61.675(4).

Any costs for the present value of future normal costs of the employees covered by this subparagraph who will contribute and earn service in the system after the employer's effective cessation date shall be included in the cost calculation established by subsection (7) of this section.

3. If the employer does not make an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, these employees shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section;
- (e) The cost of ceasing participating to an individual employer shall be equal to the cost determined under subsection (7) of this section and shall include the costs of those employees who continue to participate in the system as provided by paragraph (d)2. of this subsection;
  - (f) The employer may pay the full actuarial cost of ceasing participation by lump-sum payment or in installments as provided by paragraph (g) of this subsection;
  - (g) If the employer elects to pay the costs in installment payments, the cost of ceasing participation as provided by this subsection shall be financed by the systems using the following method:
    1. Annual payments occurring on or after July 1, 2021, shall be a set dollar value and shall be paid in monthly installments. In fiscal year 2021-2022, the set dollar value shall be equal to the higher of the actual contributions paid by the employer in fiscal year 2020-2021 or the annualized average of the creditable compensation reported to the systems by the ceasing employer over the last sixty (60) months occurring prior to July 1, 2019, for which contributions were paid by the ceasing employer, and multiplied by an employer rate of forty-nine and forty-seven one-hundredths percent (49.47%). Annual payments, for fiscal years occurring on or after July 1, 2022, which shall be paid monthly, shall be increased by one and one-half percent (1.5%) annually and shall be paid until the cost as provided by subsection (7) of this section and as adjusted annually by subparagraphs 2. and 3. of this paragraph are paid in full or until an employer as described by subparagraph 4. of this paragraph has paid for thirty (30) years from the effective cessation date;
    2. Interest shall be assigned to the principal amount annually beginning on July 1, 2021, and for each July 1 thereafter, that is equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs;
    3. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer makes an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)2. of this subsection, then the systems shall adjust the base value for the first annual payments occurring on or after July 1, 2021, in order to keep the maximum period of installments to thirty (30) years; and
    4. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer does not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)3. of this subsection, the employer shall pay the amount determined by subparagraph 1. of this paragraph for thirty (30) years from the effective cessation date and no additional costs shall be billed to a ceasing employer after the conclusion of the thirty (30) year period nor shall the employer be subject to adjustments under subparagraph 3. of this paragraph. The system may request in future biennial executive branch budgets the additional funding needed on an annual basis to fully pay off the installments at the conclusion of the thirty (30) year period for the employers described by this paragraph, and it is the intent of the General Assembly to pay the additional funding needed by appropriation in the biennial executive branch budget.

An employer ceasing participation who is making installment payments as provided by this paragraph may at any time pay off a portion of the remaining balance or the entire remaining balance and shall not be charged any interest for periods beyond the pay-off date for the balance that is paid off;

- (h) Kentucky Employees Retirement System employers eligible to cease participation under the provisions of this subsection who do not make an election to cease participation in the system prior to May 1, 2021, or prior to January 1, 2021, in the case of university and community college employers, shall be required to pay the full actuarially determined contributions established by KRS 61.565 and 61.702 for fiscal years occurring on or after July 1, 2021; and
  - (i) Kentucky Employees Retirement System employers who elect to cease participation in the system as provided by this subsection who are currently receiving a distribution of general fund appropriations in the biennial executive branch budget under the provisions of 2018 Ky. Acts ch. 169, Part I, G., 4., (5), 2018 Ky. Acts ch. 169, Part I, G., 5., (2), or 2018 Ky. Acts ch. 169, Part I, G., 9., (2) to help pay employer contributions to the system shall continue to receive the same level of distribution of general fund appropriations to help pay the costs of ceasing participation until such time that the employer's full actuarial costs of ceasing participation are paid off;
- (9) The Kentucky Retirement Systems shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this section;
- (10) (a) Any employer who voluntarily ceases participation, or who is required to involuntarily cease participation as provided in this section, shall hold the Commonwealth and the Kentucky Retirement Systems, including board members and employees of the Kentucky Retirement Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the departing employer related to the employer's cessation of participation as set forth in this section.
- (b) Any employer who is voluntarily ceasing participation under the provisions of subsection (8) of this section shall be required to pledge any security in any relevant real estate, chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money to the costs of ceasing participation until all costs of ceasing participation are paid in full; and
- (11) Notwithstanding any other provision of statute to the contrary, the provisions of KRS 61.510 to 61.705 and 78.510 to 78.852, and the administrative regulations promulgated thereunder, shall prevail regarding any question of participation in the systems of any employer or any employee of an employer who ceases participation in the Kentucky Employees Retirement System.

➔Section 4. KRS 61.522 (Effective April 1, 2021) is amended to read as follows:

Notwithstanding any other provision of KRS 61.510 to 61.705 or 78.510 to 78.852 to the contrary:

- (1) For purposes of this section:
- (a) "Active member" means a member who is participating in the system;
  - (b) "Employer" means the governing body of a department, as defined by KRS 61.510;
  - (c) "Employer's effective cessation date" means:
    1. The last day of the system's plan year in the year in which the employer has elected to cease participation in the system, provided the employer has met the requirements of this section and has given the Kentucky Retirement Systems sufficient notice as provided by administrative regulations promulgated by the systems; or
    2. For Kentucky Employees Retirement System employers making an election to cease participating under the provisions of subsection (8) of this section, it shall be June 30, 2021; and
  - (d) "Inactive member" means a member who is not participating with the system;
- (2) Any employer participating in the Kentucky Employees Retirement System on July 1, 2015, except as limited by subsection (6) of this section, may:
- (a) Voluntarily cease participation in its respective retirement system subject to the requirements and restrictions of this section;



- (b) Be required to involuntarily cease participation in the system under the provisions of this section if the board has determined the employer is no longer qualified to participate in a governmental plan or has failed to comply with the provisions of KRS 61.510 to 61.705; or
  - (c) If the employer is participating in the Kentucky Employees Retirement System, request an estimate of the cost of voluntarily ceasing participation in the system prior to officially making a request to cease participation. For those Kentucky Employees Retirement System nonhazardous employers who are considering ceasing participating in the system under the provisions of subsection (8) of this section on June 30, 2021, the request for an estimate to voluntarily cease participating must be made prior to December 31, 2019, and the estimate shall be provided to that employer within sixty (60) days of the request, except that no estimate shall be required to be provided prior to January 31, 2020;
- (3) (a) If an employer desires to voluntarily cease participation in the Kentucky Employees Retirement System as provided by subsection (2)(a) of this section:
1. The employer shall adopt a resolution requesting to cease participation in the system and shall submit the resolution to the board for its approval. The board shall not be able to deny a resolution to cease participation in the Kentucky Employees Retirement System for any employer who seeks to voluntarily cease participation in the system as provided by subsection (8) of this section;
  2. Except as provided by subsection (8)(d) of this section, the cessation of participation in the system shall apply to all employees of the employer;
  3. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section;
  4. The employer shall provide an alternative retirement program for employees who will no longer be covered by the system, which may include a voluntary defined contribution plan but, for Kentucky Employees Retirement System employers with effective cessation dates occurring on or after June 30, 2020, the alternative retirement program shall not include a defined benefit plan which by its nature can have an unfunded liability;
  5. If the alternative retirement program established by the employer meets the qualification requirements under 26 U.S.C. sec. 401(a) or 26 U.S.C. sec. 403(b) and is capable of accepting trustee-to-trustee transfers of both pre-tax and post-tax contributions, employees of the employer ceasing participation may, except for those employees continuing to participate in the system as provided by subsection (8)(d)2. of this section, seek to transfer his or her account balance to the employer's qualified alternate retirement program within sixty (60) days of the employer's effective cessation date. An employee's election to transfer his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits in the system for the time worked for the employer ceasing participation;
  6. The employer shall pay to the system by lump sum or in installments as provided by subsection (8) of this section, if eligible, the full actuarial cost, except as provided by subsection (8)(g)4. of this section, of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 3. of this paragraph. If the employer makes an election for employees to continue to participate in the system as provided by subsection (8)(d)2. of this section, the cost shall also include the present value of future normal costs of those employees who will continue to participate in the system after the employer's effective cessation date. The full actuarial cost shall not include any employee who seeks a transfer of his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subparagraph 5. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid or the installment payments have commenced; and
  7. Kentucky Employees Retirement System employers ceasing participating under the provisions of subsection (8) of this section who elect to pay their actuarial costs by a lump sum shall make the full lump-sum payment by June 30, 2022, and shall pay interest on the principal amount beginning on July 1, 2021, equal to a rate of five and one-quarter percent (5.25%) per annum for

pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs until the lump-sum payment is made. If the ceasing employer fails to make the full lump-sum payment by June 30, 2022, the ceasing employer shall make installments as provided by subsection (8)(g) of this section, and the ceasing employer shall have the costs recalculated based upon making installment payments as provided by this section and shall be required to make up any missed installment payments as determined by the system.

- (b) If the board determines an employer must involuntarily cease participation in the system as provided by subsection (2)(b) of this section:
1. The cessation of participation in the system shall apply to all employees of the employer;
  2. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section; and
  3. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 2. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid.

A Kentucky Employees Retirement System employer who ceases participation in the systems under this paragraph shall not establish or contribute to on behalf of its employees a defined benefit plan which by its nature can have an unfunded liability;

- (4) Any employee hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that employer;
- (5) If an employer has ceased participation in the system as provided by this section:
- (a) The rights of recipients and the vested rights of inactive members accrued as of the employer's effective cessation date shall not be impaired or reduced in any manner as a result of the employer ceasing participation in the system; and
  - (b) Except as provided by subsection (8)(d)2. of this section, employees of the employer ceasing participation shall accrue benefits through the employer's effective cessation date but shall not accrue any additional benefits in the Kentucky Employees Retirement System, including earning years of service credit through the ceased employer, after the employer's effective cessation date for as long as they remain employed by the employer. The day after the employer's effective cessation date, each employee described by this paragraph, except as provided by subsection (8)(d)2. of this section, shall be considered an inactive member with respect to his or her employment with the employer that ceased participation and, subject to the provisions and limitations of KRS 61.510 to 61.705, shall:
    1. Retain his or her accounts with the Kentucky Employees Retirement System and have those accounts credited with interest in accordance with KRS 61.510 to 61.705;
    2. Retain his or her vested rights in accordance with paragraph (a) of this subsection; and
    3. Be eligible to take a refund of his or her accumulated account balance in accordance with KRS 61.625 or any other available distribution if eligible;
- (6) Kentucky Employees Retirement System employers who are county attorney offices, Commonwealth's attorney offices, local and district health departments governed by KRS Chapter 212, master commissioners, executive branch agencies whose employees are subject to KRS 18A.005 to 18A.200, state-administered retirement systems, state-supported universities and community colleges, property valuation administration offices, or employers in the legislative or judicial branch of Kentucky state government, shall not be eligible to voluntarily discontinue participation in the Kentucky Employees Retirement System, except that:
- (a) Any employer who is a nonstock nonprofit corporation organized under KRS Chapter 273 may voluntarily cease participation; and

- (b) Local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, and the Kentucky Higher Education Student Loan Corporation may voluntarily cease participation in the Kentucky Employees Retirement System solely under the provisions and requirements of subsection (8) of this section;
- (7) For purposes of this section, the full actuarial cost shall be determined by the Kentucky Retirement Systems' consulting actuary separately for the pension fund and the insurance fund using the assumptions and methodology established by the system specifically for determining the full actuarial cost of ceasing participation as of the employer's effective cessation date. For purposes of determining the full actuarial cost, the assumed rate of return used to calculate the cost shall be the lesser of the assumed rate of return utilized in the system's most recent actuarial valuation or the yield on a thirty (30) year United States treasury bond as of the employer's effective cessation date, but shall in no case be lower than:
- (a) Except as provided by paragraphs (b) to (e) of this subsection, the assumed rate of return utilized in the system's most recent actuarial valuation minus three and one-half percent (3.5%);
- (b) Four and one-half percent (4.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do not make an election for their employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section;
- (c) ***Five and one-quarter percent (5.25%) for university and community college employers or*** three and one-half percent (3.5%) for ***all other***~~those~~ Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by lump-sum payment by June 30, 2022, and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
- (d) Three and one-half percent (3.5%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by installment payments and who do not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)3. of this section; or
- (e) Three percent (3%) for those Kentucky Employees Retirement System employers who voluntarily cease participation under the provisions of subsection (8) of this section who pay the costs of ceasing participation by installment payments and who do make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by subsection (8)(d)2. of this section;
- (8) Notwithstanding the provisions of this section, any Kentucky Employees Retirement System employer who is eligible to voluntarily cease participating as provided by subsection (6) of this section may, on or after April 1, 2020, but prior to May 1, 2021, except in the case of university or community college employers it shall be prior to January 1, 2021, elect to voluntarily cease participating in the systems for its nonhazardous employees by submitting a resolution in accordance with subsection (3)(a)1. of this section. If an employer makes an election to voluntarily cease participation by submitting a resolution as provided by this subsection:
- (a) The board shall accept any election to cease participation on or before June 30, 2021, and the employer's effective cessation date shall be June 30, 2021. Prior to May 1, 2021, or January 1, 2021, in the case of university or community college employers, the employer may rescind a previously submitted election to cease participation;
- (b) Nonhazardous employees hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that ceasing employer;
- (c) Nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems on or after January 1, 2014, and who are participating in the hybrid cash balance plan as provided by KRS 61.597, shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, the employee shall participate in the alternative retirement plan

established by the employer as provided by subsection (3)(a)4. of this section. A nonhazardous employee covered by this paragraph who elects to transfer his or her account balance within sixty (60) days of the employer's effective cessation date as provided by subsection (3)(a)5. of this section, shall, notwithstanding KRS 61.597, receive a transfer of the employee's accumulated account balance, including the entire accumulated employer credit, regardless of the employee's years of service credit;

- (d)
  1. The employer shall, in the resolution submitted in accordance with subsection (3)(a)1. of this section, make an election as to whether or not nonhazardous employees hired prior to the employer's effective cessation date, who began participating in the systems administered by Kentucky Retirement Systems prior to January 1, 2014, who are participating in the systems administered by Kentucky Retirement Systems through the employer, will continue to participate in the system after the employer's effective cessation date.
  2. If the employer makes an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees will continue to contribute and earn service credit in the systems for as long as they remain employed by the employer in a regular full-time position that is eligible to participate in the systems, except in the event the employer fails to make installment payments as provided by KRS 61.675(4). Any costs for the present value of future normal costs of the employees covered by this subparagraph who will contribute and earn service in the system after the employer's effective cessation date shall be included in the cost calculation established by subsection (7) of this section.
  3. If the employer does not make an election for the employees described by this paragraph to continue participating in the system after the employer's effective cessation date, these employees shall continue to contribute and earn service credit in the systems through the employer's effective cessation date. After the employer's effective cessation date, these employees shall participate in the alternative retirement plan established by the employer as provided by subsection (3)(a)4. of this section;
- (e) The cost of ceasing participating to an individual employer shall be equal to the cost determined under subsection (7) of this section and shall include the costs of those employees who continue to participate in the system as provided by paragraph (d)2. of this subsection;
- (f) The employer may pay the full actuarial cost of ceasing participation by lump-sum payment or in installments as provided by paragraph (g) of this subsection;
- (g) If the employer elects to pay the costs in installment payments, the cost of ceasing participation as provided by this subsection shall be financed by the systems using the following method:
  1. Annual payments occurring on or after July 1, 2021, shall be a set dollar value and shall be paid in monthly installments. In fiscal year 2021-2022, the set dollar value shall be equal to the higher of the actual contributions paid by the employer in fiscal year 2020-2021 or the annualized average of the creditable compensation reported to the systems by the ceasing employer over the last sixty (60) months occurring prior to July 1, 2019, for which contributions were paid by the ceasing employer, and multiplied by an employer rate of forty-nine and forty-seven one-hundredths percent (49.47%). Annual payments, for fiscal years occurring on or after July 1, 2022, which shall be paid monthly, shall be increased by one and one-half percent (1.5%) annually and shall be paid until the cost as provided by subsection (7) of this section and as adjusted annually by subparagraphs 2. and 3. of this paragraph are paid in full or until an employer as described by subparagraph 4. of this paragraph has paid for thirty (30) years from the effective cessation date;
  2. Interest shall be assigned to the principal amount annually beginning on July 1, 2021, and for each July 1 thereafter, that is equal to a rate of five and one-quarter percent (5.25%) per annum for pension costs and at a rate of six and one-quarter percent (6.25%) per annum for retiree health costs;
  3. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer makes an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)2. of this subsection, then the

systems shall adjust the base value for the first annual payments occurring on or after July 1, 2021, in order to keep the maximum period of installments to thirty (30) years; and

4. If an employer is not projected by the systems to pay off the full actuarial costs to cease participation with interest as provided by subparagraph 2. of this paragraph at the conclusion of the thirty (30) year installment period from the employer's effective cessation date, and the employer does not make an election for employees to continue to participate in the system after the employer's effective cessation date as provided by paragraph (d)3. of this subsection, the employer shall pay the amount determined by subparagraph 1. of this paragraph for thirty (30) years from the effective cessation date and no additional costs shall be billed to a ceasing employer after the conclusion of the thirty (30) year period nor shall the employer be subject to adjustments under subparagraph 3. of this paragraph. The system may request in future biennial executive branch budgets the additional funding needed on an annual basis to fully pay off the installments at the conclusion of the thirty (30) year period for the employers described by this paragraph, and it is the intent of the General Assembly to pay the additional funding needed by appropriation in the biennial executive branch budget.

An employer ceasing participation who is making installment payments as provided by this paragraph may at any time pay off a portion of the remaining balance or the entire remaining balance and shall not be charged any interest for periods beyond the pay-off date for the balance that is paid off;

- (h) Kentucky Employees Retirement System employers eligible to cease participation under the provisions of this subsection who do not make an election to cease participation in the system prior to May 1, 2021, or prior to January 1, 2021, in the case of university and community college employers, shall be required to pay the full actuarially determined contributions established by KRS 61.565 and 61.702 for fiscal years occurring on or after July 1, 2021; and
- (i) Kentucky Employees Retirement System employers who elect to cease participation in the system as provided by this subsection who are currently receiving a distribution of general fund appropriations in the biennial executive branch budget under the provisions of 2018 Ky. Acts ch. 169, Part I, G., 4., (5), 2018 Ky. Acts ch. 169, Part I, G., 5., (2), or 2018 Ky. Acts ch. 169, Part I, G., 9., (2) to help pay employer contributions to the system shall continue to receive the same level of distribution of general fund appropriations to help pay the costs of ceasing participation until such time that the employer's full actuarial costs of ceasing participation are paid off;
- (9) The Kentucky Retirement Systems shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this section;
- (10) (a) Any employer who voluntarily ceases participation, or who is required to involuntarily cease participation as provided in this section, shall hold the Commonwealth and the Kentucky Retirement Systems, including board members and employees of the Kentucky Retirement Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the departing employer related to the employer's cessation of participation as set forth in this section.
- (b) Any employer who is voluntarily ceasing participation under the provisions of subsection (8) of this section shall be required to pledge any security in any relevant real estate, chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money to the costs of ceasing participation until all costs of ceasing participation are paid in full; and
- (11) Notwithstanding any other provision of statute to the contrary, the provisions of KRS 61.510 to 61.705, and the administrative regulations promulgated thereunder, shall prevail regarding any question of participation in the systems of any employer or any employee of an employer who ceases participation in the Kentucky Employees Retirement System.

➔Section 5. KRS 61.675 is amended to read as follows:

- (1) The employer shall prepare the records and, from time to time, shall furnish the information the system may require in the discharge of its duties. Upon employment of an employee, the employer shall inform him of his duties and obligations in connection with the system as a condition of employment.
- (2) The system may at any time conduct an audit of the employer in order to determine if the employer is complying with the provisions of KRS 16.505 to 16.652, 61.610 to 61.705, or 78.510 to 78.852. The system

shall have access to and may examine all books, accounts, reports, correspondence files, and records of any employer. Every employer, employee, or agency reporting official of a department or county, as defined in KRS 78.510(3), having records in his possession or under his control, shall permit access to and examination of the records upon the request of the system.

- (3) (a) Any agency participating in the Kentucky Employees Retirement System which is not an integral part of the executive branch of state government shall file the following at the retirement office on or before the tenth day of the month following the period being reported:
1. The employer and employee contributions required under KRS 61.560, 61.565, and 61.702;
  2. The employer contributions and reimbursements for retiree health insurance premiums required under KRS 61.637; and
  3. A record of all contributions to the system on the forms prescribed by the board.
- (b) If the agency fails to file all contributions and reports on or before the tenth day of the month following the period being reported, interest on the delinquent contributions at the actuarial rate adopted by the board compounded annually, but not less than one thousand dollars (\$1,000), may be added to the amount due the system.
- (4) ***If a nonhazardous employer in the Kentucky Employees Retirement System is delinquent in paying the employer contributions required by Section 1 of this Act for a period of ninety (90) days or more for those contributions payable on or after July 1, 2021, or if an employer who voluntarily ceases participation in the Kentucky Employees Retirement System as provided by KRS 61.522(8) elects to pay off the costs of ceasing participation by installment payments as provided by KRS 61.522(8)(g) and subsequently is delinquent in making installment payments for a period of ninety (90) days or more:***
- (a) Employees of the employer ***who are participating in the system or*** who are continuing to participate in the system after the employer's effective cessation date as provided by KRS 61.522(8)(d)2. shall not accrue any additional service credit or benefits in the system through the ***employer or*** ceasing employer until such time as the employer has satisfied the required ***employer contributions or*** installment payments to the system;
  - (b) The board may file an action in the Franklin Circuit Court to collect any delinquent ***employer contributions or*** installment payments owed by the employer and to attach so much of the general fund appropriations of the delinquent employer as is necessary to achieve full compliance with the provisions of ***Section 1 of this Act or*** KRS 61.522(8); and
  - (c) The systems shall notify the Finance and Administration Cabinet, and the Finance and Administration Cabinet may withhold or intercept from the ***employer or*** ceasing employer a sufficient portion of any appropriated state funds not yet disbursed to the ***employer or*** ceasing employer to satisfy the required ***employer contributions or*** installment payments to the system.

➔SECTION 6. A NEW SECTION OF KRS 212.010 TO 212.275 IS CREATED TO READ AS FOLLOWS:

- (1) ***If a district health department established pursuant to this chapter ceases to operate or has a county or counties withdraw from the district health department, the Department for Public Health in the Cabinet for Health and Family Services shall, if the district health department participated in the Kentucky Employees Retirement System, certify the following to the Kentucky Retirement Systems:***
- (a) ***1. In the case of a district health department that ceases to operate, the proportion of taxable property of each county of the ceasing district health department as determined by respective county assessments and in accordance with revenues generated pursuant to authority under this chapter; or***
  - 2. In the case of a county or counties that withdraw from a district health department, the proportion of taxable property of the withdrawing county as determined by respective county's assessment and in accordance with revenues generated pursuant to authority under this chapter; and***
  - (b) ***The local board of health, local government agency, or entity responsible for paying retirement costs of the county that is no longer participating with the current or ceased district health department.***
- (2) ***The Cabinet for Health and Family Services may promulgate administrative regulations to carry out this section.***

➔SECTION 7. A NEW SECTION OF KRS 61.510 TO 61.705 IS CREATED TO READ AS FOLLOWS:

*Except as otherwise provided by this section, the following shall apply to nonhazardous employers in the Kentucky Employees Retirement System, who contributed to the system in fiscal year 2019-2020 except in the case of county attorneys, who are local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, county attorneys, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, or any other agency that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522:*

- (1) (a) *Each employer, except for county attorneys, shall report to the Authority for each fiscal year occurring on or after July 1, 2021, the following persons for which no employer contributions were paid by the employer to the system during the fiscal year for services provided to the employer:*
    1. *Persons employed as an independent contractor, a leased employee, or via any other employment arrangement as determined by the Authority, who if employed directly by the employer would qualify as a regular full-time employee in accordance with KRS 61.510(21); and*
    2. *Persons employed directly by the employer who meet the definition of a regular full-time employee in accordance with KRS 61.510(21), who are not being reported to the system in accordance with KRS 61.675.*
  - (b) *The reporting required by this paragraph shall:*
    1. *Be reported in a format, detail, and frequency as determined solely by the Authority;*
    2. *Include persons providing services to the employer as an independent contractor, a leased employee, or via any other employment arrangement as determined by the Authority, and those services have historically been provided or are currently being provided by employees eligible to participate in the system through the employer; and*
    3. *Exclude:*
      - a. *Contracts for professional services that have not historically been provided by employees of the employer; and*
      - b. *Any contracts entered into prior to January 1, 2021, with a person or company to provide services as an independent contractor, a leased employee, or other employment arrangement as determined by the Authority, but only for the duration of the original contract, excluding any renewal periods, and only for those services and persons included in the original contract.*
  - (c) *In any case of doubt, the Authority shall determine whether data should be reported on a specific person providing services to the employer and the Authority may by promulgation of administrative regulation provide guidance on which persons should be included for reporting purposes.*
  - (d) *If KRS determines a person who was not reported to the system under this subsection should be reported to the system as a regular full-time employee, the system shall require the employer covered by this section to report the employee on or after July 1, 2021, and pay employer contributions prospectively but shall not, notwithstanding any other statute to the contrary, bill the employer for any contributions or penalties for any service occurring prior to July 1, 2021, for that specific employee;*
- (2) (a) *Notwithstanding any other provision of statute to the contrary, the Authority shall have full power, including any authority under KRS 61.685, to audit an employer who is subject to the provisions of this section to ensure compliance and accuracy of the data required to be reported by the employer in accordance with this section.*
  - (b) *If the Authority determines an employer has knowingly falsified data required to be reported under this section:*
    1. *The Authority shall indicate in the annual report submitted in accordance with subsection (3) of this section that the employer has knowingly falsified data and shall include a brief summary of the reasons for the Authority's determination;*
    2. *The employer shall no longer be eligible to receive any future appropriations or subsidies from the state to assist in paying employer contributions to the system; and*

3. *The employer shall be required to pay back to the state any appropriations or subsidies provided in the biennial executive branch budget that were used to directly assist the employer in paying employer contributions to the system on or after July 1, 2021.*
- (c) *If an employer fails to submit the information required by this section or does not comply with requests from the Authority regarding subsections (1) and (2) of this section to verify or audit the employer's information:*
  1. *The Authority shall indicate in the annual report submitted in accordance with subsection (3) of this section that the employer is noncompliant with the Authority's requests and shall include a brief summary of the reasons for the Authority's determination; and*
  2. *The employer may lose eligibility to receive any future appropriations or subsidies from the state to assist in paying employer contributions to the system;*
- (3) *The Authority shall within sixty (60) days following the close of each fiscal year occurring on or after July 1, 2021, determine and report the following to the state budget director's office and the Legislative Research Commission for each employer subject to this section, except for county attorneys:*
  - (a) *The number of regular full-time employees of the employer who were reported to the system during the prior fiscal year for which contributions were reported in accordance with KRS 61.675;*
  - (b) *The number of persons providing services to the employer under subsection (1) of this section during the prior fiscal year who were not reported to the system and for which no contributions were reported;*
  - (c) *A percentage computed by dividing the number of employees reported in paragraph (a) of this subsection by the combined sum of the number of employees and persons reported in paragraphs (a) and (b) of this subsection and multiplying by one hundred (100); and*
  - (d) *The information required by subsection (2) of this section for any employer who has been determined by the Authority to have knowingly falsified data or is noncompliant in submitting the data required by this section to the Authority;*
- (4) *It is the intent of the General Assembly in fiscal years occurring on or after July 1, 2021, to provide appropriations for county attorneys for retirement costs in the Kentucky Employees Retirement System that is equal to the difference between the dollar value of actual contributions paid by the employer in fiscal year 2019-2020 to the system and the dollar value of contributions projected to be paid by the employer to the system in fiscal year 2021-2022;*
- (5) *For fiscal year 2021-2022, it is the intent of the General Assembly to provide a subsidy towards the retirement costs of employers covered by this section, except for county attorneys who are provided a subsidy by subsection (4) of this section, that is equal to the difference between the dollar value of actual contributions paid by the employer to the system in fiscal year 2019-2020 and the dollar value of contributions projected to be paid by the employer to the system in fiscal year 2021-2022;*
- (6) *It is the intent of the General Assembly that for fiscal years occurring on or after July 1, 2022:*
  - (a) *To provide a subsidy towards the retirement costs of each employer subject to this section, except for county attorneys who are provided a subsidy by subsection (4) of this section, who has made efforts to increase or maintain the number of employees reported to the system. Specifically, it is the intent of the General Assembly to provide subsidies only to those employers who have a percentage of employees reported to the system as specified by subsection (3)(c) of this section, equal to or greater than:*
    1. *Sixty percent (60%) for any subsidies provided in fiscal years occurring on or after July 1, 2022, to June 30, 2024; and*
    2. *Eighty percent (80%) for any subsidies provided in fiscal years occurring on or after July 1, 2024.*

*Eligibility for a subsidy provided in each fiscal year of the budget shall be based upon the most recent percentage of employees reported by the Authority;*

  - (b) *For those employers eligible for a subsidy under paragraph (a) of this subsection, to provide a subsidy that is equal to the dollar value of the subsidy provided to the employer in fiscal year 2021-2022 multiplied by the following percentage:*



1. *For local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, and any other employer subject to this section that has taxing or fee authority:*
    - a. *Ninety percent (90%) in fiscal year 2022-2023;*
    - b. *Eighty percent (80%) in fiscal year 2023-2024;*
    - c. *Seventy percent (70%) in fiscal year 2024-2025;*
    - d. *Sixty percent (60%) in fiscal year 2025-2026; and*
    - e. *Fifty percent (50%) in fiscal years occurring on or after July 1, 2026; and*
  2. *For any other employer who does not have taxing or fee authority:*
    - a. *Ninety percent (90%) in fiscal years 2022-2024; and*
    - b. *Seventy-five percent (75%) in fiscal years occurring on or after July 1, 2024; and*
- (c) *The subsidy provided by this subsection shall be adjusted to reflect the assignment of liabilities based upon the appeal process in subsection (1)(d)5. of Section 1 of this Act.*
- (7) *The Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs are, notwithstanding the provisions of subsections (1) to (6) of this section, exempt from the reporting requirements and from receiving a subsidy to assist in paying employer contribution rates; and*
- (8) *The provisions of this section shall not obligate the General Assembly to provide any specific level of subsidy to assist in paying employer contributions of any employer covered by this section, and employers shall be responsible for any and all future retirement contributions payable by the employer regardless of the actual amount of subsidy included in future executive branch budgets.*

➔Section 8. The Kentucky Retirement Systems board of trustees shall amend the actuarial valuation for the Kentucky Employees Retirement System in accordance with the provisions of Section 1 of this Act so that employer costs can be determined for fiscal year 2021-2022 and shall provide the information to the Governor and General Assembly for purposes of the fiscal year 2021-2022 budgeting process.

➔Section 9. For any district health department that has ceased to exist prior to the effective date of this Act, Kentucky Retirement Systems shall have the authority to assign liabilities and employer costs to the county health departments which comprised that ceasing district health department in order to carry out the provisions of Section 1 of this Act.

➔Section 10. Whereas ensuring the financial health of the Kentucky Employees Retirement System is critical to the Commonwealth of Kentucky and to members, retirees, and employers of the system, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by Governor March 23, 2021.**

## CHAPTER 84

( HB 236 )

AN ACT relating to fertilizer and pesticide use and application and making an appropriation therefor.

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

➔SECTION 1. KRS 217B.040 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*For the purposes of this chapter, unless the context requires otherwise:*

- (1) *"Applicant" means a person applying for a license or registration under this chapter;*
- (2) *"Branch office" means any location of a dealer other than its designated principal place of business location, but does not include on-premises and off-premises bulk storage or receiving warehouses used solely for the purpose of customer order filling;*
- (3) *"Dealer" means any person that engages in the storage of bulk fertilizer or a restricted use pesticide for the purpose of redistribution or direct resale, or engages in the business of applying any pesticide to the lands of another. A "dealer" does not include a manufacturer of a fertilizer or a restricted use pesticide who distributes his or her product solely to a dealer;*
- (4) *"Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission;*
- (5) *"Department" means the Kentucky Department of Agriculture;*
- (6) *"Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues;*
- (7) *"Direct supervision" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified operator or certified applicator who is responsible for the actions of that person and who is available if and when needed, even though such certified operator or certified applicator is not physically present at the time and place the pesticide is applied;*
- (8) *"Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive, and, having received, deliver or offer to deliver any pesticides in this state excepting internal distribution within a company or organization;*
- (9) *"EPA" means the United States Environmental Protection Agency;*
- (10) *"Equipment" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land, but shall not include any pressurized hand-sized household device used to apply any pesticide;*
- (11) *"Fertilizer" means any substance containing one (1) or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products exempted by administrative regulation;*
- (12) *"Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living humans or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;*
- (13) *"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, as for example, beetles, bugs, bees, wasps, and flies, and includes other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example, spiders, mites, ticks, centipedes, and wood lice, and also nematodes and other worms, and any other invertebrates which are destructive, constitute a liability, and may be classed as pests;*
- (14) *"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or to any of its containers or wrappers;*
- (15) *"Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices, and contrivances and machinery appurtenant to or situated on them, fixed or mobile, including any used for transportation;*
- (16) *"Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, or any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species;*
- (17) *"Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, and may also be called nemas or eelworms;*

- (18) *"Noncommercial applicator" means any licensed individual making applications of pesticides to lands owned, occupied, or managed by his or her employer;*
- (19) *"Noncommercial license" means a license that is issued by the department for noncommercial use, and shall be valid only when an individual is making applications of pesticides to lands owned, occupied, or managed by his or her employer;*
- (20) *"Person" means any individual, partnership, association, or any organized group of persons, whether incorporated or not;*
- (21) *"Pest" means:*
- (a) *Any insect, snail, slug, rodent, nematode, fungus, or weed; or*
  - (b) *Any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living humans or other living animals, which is normally considered to be a pest, or which the department declares to be a pest;*
- (22) *"Pesticide" means:*
- (a) *Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;*
  - (b) *Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; or*
  - (c) *Any substance or mixture of substances intended to be used as a spray adjuvant, once they have been mixed with an EPA-registered product;*
- (23) *"Pesticide applicator" means any individual employed or supervised by a pesticide operator to apply pesticides. The term does not include trainees;*
- (24) *"Pesticide operator" means any individual who owns or manages a pesticide application business that is engaged in the business of applying pesticides upon the lands of another;*
- (25) *"Pesticide sales agent" means an individual who is employed by a dealer and supervises the sale or distribution of restricted use pesticides to the final user;*
- (26) *"Plant regulator" means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;*
- (27) *"Restricted use pesticide" means any pesticide classified for restricted use by the administrator of the EPA, or by administrative regulation of the department;*
- (28) *"Snails or slugs" include all harmful mollusks;*
- (29) *"Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect of it, and which is in a package or container separate from that of the other pesticide with which it is to be used;*
- (30) *"Trainee" means an individual who has been employed by a dealer and is working under the direct supervision of a licensed operator or applicator;*
- (31) *"Weed" means any plant which grows where not wanted; and*
- (32) *"Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including but not limited to mammals, birds, and aquatic life.*

➔Section 2. KRS 217B.050 is amended to read as follows:

- (1) The department shall administer and enforce the provisions of this chapter and promulgate administrative regulations to carry out the provisions of this chapter and in the administrative regulations may prescribe methods to be used in the storage of fertilizers, and the storage and application of pesticides. Where the department finds that the administrative regulations are necessary to carry out the purpose and intent of this chapter, the administrative regulations may relate to the time, place, manner, and method of storage and application of ~~the~~ pesticides and ~~storage of~~ fertilizers, may restrict or prohibit use of pesticides in

designated areas during specified periods of time, and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to:

- (a) Plants, including forage plants, on adjacent or nearby lands;
  - (b) Wildlife in the adjoining or nearby areas;
  - (c) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and
  - (d) Pollinating insects, animals, or persons.
- (2) In promulgating the administrative regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state and of the federal government.
  - (3) The department may by administrative regulation adopt a list of "restricted use pesticides" for the state or for designated areas within the state if it finds that the characteristics of the pesticides require restricting their use to prevent injury on lands other than the land to which they are applied, or to persons, animals, crops, or pests or vegetation other than the pests or vegetation which they are intended to destroy. For the purpose of uniformity of requirements between the states and the federal government, the department may adopt the list of "restricted use pesticides" as established by the Environmental Protection Agency or other federal or state agencies.
  - (4) The department may establish additional classifications of applicator or operator licenses as required for conformance with the Federal Environmental Pesticide Control Act of 1972. The classifications may include private farmer applicators, commercial establishment applicators, and government employee applicators not specifically mentioned in this chapter. The administrative regulations may specify licensing conditions, procedures, and fees ~~[not to exceed those fees specified for other licensees under this chapter]~~.
  - (5) In addition to the fees authorized in subsection (4) of this section, the department may, by administrative regulation, establish fees for carrying out the provisions required or authorized by this chapter ~~[, but shall not establish fees exceeding those specified under this chapter]~~.
  - (6) ***In addition to other authority conferred by statute, the department shall develop a regulatory program for regulating application and notice of application of pesticides for lawn care and mosquito control.***

➔Section 3. KRS 217B.060 is amended to read as follows:

- (1) The department may classify licenses to be issued under this chapter. The classifications may include but not be limited to ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each classification shall be subject to separate testing procedures and requirements.
- (2) Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, and license classification or classifications the applicant is applying for, and shall include the following:
  - (a) The full name of the person applying for the license;
  - (b) If the applicant is a receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of the receiver or trustee, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;
  - (c) The principal business address of the applicant in the state and elsewhere;
  - (d) The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant; ***and***
  - (e) ~~[The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides; and~~
  - (f) ~~—~~Any other necessary information prescribed by the department.
- (3) The department shall require an applicant for a license to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he or she has applied for. The applicant shall also demonstrate a knowledge of the proper use of and calibration of the

various equipment that he or she may have applied for a license to operate, including any pressurized, hand-sized devices. The examination shall require a working knowledge of:

- (a) The proper use of the equipment;
  - (b) The hazards that may be involved in applying pesticides, including:
    - 1. The effect of drift of the pesticides on adjacent and nearby lands and other nontarget organisms;
    - 2. The proper meteorological conditions for the application of pesticides and the precautions to be taken;
    - 3. The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;
    - 4. The effect of the application of pesticides to wildlife in the area, including aquatic life;
    - 5. The identity and classification of pesticides used and the effects of their application in particular circumstances; and
    - 6. The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation;
  - (c) Calculating the concentration of pesticides to be used in particular circumstances;
  - (d) Identification of pests to be controlled by common name only and the damages caused by the pests;
  - (e) Protective clothing and respiratory equipment required during the handling and application of pesticides;
  - (f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment that the applicant proposes to use; and
  - (g) Applicable state and federal pesticide laws and regulations.
- (4) If the department finds the applicant qualified to apply pesticides in the classifications he or she has applied for, if the applicant files the bond or insurance required under KRS 217B.130, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he or she is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause, or the financial security required under KRS 217B.130 is not dated to expire at an earlier date, in which case the license shall be dated to expire upon the expiration date of the financial security.

➔Section 4. KRS 217B.070 is amended to read as follows:

- (1) No person shall engage in the business of applying pesticides to the lands of another within this state at any time without a pesticide operator's license issued by the department. The department shall require an annual fee of **one hundred dollars (\$100)**~~twenty-five dollars (\$25)~~ for each pesticide operator's license issued.
- (2) No license shall be issued unless the applicant holds a valid certification within this category.
- (3) No license shall be issued unless the applicant is registered as a dealer or is employed by a person who is registered as a dealer.

➔Section 5. KRS 217B.080 is amended to read as follows:

- (1) Except as provided in KRS 217B.090, it shall be unlawful for any person to act as an employee of a pesticide operator or dealer and apply pesticides ~~[manually, or as the applicator directly in charge of any equipment which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide,]~~ without having obtained an applicator's license from the department. An applicator's license shall be in addition to any other license or permit required by law ~~[for the operation or use of any equipment].~~ Any person applying for an applicator's license shall file an application on a form prescribed by the department on or before January 1 of each year. Application for a license to apply pesticides shall be accompanied by a license fee of **twenty-five dollars (\$25)**~~ten dollars (\$10)~~. The provisions of this section shall not apply to any individual who has passed the examination provided for in KRS 217B.060(3), and is a licensed pesticide operator. If the department finds the applicant qualified to apply pesticides in the classifications he has applied for after examinations as provided for in KRS 217B.060(3), and if the applicant applying for a license to engage in aerial applications of pesticides has met all of the requirements of the Federal Aviation Agency and

the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he is qualified which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause as provided for in KRS 217B.120.

- (2) No license shall be issued unless the applicant holds a valid certification within this category.
- (3) No license shall be issued unless the applicant is employed or supervised by a person who holds a valid operator's license.

→Section 6. KRS 217B.090 is amended to read as follows:

- (1) It shall be unlawful for any person to act as a noncommercial applicator without having obtained a noncommercial applicator license from the department. Any person applying for a noncommercial applicator's license shall file an application on a form prescribed by the department on or before January 1 of each year. The provisions of this section shall not apply to any individual who is a licensed pesticide operator or applicator. If the department finds the applicant qualified to apply pesticides, the department shall issue a **noncommercial**~~limited~~ license ~~for~~~~without~~ a fee of **ten dollars (\$10)** to a noncommercial applicator, which shall be valid only when the individual is applying pesticides on land owned, occupied, or managed by his or her employer. The noncommercial applicator license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause as provided for in KRS 217B.120.
- (2) Employers of noncommercial applicators shall be subject to legal recourse by any person damaged by the application of any pesticide, and the action may be brought in the county where the damage or some part of the damage occurred.
- (3) No license shall be issued unless the applicant holds a valid certification within this category.
- (4) A **noncommercial**~~limited~~ license cannot be upgraded without retesting.
- (5) ***The department shall issue noncommercial applicator licenses to qualifying prison inmates and other incarcerated persons who are or will be engaged in the application of pesticides under the direction of the Department of Corrections. Fees for these persons shall be waived by the department.***

→Section 7. KRS 217B.105 is amended to read as follows:

- (1) No person shall act in the capacity of a dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a dealer without having registered as a dealer with the department.
- (2) Application for a dealer registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of **seventy-five dollars (\$75)**~~fifty dollars (\$50)~~. All registrations issued under this section shall expire on December 31 of the year for which they are issued. The registration for a dealer may be renewed annually upon application to the department, accompanied by a fee of **seventy-five dollars (\$75)**~~fifty dollars (\$50)~~ for each registration, on or before the first day of January of the calendar year for which the registration is issued.
- (3) No person shall be registered as a dealer without proof of financial responsibility as required by KRS 217B.130.
- (4) A dealer shall register each branch office location.
- (5) Application for a branch office registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of **fifty dollars (\$50)**~~twenty-five dollars (\$25)~~. All registrations issued under this section shall expire on December 31. The registration for a branch office may be renewed annually upon application to the department, accompanied by a fee of **fifty dollars (\$50)**~~twenty-five dollars (\$25)~~ for each registration, on or before the first of January of the calendar year for which the registration is issued. No branch office registration may be issued unless the applicant is registered as a dealer.
- (6) The department shall issue to each applicant who satisfies the requirements of this section a registration which entitles the applicant to conduct the business described in the application for the calendar year for which the registration is issued, unless the registration is sooner revoked or suspended.
- (7) The department shall promulgate administrative regulations requiring dealers to maintain records with respect to their operations as it determines are necessary for the effective enforcement of this chapter. The records shall include, but not be limited to, brands and amounts of restricted use pesticides sold, and the buyer's name, address, use of the pesticide, and certification number. Records required under this section shall extend to

financial data, sales data, shipment data, and personnel data. The records are to be retained for a period of two (2) years from the time of sale. For the purposes of enforcing the provisions of this chapter, any dealer shall, upon request of the department, furnish or permit the department at all reasonable times to have access to, and to copy, records as required by this section.

➔Section 8. KRS 217B.120 is amended to read as follows:

The department may assess civil penalties as provided by KRS 217B.193, or may suspend, revoke, delay issuing, or modify the provision of any license or registration issued under this chapter, if it finds that the applicant or holder has committed any of the following acts, each of which is declared to be a violation of this chapter:

- (1) ~~[(Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;]~~
- (2) ~~[(Made a pesticide[ recommendation or] application not in accordance with the label registered by the department under KRS 217.541 to 217.640;~~
- (2)~~[(3)]~~ Applied known ineffective or improper materials;
- (3)~~[(4)]~~ **Operated equipment not functioning as intended or designed by the manufacturer**~~[(Operated faulty or unsafe equipment;]~~
- (4)~~[(5)]~~ **Operated equipment in a manner not intended or designed by the manufacturer**~~[(Operated application equipment in a careless or negligent manner;]~~
- (5)~~[(6)]~~ Refused or, after notice, neglected to comply with the provisions of this chapter, the administrative regulations promulgated under this chapter, or of any lawful order of the department;
- (6)~~[(7)]~~ Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;
- (7)~~[(8)]~~ Made false ~~[(or fraudulent)]~~ records, invoices, or reports;
- (8)~~[(9)]~~ **Made false representations in**~~[(Engaged in the business of the application of a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision;]~~
- (10) ~~[(Operated unregistered equipment;]~~
- (11) ~~[(Used fraud or misrepresentation in making] an application for a license or registration or renewal of a license or registration;~~
- (9)~~[(12)]~~ Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or registration;
- ~~[(13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;~~
- (14) ~~[(Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;]~~
- (10)~~[(15)]~~ Impersonated any state, county, or city inspector or official;
- (11)~~[(16)]~~ Made a sale to, or distributed a restricted use pesticide to, an **unlicensed**~~[(uncertified)]~~ applicator;
- (12)~~[(17)]~~ Failed to obtain any license or registration required by this chapter;
- (13)~~[(18)]~~ Failed to obtain or maintain financial responsibility required by this chapter;
- (14)~~[(19)]~~ Failed to comply with the provisions of KRS 217B.190; **or**
- (15)~~[(20)]~~ Failed to provide direct~~[(on-the-job)]~~ supervision of a trainee by a licensed operator or applicator in the application of a pesticide~~;~~
  - (21) ~~[(Failed to follow notification and information requirements in accordance with KRS 217B.300, including;~~
    - (a) ~~[(Failure to provide customer written information prior to application;~~
    - (b) ~~[(Failure to place lawn marker;~~
    - (c) ~~[(Failure to meet minimum requirements for lawn marker;~~

- ~~(d) Failure to furnish customer proper information at application; or~~
- ~~(e) Failure to furnish prior notification of application when requested; or~~
- ~~(22) Failed to follow notification and information requirements in accordance with KRS 217B.320, including:~~
  - ~~(a) Failure to place golf course marker immediately after application;~~
  - ~~(b) Failure to meet minimum requirements for golf course marker; or~~
  - ~~(c) Failure to furnish prior notification of application when requested.~~

➔SECTION 9. KRS 217B.140 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Investigations into claims of pesticide misuse conducted by the department shall occur only when the applicator of the pesticide is required by this chapter and related administrative regulations to obtain a license to use pesticides.*
- (2) *Any person claiming pesticide misuse by a pesticide applicator shall file with the department a written statement of alleged misuse. The statement shall be submitted to the department:*
  - (a) *Within sixty (60) days after the date the alleged pesticide misuse occurred; or*
  - (b) *Prior to the time that twenty-five percent (25%) of a crop affected by pesticide misuse is harvested.*
- (3) *A statement of alleged pesticide misuse shall contain:*
  - (a) *The name of the person allegedly responsible for the pesticide application;*
  - (b) *The name of the person who alleges misuse of pesticide;*
  - (c) *The name of the owner or lessee of the land where the effects of the alleged pesticide application misuse are evident; and*
  - (d) *The date on which the alleged pesticide misuse occurred.*
- (4) *The filing of a report or the failure to file a report need not be alleged in any complaint for damages resulting from pesticide misuse which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action. Failure to file a report shall not be a violation of this chapter. If the person failing to file the report is the only person injured from the misuse of a pesticide, the department may, when in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license or registration issued under this chapter until the report is filed.*
- (5) *When pesticide misuse is alleged, the claimant shall permit the person allegedly responsible for the application of the pesticide, registration holder, and his or her representatives, such as a bondsman or insurer, to observe within reasonable hours, the lands upon which alleged effects of pesticide misuse is evident in order that the effects may be examined. Failure of the claimant to permit the observation and examination of the location of the alleged effects shall automatically bar the claim against the person allegedly responsible for the pesticide application misuse.*

➔Section 10. KRS 217B.180 is amended to read as follows:

- (1) The provisions of KRS 217B.020 to 217B.180 relating to licenses or registration and requirements for their issuance shall not apply to any farmer owner of ground equipment applying nonrestricted use pesticides for himself or his farmer neighbors if he applies the pesticides for his farmer neighbors without compensation other than trading of personal services.
- (2) The licensing or registration provisions of KRS 217B.020 to 217B.180 *and KRS 217B.500 to 217B.585* shall not apply to any person:
  - (a) Using handpowered equipment, devices, or contrivances to apply nonrestricted use pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve (12) feet high, as an incidental part of his activity of taking care of his household lawn and yard or those of his neighbors, on the condition that the person shall not publicly hold himself out as being in the business of applying pesticides, and shall not accept compensation other than the trading of personal services for the activity; *or*
  - (b) *Using nonrestricted use pesticides to prevent, control, repel, or eliminate wood destroying organisms or general pests in, around, or outside his or her household for the purpose of mitigating threats to*



*the structural integrity, the human occupancy, or the contents of such household, on the condition that the person shall not publicly represent himself or herself as being in the business of applying pesticides, and shall not accept compensation other than the trading of personal services for the activity.*

- (3) KRS 217B.020 to 217B.180 shall not apply to operators presently licensed and regulated under the provisions of KRS 249.250 to 249.340 on June 17, 1978, except that if required by EPA regulations the persons may be issued, without additional fees or examination, an applicator's license to enable them to purchase and use restricted use pesticides in accordance with the requirements of the Federal Environmental Pesticide Control Act of 1972.

- (4) The registration provisions of KRS 217B.105 shall not apply to any noncommercial applicator.

- (5) The licensing provisions of KRS 217B.080 shall not apply to any trainee.

➔Section 11. KRS 217B.185 is amended to read as follows:

- (1) The department shall establish a licensure program for pesticide sales agents [~~The department shall require an applicant for licensure to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides.~~].

- (2) Application for a pesticide sales agent license shall be in the form and shall contain information prescribed by the department. Each application shall be accompanied by a fee of *twenty-five dollars (\$25)* [~~five dollars (\$5)~~]. All licenses issued under this section shall expire on December 31 of the year issued. The license for a pesticide sales agent may be renewed annually upon application to the department, accompanied by a fee of *twenty-five dollars (\$25)* [~~five dollars (\$5)~~] for each license, on or before the first day of January of the calendar year for which the license is issued.

- (3) The department shall issue to each applicant who meets the requirements of this section a license that entitles the applicant to hold himself or herself out as a pesticide sales agent.

- (4) No person shall hold himself or herself out as a pesticide sales agent unless that person is licensed as provided for in this section.

- (5) [~~No person shall make recommendations for the use or application of pesticides unless that person is licensed as provided for in this section.~~]

- (6) [~~No person shall supervise the sale or distribution of sell or distribute restricted use pesticides to the final user unless that person is licensed as provided for in this section.~~]

- (7) [~~No license shall be issued unless the applicant holds a valid certification within this category.~~]

➔Section 12. KRS 217B.187 is amended to read as follows:

- (1) The department shall establish and administer a program to register trainees.

- (2) A dealer shall not employ a trainee to apply pesticides manually or as the applicator directly in charge of any equipment that is licensed or should be licensed under the provisions of this chapter for the application of any pesticide without registering the trainee with the department. It shall be unlawful for any person to act as a trainee without being registered.

- (3) Application for a trainee registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of *twenty-five dollars (\$25)* [~~five dollars (\$5)~~].

- (4) Trainee registration shall be valid for ninety (90) days and shall not be reissued or renewed.

➔Section 13. KRS 217B.193 is amended to read as follows:

- (1) If any of the requirements of this chapter or administrative regulations promulgated under this chapter have not been complied with, the *department* [~~Commissioner~~] shall cause a notice of violation to be issued. The *department* [~~Commissioner~~] may issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990, or the *department* [~~Commissioner~~] may set forth in his notice a reasonable time period, but not more than ninety (90) days, for the abatement of the violation. If any licensee or registration holder has not abated the violation within the period of time prescribed in the notice of violation, the *department* [~~Commissioner~~] shall issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990. The notice of noncompliance shall be mailed to the licensee or registration holder by certified mail, return receipt requested, addressed to the permanent address as shown on department records. The notice of noncompliance shall specify in what respect the licensee or

registration holder has failed to comply with this chapter or administrative regulations promulgated under this chapter. If the licensee or registration holder has not complied with the requirements set forth in the notice of noncompliance within the time limit allowed, the license or registration may be revoked as provided in this chapter.

- (2) The ~~department~~~~Commissioner~~ shall develop a method for calculating the civil penalty for a violation, or failure to abate a violation, within the prescribed time period as authorized by this section, and he shall promulgate a schedule of the civil penalties in an administrative regulation.

➔Section 14. KRS 217B.203 is amended to read as follows:

- (1) All hearings required by KRS 217B.010 to 217B.990 shall be conducted in accordance with KRS Chapter 13B.
- (2) Appeals may be taken from all final orders of the ~~department~~~~Commissioner~~ to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 15. KRS 217B.270 is amended to read as follows:

- (1) The Commonwealth of Kentucky hereby determines that the citizens of the state benefit from a system of safe, effective, and scientifically sound fertilizer and pesticide regulation ~~[on agricultural and silvicultural land]~~. The Commonwealth further finds that a system of fertilizer and pesticide regulation which is consistent, coordinated, and comports with both federal and state technical expertise is essential to the public health, safety, and welfare, and that local regulation of fertilizer and pesticides does not materially assist in achieving these benefits.
- (2) No city, town, county, or other political subdivision of the Commonwealth shall adopt or continue in effect any ordinance, resolution, rule, or regulation regarding ~~agriculture and silviculture~~ fertilizer regulated pursuant to KRS 250.371 and pesticide sale or use, including without limitation: registration, notification of use, advertising and marketing distribution, ~~applicator~~ training, **licensing**, and certification, storage, transportation, disposal, disclosure of confidential information, or product composition.
- (3) ***Authority for the regulation of pesticides sold and used in the Commonwealth of Kentucky is hereby established in the department.***
- ~~(4)~~~~(3)~~ Nothing in this section shall be construed to:
- (a) Abrogate any authority afforded by the state statutes to any program cabinet established under KRS Chapter 12 or any state or federal mandated hazardous materials regulations or fire safety codes and comprehensive hazardous materials management program;
- (b) Abrogate the planning and zoning authority granted local government pursuant to KRS Chapter 100; or
- (c) Waive any reporting requirement established by state or federal law or regulation.

➔SECTION 16. KRS 217B.500 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*As used in KRS 217B.500 to 217B.585 unless the context requires otherwise:*

- (1) ***"Applicant" means any person applying for a license;***
- (2) ***"Applicator" means a licensed person who makes pesticide applications;***
- (3) ***"Board" means the Structural Pest Management Advisory Board;***
- (4) ***"Carpenter ants" means those ants that damage wooden structures and are classified within the genus Camponotus;***
- (5) ***"Carpenter bees" means those bees that damage wooden structures and are classified in the genus Xylocopa;***
- (6) ***"Commercial pesticide application" means a pesticide application made by a licensed person or trainee employed by a structural pest management company on the property of another for a fee;***
- (7) ***"Department" means the Kentucky Department of Agriculture;***
- (8) ***"Direct supervision" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified operator or certified applicator who is responsible for the actions of that person and who is available if and when needed, even though such***

*certified operator or certified applicator is not physically present at the time and place the pesticide is applied;*

- (9) *"General pests" means any arthropods, mollusks, annelid worms, rodents, or other pestiferous vertebrate animals, vermin, or fungi, excluding those defined in subsections (4), (5), (13), (16), and (20) of this section;*
- (10) *"KPMA" means the Kentucky Pest Management Association, Inc;*
- (11) *"License" means an instrument issued by the department that certifies a person is competent to make pesticide applications in a structural pest management category;*
- (12) *"Noncommercial pesticide application" means pesticide applications made by an applicator, in the course of employment, on property owned, occupied, or managed by the applicator or his or her employer;*
- (13) *"Office" means any location where the application records or pesticide inventory of a structural pest management company are stored;*
- (14) *"Old house borer" means the cerambycid beetle *Hylotrupes bajalus* (L.);*
- (15) *"Operator" means a licensed person who manages a structural pest management company and makes pesticide applications or supervises applicators or trainees making pesticide applications;*
- (16) *"Powder post beetle" means the beetles that damage wooden structures and are classified within the families *Lyctidae*, *Bostrichidae*, or *Anobiidae*;*
- (17) *"Structural fumigation" means the use of poisonous gases for the control of general pests and wood destroying organisms in enclosed structures;*
- (18) *"Structural pest management" means the use of pesticides to prevent, control, repel, or eliminate wood destroying organisms or general pests in, around, or outside structures for the purpose of mitigating threats to structural integrity, the human occupancy, or the contents of such structures;*
- (19) *"Structural pest management company" means any company that provides commercial structural pest management or commercial structural fumigation services for a fee;*
- (20) *"Termite" means the eastern subterranean termite, *Reticulotermes flavipes* (Kollar), the southeastern subterranean termite, *R. virginicus* Banks, or the light southeastern subterranean termite, *R. hageni* Banks;*
- (21) *"Trainee" means an unlicensed person employed by a structural pest management company to make pesticide applications; and*
- (22) *"Wood destroying organisms" means those organisms that cause damage to the wood used in the construction of structures including the insects defined under subsections (4), (5), (13), (16), and (20) of this section.*

➔Section 17. KRS 217B.505 is amended to read as follows:

- (1) There shall be established a ~~six (6)~~~~seven (7)~~ member *Structural Pest Management*~~Control~~ Advisory Board which shall consist of the following members:
  - (a)~~(1)~~ President of *the KPMA*~~[KPCA]~~ or *the president's*~~[his]~~ designated representative from the *association's membership*~~;~~~~[KPCA board of directors.]~~
  - (b)~~(2)~~ One (1) member of *the KPMA*~~[KPCA]~~ appointed by the Governor from a list of persons *active* in the *structural pest management*~~control~~ industry submitted by the *KPMA*~~[KPCA]~~, ~~who shall be residents of the Commonwealth.~~ This member shall serve a two (2) year term;~~;~~
  - (c)~~(3)~~ The *chairperson*~~[chairman]~~ of the University of Kentucky Department of Entomology or *the chairperson's*~~[his]~~ designated representative;~~;~~
  - (d)~~(4)~~ One (1) other member of the University of Kentucky Department of Entomology appointed by the *chairperson*~~[chairman]~~ of the Department of Entomology; ~~and~~~~;~~
  - (e)~~(5)~~ Two (2) members of the department *staff* appointed by the Commissioner of Agriculture.
- (2)~~(6)~~ ~~[One (1) consumer member appointed by the Commissioner of Agriculture. This member shall serve a two (2) year term.]~~

~~(7) If~~ **When** a vacancy occurs on the board, it shall be filled in the manner designated in *subsections (1) to (5) of this section.*

~~(3)(8)~~ At the first meeting of the **Structural Pest Management**~~Control~~ Advisory Board, a **chairperson**~~chairman~~, a vice **chairperson**~~chairman~~, and a secretary shall be elected for one (1) year. They shall serve at the pleasure of the board. The **chairperson**~~chairman~~ or the vice **chairperson**~~chairman~~ shall preside at all meetings and vote as any other member. The secretary of the board shall maintain accurate minutes of each meeting of the board.

~~(4)(9)~~ **Four (4)**~~Five (5)~~ members of the board shall constitute a quorum and any action or order of the board shall require the presence of a quorum and the approval of a simple majority of the members present.

~~(5)(10)~~ The board shall meet **no less than two (2) times per year upon the call of the chairperson**~~on the first Thursday of alternate months beginning with January at Frankfort or such other place in Kentucky as the chairman shall direct. If the first Thursday falls on a holiday, the meeting shall take place the following Thursday.~~ The secretary of the board shall notify members of upcoming meetings ten (10) days prior to the meeting. However, **three (3)**~~four (4)~~ members of the board may call a special meeting of the board on ten (10) days' notice to the other members.

~~(6)(11)~~ Members of the board shall serve without compensation; however, members who are not employees of the Commonwealth shall be entitled to reimbursement by the department for actual expenses incurred in carrying out the duties of the board.

➔Section 18. KRS 217B.510 is amended to read as follows:

The **Structural Pest Management**~~Control~~ Advisory Board shall have the following powers and duties:

(1) ~~To~~ Review commercial structural pest **management**~~control~~ and commercial structural fumigation enforcement proceedings and to make written recommendations ~~for further action~~ to the department;~~;~~

(2) ~~To~~ Hold hearings on the denial of an application for a license pursuant to KRS 217B.540;~~;~~

~~(3) To review commercial structural pest control and commercial structural fumigation applicator license applications to ensure that the applicants meet state pest control licensing requirements and to make recommendations to the department.~~

~~(4) To~~ Review the **structural**~~state~~ pest **management**~~control~~ licensing examinations;~~;~~

~~(5) To assist the department in administering the licensing examinations for commercial structural pest control applicators and commercial structural fumigation applicators and to make recommendations to the department.~~

~~(4)(6)~~ ~~To~~ Serve as a resource group to keep the department informed of current technical advancements in the **structural pest management**~~control~~ industry; **and**

(5) **Review and make recommendations to the department concerning statutes and administrative regulations, including any proposed revisions, affecting the structural pest management industry.**

~~(7) To recommend reasonable rules and regulations concerning the following matters:~~

~~(a) Standards of application and workmanship.~~

~~(b) Proper health and safety precautions.~~

~~(c) Requirements for standardized structural pest control contracts.~~

~~(d) Furnishing of reports and information necessary for the Pest Control Advisory Board to carry out the provisions of KRS 217B.515 to 217B.585.~~

~~(8) To assist the department in administering the licensing examinations for the commercial structural pest control applicators and commercial structural fumigation applicators and to make recommendations to the department.~~

➔SECTION 19. KRS 217B.515 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) **No person shall engage in structural pest management or structural fumigation without first obtaining a license from the department certifying competence to make commercial or noncommercial pesticide applications.**

(2) **A separate examination and license is required to operate in each of the following categories:**

- (a) *Commercial structural pest management;*
  - (b) *Commercial structural fumigation;*
  - (c) *Noncommercial structural pest management; and*
  - (d) *Any additional category the department shall designate on recommendation of the board.*
- (3) *Any person holding only a termite or a general pest control license or a fumigation license on or after June 17, 1978, may continue to operate in that category. That person may take the commercial structural pest management operator's license examination without jeopardizing his or her current license. Should the license of the license holder lapse or be revoked for any reason, the person, in order to be licensed again, shall be required to fulfill the requirements of KRS 217B.515 to 217B.545.*
- (4) *Licenses issued under this section shall expire annually.*
- (5) *The department may promulgate administrative regulations establishing other types of licenses certifying persons to engage in structural pest management and structural fumigation and providing for examinations to obtain those licenses. The department shall assess reasonable fees for licenses and the administration of examinations.*

➔Section 20. KRS 217B.520 is amended to read as follows:

~~(1)~~ Applicants for an *operator's* ~~applicator's~~ license shall be required to:

- ~~(1)(a)~~ Be a legal resident of the United States; ~~and~~
- ~~(2)(b)~~ Be *at least* eighteen (18) years of age; ~~and~~
- ~~(3)(c)~~ Have at least two (2) years of verified experience *in structural pest management* ~~employed with a licensed structural pest control applicator. Experience shall be verified by the license holder of the company from which the applicant has obtained his experience~~. A person with a bachelor's degree, a master's degree or a doctoral degree in entomology from an accredited college or university shall qualify with no experience. Educational background shall be verified with official transcripts from the institution or institutions granting the degree.

~~(2)~~ Applicants for a manager's license shall be required to have one (1) year's experience as a service technician or as a salesperson for a licensed pest control company.

~~(3)~~ No person convicted of fraud or misrepresentation may apply for an applicator's or manager's license.

➔Section 21. KRS 217B.525 is amended to read as follows:

- (1) Application for *an operator's* license shall be submitted on a form furnished by the department, and shall be filed no later than thirty (30) days in advance of the next examination date.
- (2) The department shall notify the applicant within ten (10) days of the examination date whether or not *the applicant* ~~he~~ has passed the examination.

➔Section 22. KRS 217B.530 is amended to read as follows:

(1) *Operator* ~~Applicator~~ licensing examinations for commercial structural pest *management* ~~control~~ and commercial structural fumigation shall be given *at least two (2) times per year* ~~the second Tuesday in May and the second Tuesday in November unless such date shall be a holiday. In such case the examination shall be given on the third Tuesday of that month. Manager licensing examinations shall be administered by the department as needed~~.

(2) ~~[An applicant shall be allowed to take two (2) consecutive licensing examinations but if the applicant has not passed the licensing examination after two (2) attempts he must then wait one (1) year and must complete and pass a training course approved by the department before reapplying to take the examination one (1) more time. If the applicant does not pass the examination the third or subsequent time, he shall have to wait two (2) years and complete and pass an additional training course approved by the department before reapplying to take the examination.~~

~~(3)~~ All license testing fees shall be *established in administrative regulations promulgated by the department* ~~fifty dollars (\$50) for each examination each time the examination is taken~~.

~~(3)(4)~~ ~~Written~~ Examinations shall be given to all qualified applicants. No oral examinations shall be given.

~~(4)(5)~~ The commercial structural pest *management operator's*~~[control]~~ examination shall consist of no less than two hundred sixty (260) written questions and *identification of* no less than forty (40) *wood destroying organisms and general pests*~~[identification specimens]~~. The commercial structural fumigation *operator's* examination shall consist of no less than eighty (80) written questions and *identification of* no less than twenty (20) *wood destroying organisms and general pests*~~[identification specimens]~~. ~~The manager's licensing examination shall consist of no less than ninety (90) written questions and no less than ten (10) identification specimens.~~

~~(5)(6)~~ The licensing examination shall be a timed examination. Five (5) hours shall be allowed for the commercial structural pest *management*~~[control]~~ examination and two (2) hours for the commercial structural fumigation examination. ~~Timing for the manager's licensing examinations shall be set by regulation.~~

~~(6)(7)~~ The applicant must achieve a grade of at least 70% correct on the written questions and at least 70% correct on the identification to pass the licensing examination. The ~~license~~ applicant must take and pass the entire examination to become licensed.

~~(7)(8)~~ The commercial structural pest *management operator's examination and all other structural pest management license examinations*~~[control and the commercial structural fumigation examination]~~ shall ~~also~~ serve as the *examinations*~~[examination]~~ necessary to fulfill federal commercial pesticide applicator certification requirements, including industrial, institutional, structural and health related pest control, *and the commercial structural fumigation operator's examination and all other fumigation license examinations shall serve as the examinations necessary to fulfill federal commercial pesticide applicator certification requirements for nonsoil fumigation.*

➔Section 23. KRS 217B.535 is amended to read as follows:

(1) There shall be *at least*~~[only]~~ one (1) *operator*~~[applicator]~~ license holder per *structural pest management* company ~~with one (1) or more reserve applicator license holders allowed for each company]. The department shall require an annual fee of one hundred dollars (\$100) for each operator's license issued.~~

(2) A license issued by the department shall not be transferable or assignable. *Structural pest management companies shall annually register and pay a fee of fifty dollars (\$50) for each office* ~~In the event of the death or incapacitation of a licensed operator, his heirs, representatives, other persons or legal entities, which may have an interest in the structural pest control business in which the deceased was the license holder, shall be allowed a maximum of twelve (12) months from such death to obtain a qualified licensed applicator to operate or manage said business under the provisions of KRS 217B.515 to 217B.585. A full-time certified applicator shall be employed by such business for the application and supervision of restricted use pesticides.~~

~~(3) If a pest control firm is sold, the purchaser must comply with all state laws and regulations. If the purchaser fails to comply he has ninety (90) days to dissolve the business. The seller must notify the buyer that the department regulates the pest control industry in Kentucky. The seller must notify the department that the business has been sold within ten (10) days after the sale. If the license holder for a pest control firm leaves or is terminated for reasons other than death or sale of the firm, the firm must notify the department of this change within ten (10) days and must acquire a license holder at the next testing period or must be granted an emergency license by the department for a period not to exceed the following scheduled examination. If the pest control firm fails to meet these requirements, they must dissolve the business within ninety (90) days. A full-time certified applicator shall be employed by such business for the application and supervision of restricted use pesticides.~~

~~(4) It shall be illegal to solicit business or advertise without a valid commercial structural pest control applicator's license or commercial structural fumigation applicator's license].~~

~~(3)(5)~~ ~~[Each applicator shall register annually and shall pay an annual fee of one hundred dollars (\$100) for each place of business maintained in Kentucky. ]Every nonresident *operator, applicator, and structural pest management company*~~[owner]~~ shall designate a resident agent upon whom service ~~[of notice]~~ of process may be made to enforce the provisions of KRS 217B.515 to 217B.585.~~

➔Section 24. KRS 217B.540 is amended to read as follows:

The department shall, after denying an application for a license, if petitioned by the applicant within ten (10) days of notification, schedule a hearing before the *Structural Pest Management*~~[Control]~~ Advisory Board. The hearing shall be conducted in accordance with KRS Chapter 13B.

➔Section 25. KRS 217B.545 is amended to read as follows:

- (1) The department may *issue a notice of its intent to* suspend, revoke, or modify the provision of any ~~applicator's or manager's~~ license issued under KRS 217B.515 to 217B.520 if it finds that the licensee has committed any of the acts set forth in KRS 217B.550.
- (2) The license holder shall have ten (10) days upon the receipt of *a notice of intent to suspend, revoke, or modify* ~~a~~ ~~the notification of a proposed suspension, revocation, or modification of~~ license to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (3) If a hearing is not requested as provided for in subsection (2) of this section, the department may suspend, revoke, or modify the license once the ten (10) day hearing request filing period has passed.
- (4) Any *person* ~~licensee~~ whose license is revoked under the provisions of this section shall not be eligible to apply for a new license until time has elapsed from the date of the final order revoking the license as established by the department, not to exceed two (2) years, or if an appeal is taken from the final order or revocation, not to exceed two (2) years from the date of the final order or final judgment sustaining the revocation.

➔Section 26. KRS 217B.550 is amended to read as follows:

The following acts are declared to be a violation of KRS 217B.515 to 217B.585:

- (1) *Using any material or pesticide that is not labeled for the purpose of structural pest management;* ~~Making any material representation for the purpose of defrauding the public, or using any method or material that is not reasonably suited for the purpose for which it was employed, by any licensed applicator, manager or his solicitor or agent.~~
- (2) Failure of a licensed operator or *applicator* ~~manager~~ to comply with any of the provisions of this chapter or any reasonable rule or regulation promulgated by the department; ~~[-]~~
- (3) Failure *of any person* to pay *a fine or comply with an order issued by the department;* ~~any final judgment rendered against any licensed operator or manager, his employee, solicitor or representative by reason of liabilities resulting from activities under KRS 217B.515 to 217B.585.~~
- (4) Failure to *renew any required* ~~make the~~ registration *or* ~~and~~ pay *any* ~~the annual~~ licensing fees; ~~as required by KRS 217B.535.~~
- (5) Failure to *obtain required continuing education units through* ~~attend~~ training courses approved by the department; ~~on recommendation of the Pest Control Advisory Board as specified by the Kentucky state plan.~~
- (6) ~~The making of false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized.~~
- ~~(7) The~~ ~~Making~~ ~~of~~ ~~a~~ pesticide ~~recommendation or~~ application not in accordance with the label registered by the department under KRS 217.542 to 217.640; ~~[-]~~
- ~~(8)~~ *Storing or discarding a pesticide or pesticide container in a manner prohibited under KRS 217B.555;* ~~The application of known improper materials.~~
- ~~(8)~~ ~~(9)~~ *Operating equipment not functioning as intended or designed by the manufacturer;* ~~Knowingly operating faulty or unsafe equipment.~~
- ~~(9)~~ ~~(10)~~ *Operating equipment in a manner not intended or designed by the manufacturer;* ~~Knowingly operating in a faulty, careless or negligent manner.~~
- ~~(10)~~ ~~(11)~~ Failure to keep and maintain the records required by *the department* ~~KRS 217B.510~~, or to make reports when and as required; ~~[-]~~
- ~~(11)~~ ~~(12)~~ ~~The~~ ~~Making~~ ~~of~~ ~~false~~ ~~or~~ ~~fraudulent~~ records, invoices, or reports; ~~[-]~~
- ~~(12)~~ ~~(13)~~ *Making an* ~~Engaging in the business of the~~ application of a pesticide *by a trainee* without having a licensed *person* ~~applicator or operator~~ *providing* ~~in~~ direct supervision; ~~[-]~~
- ~~(13)~~ ~~(14)~~ *Making false representations in* ~~Using fraud or misrepresentation in making~~ an application for a license or renewal of a license; ~~[-]~~
- ~~(14)~~ ~~(15)~~ Failure to comply with any limitations or restrictions *placed on a license issued by the department;* ~~on or in a duly issued license, permit or certification.~~

~~(15)(16) Aiding or abetting a licensed or an unlicensed person to evade the provisions of KRS 217B.515 to 217B.585, combining or conspiring with such a licensed or an unlicensed person to evade the provisions of KRS 217B.515 to 217B.585, or allowing one's license to be used by an unlicensed person.~~

~~(17) The making of false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.~~

~~(18) Impersonating any state, county, or city inspector or official;~~

**(16) Failure to obtain any license or make any registration required by this chapter; and**

**(17) Failure to obtain or maintain liability insurance as required by this chapter.**

➔Section 27. KRS 217B.555 is amended to read as follows:

- (1) No person shall ~~knowingly~~ discard or store any pesticide or pesticide containers in ~~such~~ a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any waterway in a way harmful to any wildlife therein.
- (2) No person shall purchase, use, or supervise the use of, a restricted use pesticide unless ~~that~~ ~~such~~ person be ~~licensed~~ ~~certified~~ in a ~~category~~ ~~classification~~ which permits ~~that~~ ~~such~~ purchase, use, or supervision of use.

➔Section 28. KRS 217B.560 is amended to read as follows:

***Structural pest management companies shall register trainees with the department for a fee of twenty-five dollars (\$25). The department may promulgate administrative regulations to establish additional requirements for trainees***~~[A pest control company shall be required and responsible to use only trained personnel such that a new employee shall work under the full-time supervision of a certified applicator for at least thirty (30) days and sales and service personnel shall receive a training course approved by the department on recommendation of the Pest Control Advisory Board].~~

➔Section 29. KRS 217B.565 is amended to read as follows:

***Identification of structural pest management company vehicles shall be subject to administrative regulations promulgated by the department***~~[Each business establishment or business entity shall at all times have its vehicles, which are actively and regularly engaged in service work marked for easy identification with at least the letters "L.P.C.O." two (2) inches high, and the company name thereon, followed by the license number of the business establishment or business entity. Identification of vehicles may be permanent or removable; however, signs shall accompany the vehicle at all times for purpose of identification. Each licensed business establishment or business entity shall furnish each employee performing work or soliciting business an identification card to be secured from the department and said identification card shall be carried on his or her person at all times for the purpose of identification of the employee to the department or to the person or persons for whom such work is being performed. It is the responsibility of every business establishment or business entity issuing identification cards to collect any and all cards, or produce proof that a reasonable effort was made to collect same, from employees whose employment has terminated with that company. Identification cards collected in this manner shall be mailed to the department].~~

➔Section 30. KRS 217B.570 is amended to read as follows:

- (1) ***Each structural pest management company and employer of a noncommercial applicator shall be responsible for the actions of every person who acts as its employee or agent in performing structural pest management services***~~[The burden of responsibility shall rest upon the applicator for selection and use of proper chemicals, and also for the correct formulation and dosages used unless otherwise specified in the rules and regulations].~~
- (2) ~~[However,]~~The department ~~for its agents~~ shall have authority at reasonable times during regular business hours to examine and test any and all chemicals ~~used or being used or bought, held or~~ stored for the purpose of being used for ***prevention or control*** of wood destroying organisms or general ***pests***~~[pest prevention or control by any person having a license issued, whether then in use or not].~~
- (3) The department ~~for its agent~~ shall have the authority to inspect equipment and all storage and disposal areas.
- (4) The department ~~for its agent~~ shall have the authority at reasonable times during regular business hours to inspect and observe the manner in which a particular pesticide is applied to ***ensure***~~[insure]~~ that ***it***~~such~~ is being done ***according to the registered label***~~[properly].~~

➔Section 31. KRS 217B.580 is amended to read as follows:



All fees collected by the department ~~[from structural pest control operators]~~ for licensing and examinations shall be deposited in the State Treasury to the credit of a revolving fund for the use of the department in enforcing the provisions of KRS 217B.515 to 217B.585 and for the expense of carrying out the duties and functions of the Pest *Management* ~~[Control]~~ Advisory Board.

➔Section 32. KRS 217B.585 is amended to read as follows:

It shall be the duty of the department, or upon the request of the Commissioner of Agriculture, of the Attorney General to bring an action for the recovery of the penalties provided for in KRS 217B.990~~[(5)]~~, and to bring an action for an injunction against any person violating or threatening to violate any provision of *this chapter*~~[KRS 217B.515 to 217B.575]~~ or violating or threatening to violate any *administrative regulation*, order, or determination of the department promulgated pursuant thereto. In any such action any finding of the department shall be prima facie evidence of the fact or facts found therein.

➔Section 33. KRS 217B.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of this chapter or who fails to perform any duties imposed by those sections, or who violates any determination or order of the department promulgated pursuant thereto shall be liable to a civil penalty of not to exceed the sum of one thousand dollars (\$1,000) for ~~that~~~~[said]~~ violation, and an additional civil penalty of not to exceed one thousand dollars (\$1,000) for each day during which ~~the~~~~[such]~~ violation continues, and in addition, may be enjoined from continuing ~~the~~~~[such]~~ violations as ~~hereinafter~~ provided in this section. ~~The~~~~[Such]~~ penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request by the Attorney General.
- (2) Any person who fails to abate a violation within the time period prescribed by administrative regulation for the abatement shall be assessed a civil penalty of not less than one hundred dollars (\$100). Each day of continuing violation may be deemed a separate violation for the purpose of penalty assessment. The Commissioner shall develop a method for calculating monetary penalties and shall promulgate a schedule of the penalties in an administrative regulation. The penalty shall be recoverable in an action brought in the name of the Commonwealth. All sums of recovery shall be placed in the State Treasury. A license holder shall have thirty (30) days from notification of the penalty assessment to request a hearing.
- (3) ~~[It shall be the duty of the department, or upon the request of the Commissioner of Agriculture, of the Attorney General to bring an action for the recovery of the penalties hereinabove provided for, and to bring an action for an injunction against any person violating or threatening to violate any provision of this chapter or violating or threatening to violate any order or determination of the department promulgated pursuant thereto. In any such action any finding of the department shall be prima facie evidence of the fact or facts found therein.]~~
- (4) ~~]~~Any person who shall willfully violate any of the provisions of this chapter or any determination or order of the department promulgated pursuant to those sections which have become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment for a term of not more than one (1) year, or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation.
- ~~[(5) Any person who violates any of the provisions of KRS 217B.515 to 217B.585 or who fails to perform any duties imposed by those sections, or who violates any determination or order of the department promulgated pursuant thereto shall be liable to a civil penalty of not to exceed the sum of one thousand dollars (\$1,000) for said violation, and an additional civil penalty of not to exceed one thousand dollars (\$1,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided for in KRS 217B.585. Such penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request by the Attorney General.]~~
- ~~[(6) Any person who shall willfully violate any of the provisions of KRS 217B.515 to 217B.585 or any determination or order of the department promulgated pursuant to those sections which have become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment for a term of not more than one (1) year or by both fine and imprisonment for each separate violation. Each day upon which the violation occurs shall constitute a separate violation.]~~

➔SECTION 34. A NEW SECTION OF KRS 217B.500 TO 217B.585 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall not issue or renew a structural pest management company registration until the applicant has furnished to the department satisfactory evidence of financial responsibility consisting of a liability insurance policy or certification of that policy.*
- (2) *The amount of the liability insurance as required in this section shall be not less than one million dollars (\$1,000,000). The liability insurance shall be maintained at not less than that amount at all times during the registration period. The department shall be notified no less than ten (10) days prior to any reduction at the request of the applicant or cancellation of the liability insurance by the insurer. The total and aggregate of the insurer for all claims shall be limited to the face of the liability insurance policy. The department may accept a liability insurance policy which has a deductible clause against the total amount of liability insurance required if the clause does not specify an amount exceeding five thousand dollars (\$5,000). If the applicant has not satisfied the requirements of the deductible amount in any prior legal claim, the deductible clause shall not be accepted by the department unless the applicant furnishes the department with a security bond or other liability insurance which shall satisfy the amount of the deductible as to all claims that may arise from his or her application of pesticides.*
- (3) *Should the surety furnished become unsatisfactory, the applicant shall, upon notice, execute a new insurance policy and if the applicant fails to do so, the department shall cancel the company's registration and it shall be unlawful for any person to act as an employee or agent of the company to engage in structural pest management until the insurance is brought into compliance with the requirements of subsection (2) of this section and the registration is reinstated by the department.*
- (4) *Nothing in this chapter shall be construed to relieve any person from liability for any damage to a person or their property caused by the use of pesticides even though the use conforms with this chapter and the administrative regulations promulgated thereunder.*

➔SECTION 35. A NEW SECTION OF KRS 217B.500 TO 217B.585 IS CREATED TO READ AS FOLLOWS:

- (1) *The Commonwealth of Kentucky hereby determines that the citizens of the state benefit from a system of safe, effective, and scientifically sound pesticide regulation. The Commonwealth further finds that a system of pesticide regulation which is consistent, coordinated, and comports with both federal and state technical expertise is essential to public health, safety, and welfare, and that local regulation of pesticides does not materially assist in achieving these benefits.*
- (2) *The authority for regulation of pesticides sold and used in the Commonwealth of Kentucky is hereby established in the Department of Agriculture.*
- (3) *Nothing in this section shall be construed to:*
  - (a) *Abrogate any authority afforded by the state statutes to any program cabinet established and defined in KRS Chapter 12 or any state or federal mandated hazardous materials regulations or fire safety codes and comprehensive hazardous materials management program;*
  - (b) *Abrogate the planning and zoning authority granted local government pursuant to KRS Chapter 100;*  
*or*
  - (c) *Waive any reporting requirement established by state or federal law or regulation.*

➔SECTION 36. A NEW SECTION OF KRS CHAPTER 217B.500 TO 217B.585 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall act in the capacity of a structural pest management company, or shall engage or offer to engage in the business of, advertise as, or assume to act as a structural pest management company, without having registered as such with the department.*
- (2) *Application for a structural pest management company registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of seventy-five dollars (\$75). All registrations issued under this section shall expire on December 31 of the year for which they are issued. The registration for a structural pest management company may be renewed annually upon application to the department, accompanied by a fee of seventy-five dollars (\$75) for each registration, on or before the first day of January of the calendar year for which the registration is issued.*
- (3) *No person shall be registered as a structural pest management company without proof of financial responsibility as required by Section 34 of this Act.*

➔SECTION 37. A NEW SECTION OF KRS 217B.500 TO 217B.585 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in this chapter, it shall be unlawful for any person to act as an employee of a structural pest management operator and apply pesticides without having obtained an applicator's license from the department. An applicator's license shall be in addition to any other license or permit required by law. Any person applying for an applicator's license shall file an application on a form prescribed by the department on or before January 1 of each year. Application for a license to apply pesticides shall be accompanied by a license fee of twenty-five dollars (\$25). The provisions of this section shall not apply to any individual who has passed the examination provided for in KRS 217B.530, and is a licensed operator.*
- (2) *No license shall be issued unless the applicant holds a valid certification within this category.*
- (3) *No license shall be issued unless the applicant is employed by a structural pest management company or is supervised by a person who holds a valid operator's license.*

➔Section 38. The following KRS sections are repealed:

- 217B.100 Consultant's license -- Fee -- Qualifications -- Waiver.
- 217B.103 Suspension, revocation, or modification of consultant's license -- Grounds -- Application for new license.
- 217B.170 Annual fee for registering equipment -- Exemptions -- Inspections -- License plate displayed on equipment.
- 217B.260 Pesticide Advisory Board.
- 217B.300 Definitions -- Notification and information requirements -- Records.
- 217B.320 Exemption from provisions of KRS 217B.300 -- Definitions -- Notification and information requirements.
- 217B.575 Notification of change of address.

**Signed by Governor March 23, 2021.**

## CHAPTER 85

( SB 84 )

AN ACT relating to the housing of inmates.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *No inmate housed in a jail, penitentiary, or local or state correctional or detention facility, residential center, or reentry center who is known to be pregnant or in the immediate postpartum period shall be placed in restrictive housing, in administrative segregation, or in solitary confinement for medical observation. This prohibition shall not include placing an inmate in a cell or hospital room by herself.*
- (2) *As used in this section, "immediate postpartum period" means the six (6) week period following childbirth by the inmate. However, the six (6) week period may be extended by a physician should the inmate experience birth-related complications.*

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

*For any inmate housed in a jail, penitentiary, or local or state correctional or detention facility, residential center, or reentry center who is known to be pregnant:*

- (1) *The facility shall provide the inmate notice of, access to, and a written application for community-based programs serving pregnant, birthing, or lactating inmates. At a minimum, the notice shall contain how to qualify for the programs as well as timelines for applying and the process for appealing a denial. If a community-based program accepts the inmate but is denied access to the facility, the facility shall provide to the inmate, in writing within fifteen (15) days of the request, the safety or security concerns for the inmate, infant, public, or staff that led to the denial.*

- (2) *The facility shall refer the inmate to a social worker who shall:*
- (a) *Discuss with the inmate the options available for feeding, placement, and care of the infant, including the benefits of lactation;*
  - (b) *Provide the inmate access to a phone to contact family regarding placement of the infant; and*
  - (c) *Oversee the placement of the infant.*
- (3) *For up to seventy-two (72) hours after the birth, the facility shall ensure that:*
- (a) *The infant is allowed to remain with the inmate, unless a medical professional determines that doing so would pose a health or safety risk to the inmate or infant; and*
  - (b) *The inmate has access to nutritional or hygiene-related products necessary to care for the infant, including but not limited to diapers. Such products shall be provided free of charge to indigent inmates.*

➔Section 3. KRS 439.3110 is amended to read as follows:

- (1) As used in this section:
  - (a) "Eligible person" means a person who is:
    1. A pregnant woman;
    2. Reasonably believed by a court or the department to have a substance use disorder;
    3. Not charged or convicted of an offense that would qualify the person as a violent offender under KRS 439.3401; and
    4. Not charged or convicted of an offense under KRS Chapter 510, KRS 529.100 involving commercial sexual activity, KRS 530.020, 530.064(1)(a), 531.310, or 531.320; and
  - (b) "Pregnancy release conditions" means conditions of release set by a court or the department for eligible persons which shall include:
    1. Completing inpatient residential treatment for substance use disorders;
    2. Not being charged with a new local, state, or federal misdemeanor or felony offense;
    3. If not yet sentenced, appearing for all required court appearances;
    4. If not yet sentenced, avoiding all contact with any alleged victim and any potential witness who may testify concerning the charge, unless or until the court removes this condition; and
    5. If not yet sentenced, maintaining a current address with the court.
- (2) Except as provided in subsection (3) of this section and notwithstanding any other statute to the contrary, when an eligible person is charged or convicted of any violation of KRS Chapter 218A, the person shall be released from custody upon her own recognizance so long as the person successfully meets the pregnancy release conditions. If the pregnancy release conditions are violated, the eligible person shall be returned to custody to await sentencing or to serve the sentence for the original conviction under KRS Chapter 218A as well as the sentence for any subsequent charges or convictions, if any.

~~{(3) If an eligible person is housed in a jail that provides treatment for substance use disorders or in a jail that transports prisoners for treatment, this section shall not apply.}~~

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall provide an annual restricted housing report to the Legislative Research Commission and the Judiciary Committee by January 31. The report shall include for the preceding year:*
  - (a) *The age, gender, and ethnicity of every inmate placed in restricted housing;*
  - (b) *The reason each inmate was placed in restricted housing; and*
  - (c) *The dates each inmate was placed in and released from restricted housing.*
- (2) *The annual restricted housing report shall be published on the Legislative Research Commission's Web site.*

Signed by Governor March 23, 2021.

## CHAPTER 86

## ( HB 105 )

AN ACT relating to missing persons.

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

➔Section 1. KRS 39F.180 is amended to read as follows:

- (1) All 911 centers and dispatch centers, law enforcement agencies, law enforcement dispatchers, fire departments, rescue squads, emergency medical service agencies, and emergency management agencies shall report the information required to be reported by administrative regulation, for all reports of persons missing, lost, or overdue, if a search for the lost person has lasted for more than two (2) hours to:
    - (a) The local emergency management director; and
    - (b) The local search and rescue coordinator for the jurisdiction in which the person is reported missing.
  - (2) (a) Any ***missing person report***~~[search]~~ for a missing minor, as that term is defined in KRS 2.015, shall be immediately reported to the Department of Kentucky State Police by the person or organization to whom the missing minor is reported.
  - (b) A ***missing person report***~~[search]~~ for an impaired person as defined in KRS 39F.010(3)(a) shall immediately be reported as a Golden Alert D to the local emergency management director, local search and rescue coordinator if different from the local emergency manager, local media outlets, and the duty officer of the Division of Emergency Management by the person managing the search or by the organization conducting the search, ***in a manner to be established by county policy***.
  - (c) A ***missing person report***~~[search]~~ for an impaired person as defined in KRS 39F.010(3)(b) shall immediately be reported as a Golden Alert to the local emergency management director, local search and rescue coordinator if different from the local emergency manager, local media outlets, and the duty officer of the Division of Emergency Management by the person managing the search or by the organization conducting the search. The provisions of this section do not apply to any licensed long-term health care provider conducting a search for a missing resident until the provider requests a search by a person or organization specified in subsection (1) of this section.
  - (d) A ***missing person report***~~[search]~~ for a veteran at risk shall immediately be reported as a Green Alert to the local emergency management director, local search and rescue coordinator if different from the local emergency management manager, local media outlets, and the duty officer of the Division of Emergency Management by the person managing the search or by the organization conducting the search. The provisions of this section do not apply to any licensed long-term health care provider conducting a search for a missing resident until the provider requests a search by a person or organization specified in subsection (1) of this section.
  - (e) ***The duty officer of the Division of Emergency Management shall contact the Transportation Cabinet if the local search coordinator determines that at any time during a search the use of electronic highway signs will aid in the search and is in the best interest of the missing person.***
  - (f) The making of this report does not relieve the person or organization from the duty to make other notifications and reports required in this section.
- (3) Any search and rescue mission which has lasted four (4) hours without the subject being located shall be immediately reported to the duty officer of the Division of Emergency Management by telephone or radio. ***Any agency, including but not limited to local law enforcement, the Kentucky State Police, fire departments, rescue squads, and emergency management, that initiates a search for any missing person not considered a Golden or Green Alert shall make the notifications indicated in subsection (2) of this section within four (4) hours of initiation of the search. Any search by any agency shall be reported to the Division of Emergency Management by telephone or radio within four (4) hours of initiation by the local search and rescue coordinator, the local emergency management director, or their designee.***

- (4) The results of each lost, missing, or overdue person report or search mission required to be reported under subsections (1) to (3) of this section shall be reported to the division and the local director on forms provided by the division and containing the information required by administrative regulation. The report shall be filed within twenty (20) days after:
- (a) The search and rescue mission is discontinued; or
  - (b) The victim has not been found and a decision is made to keep the case open or continue searching on a limited basis, whichever occurs earlier.
- (5) Each agency required to notify a local emergency management director or the division of a report of a missing person, or a search mission pursuant to this section shall develop a written standard operating procedure for handling and reporting requests to search for missing, lost, or overdue persons. This standard operating procedure shall be a public record.
- (6) ***The Transportation Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to develop a written standard operating procedure for handling and reporting requests made by the duty officer of the Division of Emergency Management to initiate the use of electronic highway signs as part of a search for a missing, lost, or overdue person. This standard operating procedure shall be a public record.***
- (7) The contents of reports, information to be conveyed upon notification, and other matters relating to the administration of this section and the securing of information required hereby shall be specified by the division by administrative regulations.
- ~~(8)~~(7) There is no requirement in Kentucky to delay the search for or rescue of any lost, missing, or overdue person. Any person who is reported lost, missing, or overdue, adult or child, may be searched for immediately by any emergency management, fire, law enforcement, emergency medical services, search and rescue, rescue squad, or other similar organization to which a missing or overdue person is reported. ***Any agency searching for a lost or missing person shall utilize existing resources, including but not limited to electronic highway signs, the Amber Alert System, law enforcement communications systems, electronic media, local, regional, and statewide media providers, and the Integrated Public Alert and Warning System, if authorized and under conditions permitted by the federal government.*** No public safety answering point, emergency dispatch center, or 911 center shall delay any call reporting a person lost, overdue, or missing to the organization specified in the county search and rescue annex of the county emergency management plan as responsible for searching for lost, missing, or overdue persons.

Signed by Governor March 23, 2021.

## CHAPTER 87

### ( HB 254 )

AN ACT relating to the sexual exploitation of minors.

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

➔Section 1. KRS 531.335 is amended to read as follows:

- (1) A person is guilty of possession or viewing of matter portraying a sexual performance by a minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he or she:
  - (a) Knowingly has in his or her possession or control any matter which visually depicts an actual sexual performance by a minor person; or
  - (b) Intentionally views any matter which visually depicts an actual sexual performance by a minor person.
- (2) The provisions of subsection (1)(b) of this section:
  - (a) Shall only apply to the deliberate, purposeful, and voluntary viewing of matter depicting sexual conduct by a minor person and not to the accidental or inadvertent viewing of such matter;

- (b) Shall not apply to persons viewing the matter in the course of a law enforcement investigation or criminal or civil litigation involving the matter; and
  - (c) Shall not apply to viewing the matter by a minor or the minor's parents or guardians, or to school administrators investigating violations of subsection (1)(b) of this section.
- (3) Possession or viewing of matter portraying a sexual performance by a minor is:
- (a) A Class D felony *if the person knows that the minor portrayed is less than eighteen (18) years old at the time of the sexual performance; and*
  - (b) A Class C felony *if the person knows that the minor portrayed is less than twelve (12) years old at the time of the sexual performance.*

➔Section 2. KRS 531.340 is amended to read as follows:

- (1) A person is guilty of distribution of matter portraying a sexual performance by a minor when, having knowledge of its content and character, he or she:
- (a) Sends or causes to be sent into this state for sale or distribution; or
  - (b) Brings or causes to be brought into this state for sale or distribution; or
  - (c) In this state, he or she:
    1. Exhibits for profit or gain; or
    2. Distributes; or
    3. Offers to distribute; or
    4. Has in his or her possession with intent to distribute, exhibit for profit or gain or offer to distribute, any matter portraying a sexual performance by a minor.
- (2) Any person who has in his or her possession more than one (1) unit of material coming within the provision of KRS 531.300(2) shall be rebuttably presumed to have such material in his or her possession with the intent to distribute it.
- (3) Distribution of matter portraying a sexual performance by a minor is:
- (a) A Class D felony for the first offense, and a Class C felony for each subsequent offense, *if the person knows that the minor portrayed is less than eighteen (18) years old at the time of the sexual performance; and*
  - (b) *A Class C felony for the first offense, and a Class B felony for each subsequent offense, if the person knows that the minor portrayed is less than twelve (12) years old at the time of the sexual performance.*

Signed by Governor March 23, 2021.

## CHAPTER 88

( SB 64 )

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 510.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Deviate sexual intercourse" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; or penetration of the anus of one person by any body part or a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by any body part or a foreign object in the course of the performance of generally recognized health-care practices;

- (2) "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;
- (3) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;
- (4) "Individual with an intellectual disability" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;
- (5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of an intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;
- (6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. "Physically helpless" also includes a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug;
- (7) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party;
- (8) "Sexual intercourse" means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by any body part or a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ by any body part or a foreign object in the course of the performance of generally recognized health-care practices;~~and~~
- (9) "Foreign object" means anything used in commission of a sexual act other than the person of the actor;
- (10) ***"Registrant" has the same meaning as in KRS 17.500; and***
- (11) ***"Adult intermediary" means a person who is age eighteen (18) years or older, who communicates with another for the purpose of procuring or promoting the use of a minor in violation of Section 2 of this Act .***

➔Section 2. KRS 510.155 is amended to read as follows:

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of:
  - (a) Procuring or promoting the use of a minor, ~~including~~~~or~~ a peace officer, ***or a person working in coordination with law enforcement***, posing as a minor if the person believes that the peace officer ***or the person working in coordination with law enforcement*** is a minor or is wanton or reckless in that belief;~~or~~
  - (b) ***Procuring or promoting the use of a minor from an adult intermediary, including a peace officer, or a person working in coordination with law enforcement, posing as an adult intermediary for a minor if the person believes that the peace officer or the person working in coordination with law enforcement is an adult intermediary for a minor or is wanton or reckless in that belief;***

for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where that offense involves commercial sexual activity, or 530.064(1)(a), or KRS Chapter 531.
- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) ***Each day a person knowingly uses a communications system for the purpose of procuring or promoting the use of a minor shall be a separate violation of this section.***



- ~~(4)(3)~~ The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense, and the offense is complete at that point without regard to whether the person met or attempted to meet the minor.
- ~~(5)(4)~~ This section shall apply to electronic communications originating within or received within the Commonwealth.
- ~~(6)(5)~~ ***Except as provided in subsection (7) of this section***, a violation of this section is punishable as a Class D felony.
- (7) ***A violation of this section is punishable as a Class C felony if:***
- (a) ***The minor or perceived minor procured or promoted is under twelve (12) years old;***
  - (b) ***The offender is a registrant; or***
  - (c) ***A person enters into the Commonwealth from another jurisdiction for the purpose of procuring or promoting the use of a minor or perceived minor in violation of this section.***

Signed by Governor March 23, 2021.

## CHAPTER 89

### ( HB 472 )

AN ACT relating to child abuse and declaring an emergency.

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

➔Section 1. KRS 500.050 is amended to read as follows:

- (1) Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.
- (2) Except as otherwise expressly provided, the prosecution of an offense other than a felony must be commenced within one (1) year after it is committed.
- (3)
  - (a) For a misdemeanor ~~sex~~ offense ~~[under KRS Chapter 510]~~ when the victim is ***a minor*** ~~[under the age of eighteen (18)]~~ at the time of the offense, the prosecution of the offense shall be commenced within ***ten (10)*** ~~five (5)~~ years after the victim attains the age of eighteen (18) years.
  - (b) ***As used in paragraph (a) of this subsection, "misdemeanor sex offense" means a misdemeanor offense in:***
    1. ***KRS Chapter 510;***
    2. ***KRS Chapter 531 involving a minor or depiction of a minor; or***
    3. ***KRS 506.010 or 506.030 for attempt to commit or solicitation to commit:***
      - a. ***Any of the offenses described in subparagraphs 1. and 2. of this paragraph;***
      - b. ***Promoting prostitution under KRS 529.040 when the defendant advances or profits from the prostitution of a minor;***
      - c. ***Human trafficking involving commercial sexual activity under KRS 529.100;***
      - d. ***Promoting human trafficking involving commercial sexual activity under KRS 529.110; or***
      - e. ***Unlawful transaction with a minor in the first degree under KRS 530.064(1)(a).***
- (4) For purposes of this section, an offense is committed either when every element occurs, or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.

➔Section 2. KRS 413.249 is amended to read as follows:

(1) As used in this section:

(a) "Childhood sexual assault *or abuse*" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a *misdemeanor or felony in:*

1. *KRS Chapter 510;*

2. *KRS 529.040 when the defendant advances or profits from the prostitution of a minor; [in KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110,]*

3. *KRS 529.100 when [where] the offense involves commercial sexual activity; [;]*

4. *KRS 529.110 when [where] the offense involves commercial sexual activity; [;]*

5. *KRS 530.020 or [;] 530.064(I)(a); [; 531.310, or 531.320]*

6. *KRS Chapter 531 involving a minor or depiction of a minor; or*

7. *KRS 506.010 or 506.030 for attempt to commit or solicitation to commit any of the offenses described in subparagraphs 1. to 6. of this paragraph.*

No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual assault *or abuse*;

(b) "*Entity*" means a firm, partnership, company, corporation, trustee, association, or any private or public entity, including the Commonwealth, a city, county, urban-county, consolidated local government, unified local government, or charter county government, or any of their agencies, departments, or any *KRS 58.180 nonprofit nonstock corporation; and* ["Childhood sexual abuse" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor in *KRS 510.120, KRS 510.130, KRS 510.140, or KRS 510.150. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual abuse;*]

(c) ["Child" means a person less than eighteen (18) years old; and

(d) —] "Injury or illness" means either a physical or psychological injury or illness.

(2) A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual *assault or abuse* [~~or childhood sexual assault~~] shall be brought before whichever of the following periods last expires:

(a) Within ten (10) years of the commission of the act or the last of a series of acts by the same perpetrator;

(b) Within ten (10) years of the date the victim knew, or should have known, of the act;

(c) Within ten (10) years after the victim attains the age of eighteen (18) years; or

(d) Within ten (10) years of the conviction of a civil defendant for an offense included in the definition of childhood sexual *assault or abuse* [~~or childhood sexual assault~~].

(3) *The time periods set forth in subsection (2) of this section shall apply to a civil action for recovery of damages for injury or illness against;*

(a) *A person alleged to have committed the act of childhood sexual assault or abuse; or*

(b) *An entity that owed a duty of care to the plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or agent of the entity was a legal cause of the childhood sexual assault or abuse that resulted in the injury to the plaintiff.*

(4) If a complaint is filed alleging that an act of childhood sexual assault or [~~childhood sexual~~] abuse occurred more than ten (10) years prior to the date that the action is commenced, the complaint shall be accompanied by a motion to seal the record and the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until:

(a) The court rules upon the motion to seal;

(b) Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed unless opened by a higher court; or

(c) The defendant files an answer and a motion to seal the record upon grounds that a valid factual defense exists, to be raised in a motion for summary judgment pursuant to CR 56. The record shall remain sealed by the clerk until the court rules upon the defendant's motion to close the record. If the court

grants the motion to close, the record shall remain sealed until the defendant's motion for summary judgment is granted. The complaint, motions, and other related papers or pleadings shall remain sealed unless opened by a higher court.

- (5) *A victim of childhood sexual assault or abuse shall not have a cause of action against a third party, unless the third party failed to act as a reasonable person or entity in complying with their duties to the victim. If a victim of childhood sexual assault or abuse has a cause of action under this section, the cause of action shall be commenced within the time period set forth in subsection (2) of this section.*
- (6) (a) *Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for excluding evidence regarding childhood sexual assault or abuse or the cause thereof when an exception to the Kentucky Rules of Evidence is met, in any judicial proceeding. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding childhood sexual assault or abuse.*
- (b) *As used in paragraph (a) of this subsection, the clergy-penitent privilege is limited to information received solely through confidential communications with a clergy member, privately or in a confessional setting, when in the course of the discipline or practice of the clergy member's church, denomination, or organization, he or she is authorized or accustomed to hearing those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.*
- (7) (a) *As was its intention with the passage of 2017 Ky. Acts ch. 114, sec. 2, the General Assembly hereby states that the amendments enacted in 2017 Ky. Acts ch. 114, sec. 2 shall be applied retroactively to actions accruing before its effective date of June 29, 2017. This section is a remedial statute which is to be given the most liberal interpretation to provide remedies for victims of childhood sexual assault or abuse.*
- (b) *Notwithstanding any provision of law to the contrary, any claim for childhood sexual assault or abuse that was barred as of the effective date of this Act because the applicable statute of limitations had expired is hereby revived, and the action may be brought if commenced within five (5) years of the date on which the applicable statute of limitations expired.*

➔Section 3. This Act shall apply to causes of action accruing on or after the effective date of this Act, and to causes of action accruing before the effective date of this Act, if the applicable statute of limitations, as it existed prior to this Act, has not yet run before the effective date of this Act.

➔Section 4. The restrictions of KRS 6.945(1) shall not apply to Sections 1 and 2 of this Act.

➔Section 5. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

➔Section 6. Whereas Kentucky has the highest rate of child abuse in the country, 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 23, 2021.**

## CHAPTER 90

( SB 66 )

AN ACT relating to youth camps.

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

➔Section 1. KRS 194A.380 is amended to read as follows:

As used in KRS 194A.380 to 194A.383:

- (1) "Criminal offense against a minor" means a conviction or a plea of guilty to any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:

- (a) Kidnapping, as in KRS 509.040, except by a parent;
  - (b) Unlawful imprisonment, as in KRS 509.020, except by a parent;
  - (c) Sexual misconduct as in KRS 510.140;
  - (d) Use of a minor in a sexual performance, as in KRS 531.310;
  - (e) Promoting a sexual performance of a minor, as in KRS 531.320;
  - (f) Possession or viewing matter portraying a sexual performance by a minor, as in KRS 531.335;
  - (g) Distribution of matter portraying a sexual performance by a minor, as in KRS 531.340;
  - (h) Promoting the sale of material portraying a sexual performance by a minor, as in KRS 531.350;
  - (i) Advertising material portraying a sexual performance by a minor, as in KRS 531.360;
  - (j) Using minors to distribute material portraying a sexual performance by a minor, as in KRS 531.370;
  - (k) Human trafficking involving commercial sexual activity, as in KRS 529.100;
  - (l) Promoting prostitution, as in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
  - (m) Unlawful transaction with a minor in the first degree, as in KRS 530.064(1)(a);
  - (n) Any attempt to commit any of the offenses described in paragraphs (a) to (m) of this subsection; or
  - (o) Solicitation to commit any of the offenses described in paragraphs (a) to (m) of this subsection;
- (2) ***"Local government" means a city, county, consolidated local government, urban-county government, unified local government, or charter county government;***
- (3) ***"Local government youth day camp" means a camp operated by a local government for all or part of a day, whether free or for a fee, for five (5) or more children under eighteen (18) years of age outside the presence of their parent or guardian for recreational or educational purposes for four (4) or more consecutive hours per day during school vacation periods, school breaks, or school cancellations;***
- (4) "Sex crime" means a conviction or a plea of guilty to any of the following offenses:
- (a) Rape in the first degree as in KRS 510.040;
  - (b) Rape in the second degree as in KRS 510.050;
  - (c) Rape in the third degree as in KRS 510.060;
  - (d) Sodomy in the first degree as in KRS 510.070;
  - (e) Sodomy in the second degree as in KRS 510.080;
  - (f) Sodomy in the third degree as in KRS 510.090;
  - (g) Sodomy in the fourth degree as in KRS 510.100;
  - (h) Sexual abuse in the first degree as in KRS 510.110;
  - (i) Sexual abuse in the second degree as in KRS 510.120;
  - (j) Sexual abuse in the third degree as in KRS 510.130;
  - (k) Indecent exposure in the first degree as in KRS 510.148;
  - (l) Indecent exposure in the second degree as in KRS 510.150;
  - (m) Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities as in KRS 510.155; or
  - (n) Incest as in KRS 530.020;
- (5) ***"Staff member" means:***
- (a) ***An individual who is employed by a youth camp or camp or a local government youth day camp for compensation;***

- (b) *A contract employee or a self-employed individual whose employment directly involves the care or supervision of children or unsupervised access to children placed with a youth camp or camp or a local government youth day camp; or*
- (c) *A volunteer or intern whose activities on behalf of a youth camp or camp or a local government youth day camp directly involves the care or supervision of children or unsupervised access to children placed with a youth camp or camp or a local government youth day camp;*

~~(6)(3)~~ "Violent offender" means any person who has been convicted of or who has entered a plea of guilty to the commission of a capital offense, Class A felony, Class B felony involving the death of the victim or serious physical injury to the victim, or rape in the first degree, or sodomy in the first degree; and

~~(7)(4)~~ "Youth camp" or "camp" means:

- (a) Any camp required pursuant to KRS 211.180 to obtain a permit to operate; and
- (b) Any program offered, whether free or for a fee, for recreational, educational, sports training, or vacation purposes to children under eighteen (18) years of age that a child attends outside the presence of his or her parent or legal guardian.

➔Section 2. KRS 194A.382 is amended to read as follows:

- (1) A youth camp *or camp or a local government youth day camp* that receives public funds shall not employ, contract, or utilize as a volunteer, in any position, any ~~staff member~~~~(person)~~ who has been convicted of or who has entered a plea of guilty to a criminal offense against a minor or a sex crime, who is a violent offender, or who has been found by the Cabinet for Health and Family Services or a court to have abused or neglected a child.
- (2) Prior to employing, contracting with, or allowing volunteer work, each youth camp *or camp or a local government youth day camp* that receives public funds shall obtain from the Justice and Public Safety Cabinet a national and state criminal background check of the applicant, contractor, or volunteer *who is or intends to become a staff member* prior to the individual's presence at the camp or involvement in any program of the camp.
- (3) Prior to employing, contracting with, or allowing volunteer work, each youth camp *or camp or a local government youth day camp* that receives public funds shall require ~~an applicant~~~~(applicants)~~ to obtain a letter from the Cabinet for Health and Family Services stating the individual is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services of the applicant, contractor, or volunteer *who intends to become a staff member* prior to the individual's presence at the camp or involvement in any program of the camp.
- (4) Each application form provided by a youth camp *or camp or a local government youth day camp* that receives public funds to an applicant or volunteer *who intends to become a staff member* shall in a prominent place and legible font conspicuously state the following: "STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL BACKGROUND CHECK AND A LETTER FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE ~~STAFF MEMBER~~~~(EMPLOYEE)~~ IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS AS A CONDITION OF EMPLOYMENT OR INVOLVEMENT IN THIS PROGRAM."
- (5) Any request for records under this section shall be on a form approved by the Justice and Public Safety Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.
- (6) This section shall apply to all applicants and volunteers in a position which involves supervisory or disciplinary power over a minor, *who intend to become staff members*.
- (7) This section shall not be construed to prohibit an exempted organization from requiring its employees, contractors, or volunteers to submit to a background check. A youth ~~camp~~~~(camps)~~ *or camp or a local government youth day camp* that ~~does~~~~(do)~~ not receive public funds may require its employees, contractor, or volunteers to submit to a criminal background check and to have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the individual has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

- (8) This section shall not be construed to require a youth camp *or camp or a local government youth day camp* that receives public funds to employ, contract with, or allow volunteering by, an individual solely on the basis of an acceptable criminal background check.
- (9) This section shall not limit the ability of a youth camp *or camp or a local government youth day camp* that receives public funds to establish a more stringent background check process for its employees, contractors, or volunteers regarding other criminal offenses which, in the discretion of the youth camp *or camp or a local government youth day camp* that receives public funds, would disqualify the individual from involvement with the youth camp *or camp or a local government youth day camp*.
- (10) The form for requesting a letter, required by this section, stating *a staff member* ~~[an employee]~~ is clear to hire based on a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be made available on the Cabinet for Health and Family Services Web site.

➔Section 3. KRS 194A.383 is amended to read as follows:

- (1) Failure to comply with KRS 194A.382 will result in immediate suspension of the entity's permit until compliance is obtained.
- (2) If any employee, contractor, or volunteer *who is a staff member* is discovered to be a violent offender or has been convicted of a sex crime or a criminal offense against a minor, or has been found by the Cabinet for Health and Family Services to have abused or neglected a child, and if he or she has waived the right to appeal a substantiated finding of child abuse or neglect or if the substantiated incident was upheld upon appeal, he or she shall be immediately terminated from participation with the program and removed from the property.
- (3) Any person who owns or operates a youth camp *or camp or a local government youth day camp* that receives public funds and who knowingly allows an individual *who is a staff member* to serve or continue to serve as an employee, contractor, or volunteer despite a conviction or offense specified in this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

- (1) *A local government youth day camp shall not be required:*
- (a) *To be licensed as a child care center as defined in KRS 199.894; or*
- (b) *To obtain a permit under KRS 211.180.*
- (2) *A local government youth day camp shall comply with background checks required under Section 2 of this Act.*

Signed by Governor March 23, 2021.

## CHAPTER 91

### ( HB 392 )

AN ACT relating to voluntary energy cost assistance funds.

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

➔Section 1. KRS 278.287 is amended to read as follows:

- (1) As used in this section:
- (a) "Voluntary energy cost assistance fund" means a fund that shall:
1. Be administered by a utility or provider for the purpose of receiving voluntary contributions from customers and disbursing subsidies to customers;
  2. Be administered in coordination with one (1) or more community action agencies that assist the Cabinet for Health and Family Services in administering federal Low-Income Home Energy Assistance Program (LIHEAP) funding; and

3. Be maintained in trust and separate from any customer assistance program otherwise implemented by the utility or provider;
  - (b) "Provider" means any person or persons, excluding an electric power system owned and operated by a municipality, that provide service to retail customers and that own, control, operate, or manage any facility used or to be used for or in connection with any activity described in KRS 278.010(3)(a) or (b) but are not regulated by KRS Chapter 278; and
  - (c) "Fund" means a voluntary energy cost assistance fund.
- (2) Any utility as defined in KRS 278.010(3)(a) or (b) that provides service to retail customers and that does not already administer an energy assistance program prior to July 12, 2006, may establish a fund.
- (3) Any provider that does not already administer an energy assistance program prior to July 12, 2006, may establish a fund.
- (4) A customer's voluntary monthly contribution amount to the fund shall be:
  - (a) An amount equal to the difference of the customer's monthly bill and the amount of the next highest whole dollar; or
  - (b) A standard amount not to exceed one dollar (\$1).
- (5) A customer may make a special contribution to the fund at any time in any amount.
- (6) Annual disbursements from the fund may be made in November and December of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing a utility or provider bill subsidy for residential customers who:
  - (a) Use electricity or natural or manufactured gas as a principal source of home energy;
  - (b) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;
  - (c) Have a total household income that is at or below ***the percentage*** ~~one hundred ten percent (110%)~~ of the federal poverty guidelines ***required for eligibility in the subsidy component of LIHEAP, as specified in the latest federally approved version of the Kentucky LIHEAP State Plan submitted by the Department for Community Based Services*** ~~[as defined in KRS 205.5621];~~
  - (d) Have liquid monetary resources that do not exceed one thousand five hundred dollars (\$1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;
  - (e) Have liquid monetary resources that do not exceed four thousand dollars (\$4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness; and
  - (f) Are customers of the utility or provider.
- (7) If available, additional disbursements from the fund may be made from January 1 through March 15 of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing a utility or provider bill subsidy for residential customers who:
  - (a) Use electricity or natural or manufactured gas as a principal source of home energy;
  - (b) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;
  - (c) Have a total household income that is at or below ***the percentage*** ~~one hundred ten percent (110%)~~ of the federal poverty guidelines ***required for eligibility in the subsidy component of LIHEAP, as specified in the latest federally approved version of the Kentucky LIHEAP State Plan submitted by the Department for Community Based Services*** ~~[as defined in KRS 205.5621];~~
  - (d) Have liquid monetary resources that do not exceed one thousand five hundred dollars (\$1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;

- (e) Have liquid monetary resources that do not exceed four thousand dollars (\$4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness; and
  - (f) Are utility or provider customers who:
    - 1. Have received a disconnect notice from the utility or provider;
    - 2. Are within four (4) days of running out of fuel oil, propane, kerosene, wood, or coal; or
    - 3. Have received an eviction notice for nonpayment of rent, when heat is included as an undesignated portion of the rent.
- (8) If available, additional summer cooling disbursements from the fund may be made on a one (1) time basis from May through August of each year by the utility or provider upon the recommendation of a community action agency for the purpose of providing an air-conditioning unit to residential customers who:
- (a) Are responsible for their home heating costs either directly or indirectly as an undesignated portion of the rent;
  - (b) Have a total household income that is at or below ***the percentage [one hundred ten percent (110%)]*** of the federal poverty guidelines ***required for eligibility in the subsidy component of LIHEAP, as specified in the latest federally approved version of the Kentucky LIHEAP State Plan submitted by the Department for Community Based Services [as defined in KRS 205.5621];***
  - (c) Have liquid monetary resources that do not exceed one thousand five hundred dollars (\$1,500) if those liquid monetary resources are not used for the medical and living expenses of a household member with a catastrophic illness;
  - (d) Have liquid monetary resources that do not exceed four thousand dollars (\$4,000) if those liquid monetary resources are used for the medical and living expenses of a household member with a catastrophic illness;
  - (e) Are customers of the utility or provider;
  - (f) Do not have access to an air conditioner; and
  - (g) Have a household member who:
    - 1. Has a health condition or disability that requires cooling to prevent further deterioration as verified by a physician's statement;
    - 2. Is sixty-five (65) years of age or older; or
    - 3. Is under the age of six (6).
- (9) For the six (6) month period from January 1 to June 30 of each year, each utility or provider that administers a fund shall provide a detailed report of costs in administering the fund and a detailed report of receipts to and disbursements from the fund to the commission no later than July 31, and for the six (6) month period from July 1 to December 31, no later than January 31 of the following year. Any balances remaining in the fund at the end of a year shall remain in the fund for use in succeeding years.
- (10) The commission shall require all utilities as defined in KRS 278.010(3)(a) and (b) that administer a fund and provide service to retail customers in Kentucky to develop and implement a mechanism for soliciting and receiving contributions to the fund. The mechanism and format shall be approved by the commission and may include but shall not be limited to a check-the-box format. Contributions shall be made as described in subsections (4) and (5) of this section.
- (11) Any provider that administers a fund shall comply with the requirements to implement a mechanism for soliciting and receiving contributions to the fund as provided in subsection (10) of this section.
- (12) Those utilities and providers that are already administering an energy assistance program prior to July 12, 2006, shall not be subject to subsections (9), (10), and (11) of this section.
- (13) All contributions to the fund shall be voluntary and shall be uniformly assessed monthly, except in the case of a special contribution, which can be made in any amount at any time, for all customers of the utility or provider. A customer shall not be subject to making contributions until such time as his or her intent is submitted to the applicable utility in a manner prescribed by the commission. A customer who no longer



wishes to contribute to the fund shall be exempted from making further contributions to the fund once his or her intent is submitted to the applicable utility in a manner prescribed by the commission.

- (14) Contributions received by utilities or providers, together with any interest accruing thereon, shall be transferred to the fund immediately upon receipt.
- (15) A utility or provider that administers a fund may recover up to three percent (3%) of each contribution received for its costs in administering the fund. The commission shall allow any additional, reasonable cost a utility incurs in administering the receipt and disbursement of contributions to the fund in the cost of service of the utility for ratemaking purposes.

**Signed by Governor March 23, 2021.**

## CHAPTER 92

### ( HB 370 )

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. KRS 186.162 is amended to read as follows:

- (1) As used in this section and in KRS 186.043, 186.164, 186.166, 186.1722, and 186.174:
- (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 *county clerk's fee for issuing a motor vehicle registration as established under subsection (1) of Section 2 of this Act* ~~portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by a county clerk~~. If a CF amount is charged for a license plate listed in this section, the applicant for that plate shall also pay the fees identified in KRS 186.040(6). If a CF amount is not charged, the applicant shall not be required to pay those fees; 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: | \$23 | (\$12 SF/\$6 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460). |
| 2. | Renewal Fee: | \$6  | (\$0 SF/\$6 CF/\$0 EF).   |

- (c) Members of the Kentucky National Guard and recipients of the Purple Heart:
1. Initial Fee: \$23 (\$12 SF/\$6 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
  2. Renewal Fee: \$11 (\$0 SF/\$6 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, *the Distinguished Flying Cross, the Air Medal, the Combat Action Badge, the Combat Infantry Badge*, 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); individuals eligible for a special military service academy license plate under KRS 186.041(8); 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: \$23 (\$12 SF/\$6 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
  2. Renewal Fee: \$23 (\$12 SF/\$6 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: \$6 (\$0 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$6 (\$0 SF/\$6 CF/\$0 EF).
- (f) Disabled license plates:
1. Initial Fee: \$18 (\$12 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$18 (\$12 SF/\$6 CF/\$0 EF).
- (g) Historic vehicles:
1. Initial Fee for two plates: \$56 (\$50 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: Do not renew annually.
- (h) Members of Congress:
1. Initial Fee: \$43 (\$37 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$23 (\$12 SF/\$6 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (i) Firefighters:
1. Initial Fee: ~~\$28~~~~18~~ (\$12 SF/\$6 CF/~~\$10~~~~\$0~~ EF to *the Kentucky Firefighters Association*).
  2. Renewal Fee: ~~\$28~~~~18~~ (\$12 SF/\$6 CF/~~\$10~~~~\$0~~ EF to *the Kentucky Firefighters Association*).
- (j) Emergency management:
1. Initial Fee: \$31 (\$25 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$18 (\$12 SF/\$6 CF/\$0 EF).
- (k) Fraternal Order of Police:
1. Initial Fee: \$41 (\$25 SF/\$6 CF/\$10 EF to the Kentucky FOP Death Benefit Fund).
  2. Renewal Fee: \$28 (\$12 SF/\$6 CF/\$10 EF to the Kentucky FOP Death Benefit Fund).

- (l) Law Enforcement Memorial:
1. Initial Fee: \$41 (\$25 SF/\$6 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
  2. Renewal Fee: \$28 (\$12 SF/\$6 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
- (m) Personalized plates:
1. Initial Fee: \$43 (\$37 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$43 (\$37 SF/\$6 CF/\$0 EF).
- (n) Street rods:
1. Initial Fee: \$43 (\$37 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$18 (\$12 SF/\$6 CF/\$0 EF).
- (o) Nature plates:
1. Initial Fee: \$28 (\$12 SF/\$6 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
  2. Renewal Fee: \$28 (\$12 SF/\$6 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
- (p) Amateur radio:
1. Initial Fee: \$43 (\$37 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$18 (\$12 SF/\$6 CF/\$0 EF).
- (q) Kentucky General Assembly:
1. Initial Fee: \$43 (\$37 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$23 (\$12 SF/\$6 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (r) Kentucky Court of Justice:
1. Initial Fee: \$43 (\$37 SF/\$6 CF/\$0 EF).
  2. Renewal Fee: \$11 (\$0 SF/\$6 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (s) Masons:
1. Initial Fee: ~~\$41~~<sup>\$34</sup> (\$25 SF/\$6 CF/~~\$10~~<sup>\$0</sup> EF to the *Masonic Homes of Kentucky*).
  2. Renewal Fee: ~~\$28~~<sup>\$18</sup> (\$12 SF/\$6 CF/~~\$10~~<sup>\$0</sup> EF to the *Masonic Homes of Kentucky*).
- (t) Collegiate plates:
1. Initial Fee: \$53 (\$37 SF/\$6 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
  2. Renewal Fee: \$28 (\$12 SF/\$6 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: \$41 (\$25 SF/\$6 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: \$28 (\$12 SF/\$6 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: \$41 (\$25 SF/\$6 CF/\$10 EF to the child victims' trust fund established under KRS 41.400).
  2. Renewal Fee: \$23 (\$12 SF/\$6 CF/\$5 EF to the child victims' trust fund established under KRS 41.400).
- (w) Kentucky Horse Council:
1. Initial Fee: \$41 (\$25 SF/\$6 CF/\$10 EF to the Kentucky Horse Council).
  2. Renewal Fee: \$23 (\$12 SF/\$6 CF/\$5 EF to the Kentucky Horse Council).
- (x) Ducks Unlimited:
1. Initial Fee: \$41 (\$25 SF/\$6 CF/\$10 EF to Kentucky Ducks Unlimited).
  2. Renewal Fee: \$28 (\$12 SF/\$6 CF/\$10 EF to Kentucky Ducks Unlimited).
- (y) Spay neuter:
1. Initial Fee: \$28 (\$12 SF/\$6 CF/\$10 EF to the animal control and care fund established under KRS 258.119).
  2. Renewal Fee: \$23 (\$12 SF/\$6 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: \$28 (\$12 SF/\$6 CF/\$10 EF to the Kentucky Department of Veterans' Affairs).
  2. Renewal Fee: \$23 (\$12 SF/\$6 CF/\$5 EF to the Kentucky Department of Veterans' Affairs).
- (ab) Gold Star Siblings, Gold Star Sons, or Gold Star Daughters:
1. Initial Fee: \$28 (\$12 SF/\$6 CF/\$10 EF to the veterans' program trust fund established under KRS 40.460).
  2. Renewal Fee: \$23 (\$12 SF/\$6 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (ac) **POW/MIA Awareness:**
1. **Initial Fee: \$41 (\$25 SF/\$6 CF/\$10 EF to the veterans' program trust fund established under KRS 40.460).**
  2. **Renewal Fee: \$28 (\$12 SF/\$6 CF/\$10 EF to the veterans' program trust fund established under KRS 40.460).**
- (ad) ~~Special license plates established between June 20, 2005, and June 27, 2019:~~
- ~~1. Initial Fee: \$41 (\$25 SF/\$6 CF/\$10 EF).~~
  - ~~2. Renewal Fee: \$41 (\$25 SF/\$6 CF/\$10 EF).~~
- (ad) ~~Special license plates established under KRS 186.164 on or after June 27, 2019:~~
1. **Initial Fee: \$41 (\$25 SF/\$6 CF/\$10 EF).**
  2. **Renewal Fee: \$41 (\$25 SF/\$6 CF/\$10 EF).**
  - ~~1. Initial Fee: \$40 (\$24 SF/\$6 CF/\$10 EF).~~

~~2. Renewal Fee \$28 (\$12 SF/\$6 CF/\$10 EF).~~

- (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) (a) *A sponsoring organization of any special license plate issued under this section or any special license plate established under the provisions of KRS 186.164 may petition the cabinet for the production of that special license plate for motorcycles.*
- (b) Owners and lessees of motorcycles registered under KRS 186.050(2) may be eligible to receive special license plates ***approved by the cabinet under paragraph (a) of this subsection*** ~~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 2. KRS 186.040 is amended to read as follows:

- (1) Upon receiving the application and fee, the county clerk shall issue to the owner a certificate of registration containing the information required by subsection (2) of this section and a registration plate. If the cabinet finds that there is a shortage of materials suitable for making plates, or that a substantial saving will result, it may require by regulation with the approval of the Governor that previously issued plates continue to be used for a designated period. Except as provided in subsection (3) of this section ***and in Section 1 of this Act***, for services performed, the owner shall pay the county clerk the sum of six dollars (\$6) for each registration, or if the registration exceeds a twelve (12) month period, the clerk shall receive a fee of nine dollars (\$9).
- (2) The certificate of registration shall contain the registration number, the name and post office address of the owner, and such other information as the cabinet may require.
- (3) An owner who registers a vehicle under KRS 186.050 that has a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater shall pay the county clerk thirty dollars (\$30) for each registration. The clerk shall retain the thirty dollar (\$30) fee for services performed under this subsection.
- (4) Any person requesting a certificate of registration or renewal of registration of any type of motor vehicle shall have the opportunity to donate one dollar (\$1) to the child care assistance account. The one dollar (\$1) donation shall be added to the regular fee for vehicle registration. One donation may be made per issuance or renewal of vehicle registration. Donation to the child care assistance account shall be voluntary and may be refused by the applicant at the time of the issuance or renewal of any vehicle registration.
- (5) The county clerk may retain five percent (5%) of fees collected for the child care assistance account under subsection (4) of this section. The remaining funds shall be deposited into a trust and agency account in the State Treasury to the credit of the Cabinet for Health and Family Services for the exclusive use as follows:
- (a) Funds shall be made available to the agencies that administer child care subsidy funds; and
- (b) Funds shall be used as determined by the cabinet for working families whose income exceeds the state income eligibility limits for child day care assistance.
- (6) ***Except as provided in Section 1 of this Act*** ~~Notwithstanding any other provision of law~~, in addition to the registration fee provided for county clerks in subsections (1) and (3) of this section, an additional three dollars (\$3) per registration shall be collected by the county clerk at the time of registration. This additional fee shall be distributed as follows:
- (a) One dollar (\$1) shall be placed in an agency fund to provide additional funds exclusively for technological improvements or replacement of the AVIS system. The operation and maintenance of AVIS shall remain as currently provided for from the operational budget of the Transportation Cabinet and shall not be reduced below the 2005-2006 funding level;
- (b) One dollar (\$1) shall be placed in an agency trust fund to provide funds exclusively for technological improvements to the hardware and software in county clerk offices related to the collection and

administration of road fund taxes. The Transportation Cabinet, in consultation with county clerks, shall allocate funds as necessary from this fund to be used for this exclusive purpose; and

- (c) One dollar (\$1) shall be placed in a trust fund to be maintained by the Transportation Cabinet to provide an unrestricted revenue supplement, for operations of the office related to the collection and administration of road fund taxes, to county clerk offices in counties containing a population of less than twenty thousand (20,000), as determined by the decennial census, and for no other purpose. Annually, by March 1, the Transportation Cabinet shall calculate the amount collected in the previous calendar year and distribute the entire fund proportionate to each county that qualifies under this paragraph based on population. This revenue shall be considered current year revenue when paid to the clerk and shall not be identified as excess fees from the previous year.

➔Section 3. KRS 186.164 is amended to read as follows:

- (1) The SF portion of the fee required under KRS 186.162 shall include the fee to reflectorize all license plates under KRS 186.240. All EF fees required under KRS 186.162 shall be collected at the time of an initial or renewal application by the county clerk who shall forward the EF fee to the cabinet. The cabinet shall remit EF fees to the group or organization identified in KRS 186.162 on a quarterly basis. The cabinet may retain any investment income earned from holding EF fees designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of EF fees.
- (2) A special license plate shall be the color and design selected by the group or organization identified in subsection (13) of this section, contingent upon the approval of the Transportation Cabinet. In addition to the design selected for a special license plate, the name "Kentucky," an annual renewal decal, and any combination of letters or numerals required by the cabinet in the design shall also appear on the plate.
- (3) An actual metal special license plate shall be issued on the same schedule as regular license plates are issued under KRS 186.240. The cabinet shall have the discretion to extend the time period that will exist between the date a metal special license plate is issued and the date that regular plates are issued under KRS 186.240. A renewal registration decal shall be issued all other years during the owner's or lessee's birth month, except as provided in KRS 186.041(2) and 186.042(5). A person seeking a special license plate for a vehicle provided as part of the person's occupation shall conform to the requirements of KRS 186.050(14).
- (4)
  - (a) If a special license plate issued under this chapter deteriorates to the point that the lettering, numbering, or images on the face of the plate are not legible, the plate shall be replaced free of charge, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
  - (b) If a special license plate issued under this chapter is lost, stolen, or damaged in an accident, the county clerk shall issue a new plate upon payment of a three dollar (\$3) county clerk fee, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
- (5) Upon the sale, transfer, or termination of a lease of a vehicle with any special license plate issued under this chapter, the owner or lessee shall remove the special plate and return it and the certificate of registration to the county clerk. The county clerk shall reissue the owner or lessee a regular license plate and a certificate of registration upon payment of a three dollar (\$3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special plate upon payment of a three dollar (\$3) county clerk fee for use on any other vehicle of the same classification and category owned, leased, or acquired by the person during the current licensing period. If the owner or lessee has the special plate reissued to a vehicle which has been previously registered in this state, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to the Transportation Cabinet.
- (6) A special license plate may be issued to the owner or lessee of a motor vehicle that is required to be registered under KRS 186.050(1), (3)(a), or (4)(a), except a special license plate shall not be issued to a taxicab, limousine, or U-Drive-It registered and licensed under this chapter or KRS Chapter 281. A person applying for a special license plate shall apply in the office of the county clerk in the county of the person's residence, except as provided in KRS 186.168(3). All special license plates issued under this chapter may be combined with a personalized license plate under the provisions of KRS 186.174. The fee to combine a special license plate with a personalized license plate shall be as established in KRS 186.162(3).
- (7) Within thirty (30) days of termination from election to, appointment to, or membership with any group or organization, an applicant to whom a special license plate was issued under this chapter shall return the special license plate to the county clerk of the county of his or her residence, unless the person is merely changing his or her status with the group or organization to retired.

- (8) A group wanting to create a special license plate that is not authorized under this chapter on June 27, 2019, shall comply with the following conditions before being eligible to apply for a special license plate:
- (a) The group shall be nonprofit and based, headquartered, or have a chapter in Kentucky;
  - (b) The group may be organized for, but shall not be restricted to, social, civic, or entertainment purposes;
  - (c) The message to be placed on the license plate, if created, shall not discriminate against any race, color, religion, sex, or national origin, and shall not be construed, as determined by the cabinet, as an attempt to victimize or intimidate any person due to the person's race, color, religion, sex, or national origin;
  - (d) The plate shall not represent a political party and shall not have been created primarily to promote a specific political belief;
  - (e) The plate shall not have as its primary purpose the promotion of any specific faith, religion, or antireligion;
  - (f) The plate shall not be the name of a special product or brand name, and shall not be construed, as determined by the cabinet, as promoting a product or brand name; and
  - (g) The plate's lettering, logo, image, or message to be placed on the license plate, if created, shall not be obscene, as determined by the cabinet.
- (9) If the cabinet denies to issue a group a special license plate based upon the conditions specified in subsection (8) of this section, the cabinet shall, immediately upon denying to issue a group a special license plate, notify in writing the chairperson of both the House and Senate standing committees on transportation of the denial and the reasons upon which the cabinet based the denial.
- (10) If the cabinet approves a request for a special license plate, the cabinet shall begin designing and printing the plate after:
- (a) The group collects a minimum of nine hundred (900) applications with each application being accompanied by a fee as set forth in KRS 186.162. The applications and accompanying fee shall be submitted to the cabinet at one (1) time as a whole and shall not be submitted individually or intermittently; and
  - (b) The group submits to the cabinet the programming and production costs for the plate.
- (11) A group that is approved for a special license plate shall maintain a minimum number of five hundred (500) registrations annually for the cabinet to continue production of the plate.
- (12) An initial applicant for, or an applicant renewing, his or her registration for a special license plate shall, at the time of application, make a contribution that the county clerk shall forward to the cabinet as set forth in KRS 186.162. The cabinet shall, on an annual basis, remit the contributions to the appropriate group identified to be used for the declared purpose stated under subsection (13) of this section. The cabinet may retain any investment income earned from holding contributions designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of the contributions. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall maintain the information required under subsection (13)(a) and (c) of this section with the Transportation Cabinet.
- (13) The group shall, at the time the nine hundred (900) applications are submitted to the Transportation Cabinet, also submit a notarized affidavit to the cabinet attesting to:
- (a) The name, address, and telephone number for the group or organization. If the group or organization does not have its headquarters in the Commonwealth, then the name, address, and telephone number for the group or organization's Kentucky state chapter shall be required. The names of the officers of the group or organization shall also be required. If the entity receiving funds under subsection (12) of this section is not a state governmental agency, a program unit within a state governmental agency, or is a group or organization that does not have a statewide chapter, then a donation for use by the group or organization shall be prohibited;
  - (b) The amount of the monetary donation the group wants to receive when a person purchases the group or organization's special license plate; and
  - (c) The purpose for which the donated funds will be used by the group or organization. Donated funds shall not be limited for use by members of the group or organization, and shall not be used for administrative or personnel costs of the group or organization.

- (14) All funds received by a group or organization under subsection (12) of this section shall be deposited into an account separate from all other accounts the group or organization may have, and the account shall be audited yearly at the expense of the group or organization. The completed audit shall be forwarded to the Transportation Cabinet in Frankfort. One hundred percent (100%) of the funds received by a group or organization under subsection (12) of this section shall be used for the express purpose identified by the group in subsection (13) of this section. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall comply with the provisions of this subsection.
- (15) The secretary of the Transportation Cabinet shall promulgate administrative regulations under KRS Chapter 13A to establish additional rules to implement the issuance of special license plates issued under this chapter, including but not limited to:
- (a) Documentation that will be required to accompany an application for a special license plate to provide proof of:
    1. Election to the United States Congress or the Kentucky General Assembly;
    2. Election or appointment to the Kentucky Court of Justice;
    3. Membership in a Masonic Order, Fraternal Order of Police, or emergency management organization;
    4. Eligibility for membership in the Gold Star Mothers of America;
    5. Eligibility as a father for associate membership in the Gold Star Mothers of America;
    6. Eligibility for membership in the Gold Star Wives of America;
    7. Ownership of an amateur radio operator license;
    8. Receipt of the Silver Star Medal;
    9. Receipt of the Bronze Star Medal~~[awarded for valor]~~;
    10. **Receipt of the Air Medal;**
    11. **Receipt of the Distinguished Flying Cross;**
    12. **Receipt of the Combat Action Badge;**
    13. **Receipt of the Combat Infantry Badge;**
    14. Eligibility for a Gold Star Siblings license plate for a person whose sibling died while serving the country in the United States Armed Forces. For the purposes of this subparagraph, "sibling" means a sibling by blood, a sibling by half-blood, a sibling by adoption, or a stepsibling; or
    - ~~15. Eligibility for a Gold Star Sons or Gold Star Daughters license plate for a person whose parent or stepparent died while serving the country in the United States Armed Forces;~~
  - (b) The time schedule permissible for a group or organization to request a design change for the special license plate; and
  - (c) The procedures for review of proposed license plates and the standards by which proposed special license plates are approved or rejected in accordance with subsection (10) of this section.
- (16) Any individual, group, or organization that fails to audit any funds received under this chapter, or that intentionally uses any funds received in any way other than attested to under subsection (13) of this section or for administrative or personnel costs in violation of subsection (13) of this section, shall be guilty of a Class D felony and upon conviction shall, in addition to being subject to criminal penalties, be assessed a mandatory five thousand dollar (\$5,000) fine.

➔Section 4. 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, Fathers,



and Spouses license plates, Gold Star Siblings, Sons, and Daughters license plates, Silver Star Medal license plates, Bronze Star Medal license plates, *Air Medal license plates*, *Distinguished Flying Cross license plates*, *Combat Action Badge license plates*, *Combat Infantry Badge license plates*, *POW/MIA Awareness license plates*, spay neuter license plates, service academy 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)
  - (a) 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.
  - (b) The design of a Purple Heart license plate shall include a representation of the Purple Heart medal and the words "Combat Wounded."

➔Section 5. KRS 186.041 is amended to read as follows:

- (1) Each initial and renewal application by a person who meets the criteria of paragraph (a) of this section and each initial application by a person who meets the criteria of paragraph (b), (c), or (d) of this section for a special military license plate shall be accompanied by proof as set forth in subsection (10) of this section that the person is associated with the United States Army, United States Navy, United States Air Force, United States Marine Corps, United States Coast Guard, United States Coast Guard Auxiliary, Kentucky National Guard, Merchant Marines with service between December 7, 1941, and August 15, 1945, or Civil Air Patrol in one (1) of the following ways:
  - (a) A member of the Armed Forces of the United States;
  - (b) A retired member;
  - (c) A member of the National Guard or Reserve component who has completed his or her term of service, or has retired with a minimum of twenty (20) years of service; or
  - (d) A veteran who received a discharge under honorable conditions, or the veteran's surviving spouse, and:
    1. Performed one hundred eighty (180) days of active-duty service;
    2. Received an early release due to injuries or other medical condition, or at the convenience of the service;
    3. Received a hardship discharge;
    4. Was separated or retired due to a disability; or
    5. Was determined to have a service-connected disability incurred during the enlistment.
- (2) The member, retired member, veteran, reservist, or his or her spouse who is eligible under subsection (9) of this section may purchase an unlimited number of special military-related license plates described in subsection (1) of this section, annually for vehicles they own or lease. A disabled veterans license plate shall expire on July 31.
- (3) A recipient of the Distinguished Service Cross, Navy Cross, or Air Force Cross shall be eligible for a Service Cross license plate upon submission of an application to the Kentucky Department of Veterans' Affairs. The recipient shall be required to include with the initial application for a Service Cross license plate a copy of the general order that authorized the award and the recipient's Department of Defense form number 214. The Department of Veterans' Affairs shall verify the documentation submitted with the application for a Service Cross license plate, and if the individual applying for the plate is confirmed to be a recipient of the Distinguished Service Cross, Navy Cross, or Air Force Cross, the Department of Veterans' Affairs shall submit the applicant's name to the Transportation Cabinet's Division of Motor Vehicle Licensing not later than September 1 preceding the year that the Service Cross license plate is to be initially issued or renewed. When the Service Cross license plate is ready, the plate shall be sent to the county clerk in the county of the applicant's residence. The Transportation Cabinet's Division of Motor Vehicle Licensing shall inform each applicant in writing that the Service Cross license plate is ready and may be picked up at the county clerk's office. The Transportation Cabinet shall prescribe the type of application form required by this subsection and shall supply the Department of Veterans' Affairs with the application form required by this subsection.
- (4) A person who is a former prisoner of the enemy during World War I, World War II, the Korean War, or the Vietnam War, or the spouse of a deceased former prisoner of war, shall be eligible for a former prisoner of war license plate by submitting written proof from the United States Department of Veterans Affairs or other

appropriate federal agency stating the period of time the person or person's spouse was a prisoner of war. If a former prisoner of war dies with a vehicle licensed as authorized under this section, the person's surviving spouse may retain the license plate for use on the same vehicle or on another vehicle that complies with KRS 186.164(7).

- (5) A person who is certified by the Kentucky chapter of the Pearl Harbor Survivors Association as being a survivor of the attack on Pearl Harbor shall be eligible for a Pearl Harbor license plate and shall be required to attach to the special military-related license plate application written evidence from the Kentucky chapter of the Pearl Harbor Survivors Association that the person:
- (a) Was a member of the United States Armed Forces on December 7, 1941;
  - (b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m., Hawaii time, at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three (3) miles;
  - (c) Was discharged honorably from the United States Armed Forces; and
  - (d) Is certified by the Kentucky chapter of the Pearl Harbor Survivors Association.
- (6) A person who is eligible to receive a Gold Star Mothers, Gold Star Fathers, or Gold Star Spouses license plate under KRS 186.164(15)(a) may receive up to two (2) Gold Star Mothers, Gold Star Fathers, or Gold Star Spouses license plates free of charge and may purchase additional license plates by paying the same fee as for special military-related plates issued under KRS 186.162(2)(d) annually for vehicles he or she owns or leases.
- (7) The surviving spouse of a Purple Heart recipient, or a Kentucky National Guard member or a retired member, who possessed a vehicle licensed with the Purple Heart recipient special license plate or the Kentucky National Guard special license plate, may retain the license plate for use on the same vehicle or another vehicle that complies with KRS 186.164(7). The surviving spouse may renew the license plate indefinitely, provided the appropriate registration fee is paid annually.
- (8) A person who is attending or who is a graduate of the United States Air Force Academy, the United States Military Academy, the United States Naval Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy shall be eligible for a special military service academy license plate. A special military service academy license plate under this subsection shall use the same plate template as the standard special military license plate under subsection (1) of this section, with stickers to identify the various service academies. The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to establish the proof required to demonstrate current attendance at or graduation from a service academy. An eligible applicant may receive up to two (2) special military service academy license plates.
- (9) (a) The legally married spouse of a member of the Armed Forces of the United States who meets the criteria for a special military license plate under subsection (1) of this section shall be eligible for a special military license plate. A special military license plate under this subsection shall use the same template as the standard special military license plate under subsection (1) of this section, with a sticker identifying the plate as that of a military spouse.
- (b) ***An applicant who is eligible for a special military license plate under this subsection shall present as proof of eligibility an original or copy of his or her marriage certificate establishing marriage to the member of the Armed Forces of the United States and an original or copy of one (1) of the following:***
1. ***His or her unexpired DD-1173 form; or***
  2. ***Any identification document outlined in subsection (10) of this section issued to his or her spouse.***
- (10) Prior to receiving a special military-related plate requested under subsection (1) of this section, the applicant shall present ~~one (1) of the following~~ as proof of ***eligibility, an original or copy of his or her*** ~~veteran status~~:
- (a) ***Unexpired*** ~~An original or copy of his or her~~ Veteran Identification Card or Veteran Health Identification Card issued by the United States Department of Veterans Affairs; ~~or a~~
  - (b) ***DD-2, DD-214, DD-256, DD-257, or NGB-22 form; or***
  - (c)~~(b)~~ ***Unexpired*** ~~A current military or~~ Geneva Conventions Identification Card ***issued by the United States Department of Defense*** ~~establishing current service, dependent status, or retirement status in the Armed Forces of the United States~~.

Signed by Governor March 23, 2021.

### CHAPTER 93

( SB 72 )

AN ACT relating to the Revised Uniform Fiduciary Access to Digital Assets Act.

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

➔Section 1. KRS 395A.060 is amended to read as follows:

- (1) When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion:
  - (a) Grant a fiduciary or designated recipient full access to the user's account;
  - (b) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
  - (c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.
- (2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter, *unless the user would have had access to those digital assets for free or for no additional charge*.
- (3) A custodian need not disclose under this chapter a digital asset deleted by a user.
- (4) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:
  - (a) A subset limited by date of the user's digital assets;
  - (b) All of the user's digital assets to the fiduciary or designated recipient;
  - (c) None of the user's digital assets; or
  - (d) All of the user's digital assets to the court for review in camera.

Signed by Governor March 23, 2021.

### CHAPTER 94

( HB 109 )

AN ACT relating to the Uniform Deployed Parents Custody and Visitation Act.

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

➔SECTION 1. KRS CHAPTER 403A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*This chapter may be cited as the Uniform Deployed Parents Custody and Visitation Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*As used in this chapter:*

- (1) *"Adult" means an individual who has attained eighteen (18) years of age or an emancipated minor;*

- (2) *"Caretaking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation;*
- (3) *"Child" means:*
  - (a) *An unemancipated individual who has not attained eighteen (18) years of age; or*
  - (b) *An adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility;*
- (4) *"Court" means a tribunal authorized under law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility;*
- (5) *"Custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child;*
- (6) *"Decision-making authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority;*
- (7) *"Deploying parent" means a service member, who is deployed or has been notified of impending deployment and is:*
  - (a) *A parent of a child under law of this state other than this chapter; or*
  - (b) *An individual who has custodial responsibility for a child under law of this state other than this chapter;*
- (8) *"Deployment" means the movement or mobilization of a service member for more than ninety (90) days but less than eighteen (18) months pursuant to uniformed service orders that:*
  - (a) *Are designated as unaccompanied;*
  - (b) *Do not authorize dependent travel; or*
  - (c) *Otherwise do not permit the movement of family members to the location to which the service member is deployed;*
- (9) *"Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this chapter;*
- (10) *"Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child;*
- (11) *"Nonparent" means an individual other than a deploying parent or other parent;*
- (12) *"Other parent" means an individual who, in common with a deploying parent, is:*
  - (a) *A parent of a child under law of this state other than this chapter; or*
  - (b) *An individual who has custodial responsibility for a child under law of this state other than this chapter;*
- (13) *"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;*
- (14) *"Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders;*
- (15) *"Service member" means a member of a uniformed service;*
- (16) *"Sign" means, with present intent to authenticate or adopt a record:*
  - (a) *To execute or adopt a tangible symbol; or*
  - (b) *To attach to or logically associate with the record an electronic symbol, sounds, or process;*
- (17) *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and*

(18) *"Uniformed service" means:*

- (a) *Active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;*
- (b) *The United States Merchant Marine;*
- (c) *The commissioned corps of the United States Public Health Service;*
- (d) *The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or*
- (e) *The National Guard of a state.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In addition to other remedies under law of this state other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, KRS 403.800 to 403.880.*
- (2) *If a court has issued a temporary order regarding custodial responsibility pursuant to Sections 13 to 23 of this Act, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.*
- (3) *If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to Sections 8 to 12 of this Act, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.*
- (4) *If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.*
- (5) *This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (4) of this section, and subject to subsection (3) of this section, a deploying parent shall notify in a record the other parent of a pending deployment not later than seven (7) days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven (7) days, the deploying parent shall give the notification as soon as reasonably possible.*
- (2) *Except as otherwise provided in subsection (4) of this section, and subject to subsection (3) of this section, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (1) of this section.*
- (3) *If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (1) of this section, or notification of a plan for custodial responsibility during deployment under subsection (2) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.*
- (4) *Notification in a record under subsection (1) or (2) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.*
- (5) *In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to Sections 8 to 12 or 13 to 23 of this Act shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.*
- (2) *If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (1) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *The parents of a child may enter into a temporary agreement under Sections 8 to 12 of this Act granting custodial responsibility during deployment.*
- (2) *An agreement under subsection (1) of this section shall be:*
  - (a) *In writing; and*
  - (b) *Signed by both parents and any nonparent to whom custodial responsibility is granted.*
- (3) *Subject to subsection (4) of this section, an agreement under subsection (1) of this section, if feasible, shall:*
  - (a) *Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;*
  - (b) *Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;*
  - (c) *Specify any decision-making authority that accompanies a grant of caretaking authority;*
  - (d) *Specify any grant of limited contact to a nonparent;*
  - (e) *If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;*
  - (f) *Specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;*
  - (g) *Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;*
  - (h) *Acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during the deployment requires modification in the appropriate court;*
  - (i) *Provide that the agreement will terminate according to the procedures under Sections 24 to 27 of this Act after the deploying parent returns from deployment; and*
  - (j) *If the agreement must be filed pursuant to Section 12 of this Act, specify which parent is required to file the agreement.*
- (4) *The omission of any of the items specified in subsection (3) of this section does not invalidate an agreement under this section.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *An agreement under Sections 8 to 12 of this Act is temporary and terminates pursuant to Sections 24 to 27 of this Act after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under Section 10 of this Act. The agreement does not create*

*an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.*

- (2) *A nonparent who has caretaking authority, decision-making authority, or limited contact by an agreement under Sections 8 to 12 of this Act has standing to enforce the agreement until it has been terminated by court order, by modification under Section 10 of this Act, or under Sections 24 to 27 of this Act.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to Sections 8 to 12 of this Act.*
- (2) *If an agreement is modified under subsection (1) of this section before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.*
- (3) *If an agreement is modified under subsection (1) of this section during deployment of a deploying parent, the modification shall be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this chapter, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*An agreement or power of attorney under Sections 8 to 12 of this Act shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*As used in Sections 13 to 23 of this Act, "close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.*
- (2) *At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion shall be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under Section 4 of this Act or, if there is no pending proceeding in a court with jurisdiction under Section 4 of this Act, in a new action for granting custodial responsibility during deployment.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*If a motion to grant custodial responsibility is filed under subsection (2) of Section 14 of this Act before a deploying parent deploys, the court shall conduct an expedited hearing.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In a proceeding under Sections 13 to 23 of this Act, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In a proceeding for a grant of custodial responsibility pursuant to Sections 13 to 23 of this Act, the following rules apply:*

- (1) *A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than this chapter for modifying a judicial order regarding custodial responsibility; and*
- (2) *The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under Sections 8 to 12 of this Act, unless the court finds that the agreement is contrary to the best interest of the child.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *On motion of a deploying parent and in accordance with law of this state other than this chapter, if it is in the best interest of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.*
- (2) *Unless a grant of caretaking authority to a nonparent under subsection (1) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:*
  - (a) *The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or*
  - (b) *In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.*
- (3) *A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*On motion of a deploying parent, and in accordance with law of this state other than this chapter, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.*

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *A grant of authority under Sections 13 to 23 of this Act is temporary and terminates under Sections 24 to 27 of this Act after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.*
- (2) *A nonparent granted caretaking authority, decision-making authority, or limited contact under Sections 13 to 23 of this Act has standing to enforce the grant until it is terminated by court order or under Sections 24 to 27 of this Act.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *An order granting custodial responsibility under this article shall:*
  - (a) *Designate the order as temporary; and*
  - (b) *Identify to the extent feasible the destination, duration, and conditions of the deployment.*
- (2) *If applicable, an order for custodial responsibility under Sections 13 to 23 of this Act shall:*
  - (a) *Specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent;*
  - (b) *If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one (1) individual and limited contact to another, provide a process to resolve any dispute that may arise;*
  - (c) *Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communication;*



- (d) *Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;*
- (e) *Provide for the reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and*
- (f) *Provide that the order will terminate pursuant to Sections 24 to 27 of this Act after the deploying parent returns from deployment.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*If a court has issued an order granting caretaking authority under this article, or an agreement granting caretaking authority has been executed under Sections 8 to 12 of this Act, the court may enter a temporary order for child support consistent with law of this state other than this chapter if the court has jurisdiction under the Uniform Interstate Family Support Act, KRS 407.5101 to 407.5902.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *Except for an order under Section 17 of this Act, except as otherwise provided in subsection (2) of this section, and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with Sections 13 to 23 of this Act and it is in the best interest of the child. A modification is temporary and terminates pursuant to Sections 24 to 27 of this Act after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.*
- (2) *On motion of a deploying parent, the court shall terminate a grant of limited contact.*

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *At any time after return from deployment, a temporary agreement granting custodial responsibility under Sections 8 to 12 of this Act may be terminated by an agreement to terminate signed by the deploying parent and the other parent.*
- (2) *A temporary agreement under Sections 8 to 12 of this Act granting custodial responsibility terminates:*
  - (a) *If an agreement to terminate under subsection (1) of this section specifies a date for termination, on that date; or*
  - (b) *If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.*
- (3) *In the absence of an agreement under subsection (1) of this section to terminate, a temporary agreement granting custodial responsibility terminates under Sections 8 to 12 of this Act sixty (60) days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.*
- (4) *If a temporary agreement granting custodial responsibility was filed with a court pursuant to Section 12 of this Act, an agreement to terminate the temporary agreement also shall be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support shall be provided to the court with the agreement to terminate.*

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under Sections 13 to 23 of this Act. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.*

➔SECTION 26. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under Sections 8 to 12 of this Act or Sections 13 to 23 of this Act is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before the deployment.*

➔SECTION 27. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

- (1) *If an agreement between the parties to terminate a temporary order for custodial responsibility under Sections 13 to 23 of this Act has not been filed, the order terminates sixty (60) days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.*
- (2) *A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this chapter.*

➔SECTION 28. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*In applying and construing the Uniform Deployed Parents Custody and Visitation 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 29. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does 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 30. A NEW SECTION OF KRS CHAPTER 403A IS CREATED TO READ AS FOLLOWS:

*This chapter does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before the effective date of this Act.*

➔Section 31. KRS 403.280 is amended to read as follows:

- (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in KRS 403.350. The court may award temporary custody under the standards of KRS 403.270 after a hearing, or, if there is no objection, solely on the basis of the affidavits. If the parents or a de facto custodian joined under subsection (9) of this section present a temporary custody agreement and mutually agreed plan for parenting time, and the court confirms that the agreement adequately provides for the welfare of the child, the agreement shall become the temporary custody order of the court.
- (2) Subject to KRS 403.315, in making an order for temporary custody, there shall be a presumption, rebuttable by preponderance of evidence, that it is in the best interest of the child for the parents or a de facto custodian joined under subsection (9) of this section to have temporary joint custody and share equally in parenting time.
- (3) If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian joined under subsection (9) of this section has with the child and is consistent with ensuring the child's welfare.
- (4) Each temporary custody order shall include specific findings of fact and conclusions of law, except when the court confirms the agreement of the parties.
- (5) Any temporary custody order shall address the circumstance in which physical possession of the child will be exchanged.
- (6) ~~Subject to KRS 403.320(4) and 403.340(5),~~ Modification of a temporary custody order may be sought when there is a material and substantial change in the circumstances of the parents, de facto custodian, or child.
- (7) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.
- (8) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under KRS 403.822(1)(a) or (b) is dismissed, any temporary custody order is vacated.
- (9) If a court determines by clear and convincing evidence that a person is a de facto custodian, the court shall join that person in the action, as a party needed for just adjudication under Rule 19 of the Kentucky Rules of Civil Procedure.

➔Section 32. KRS 403.320 is amended to read as follows:

- (1) A parent not granted custody of the child and not awarded shared parenting time under the presumption specified in KRS 403.270(2), 403.280(2), or 403.340(5)~~(6)~~ is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or

emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.

- (2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.
- (3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

~~(4) (a) Except as provided in paragraph (b) of this subsection, any court ordered modification of a child visitation decree, based in whole or in part on:~~

- ~~1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or~~
- ~~2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;~~

~~shall be temporary and shall revert back to the previous child visitation decree at the end of the deployment outside the United States or the federal active duty, as appropriate.~~

~~(b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child visitation decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.~~

- ~~(5) ]~~Under circumstances where the court finds, by clear and convincing evidence, it is in the best interest of the child, any relative, by blood or affinity, that was previously granted temporary custody pursuant to the provisions of KRS 620.090 may be granted reasonable noncustodial parental visitation rights by a Circuit Court or Family Court as an intervenor or by original action. Once the relative has been granted visitation pursuant to this subsection, those rights shall not be adversely affected by the termination of custodial or parental rights of an individual who has permanent custody of the child unless the court determines that termination of the visitation rights are in the best interests of the child. The action shall be brought in the county in which the temporary or permanent custody order was entered or where the child resides.

➔Section 33. KRS 403.340 is amended to read as follows:

- (1) As used in this section, "custody" means sole or joint custody, whether ordered by a court or agreed to by the parties.
- (2) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that:
  - (a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or
  - (b) The custodian appointed under the prior decree has placed the child with a de facto custodian.
- (3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless after hearing it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following:
  - (a) Whether the custodian agrees to the modification;
  - (b) Whether the child has been integrated into the family of the petitioner with consent of the custodian;
  - (c) The factors set forth in KRS 403.270(2) to determine the best interests of the child;
  - (d) Whether the child's present environment endangers seriously his physical, mental, moral, or emotional health;
  - (e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him; and

- (f) Whether the custodian has placed the child with a de facto custodian.
- (4) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:
- (a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;
  - (b) The mental and physical health of all individuals involved;
  - (c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;
  - (d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
- ~~(5) (a) Except as provided in paragraph (b) of this subsection, any court ordered modification of a child custody decree, based in whole or in part on:~~
- ~~1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or~~
  - ~~2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;~~
- ~~shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the federal active duty, as appropriate.~~
- ~~(b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child custody decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.~~
- ~~(6)~~ Subject to KRS 403.315, if the court orders a modification of a child custody decree, there shall be a presumption, rebuttable by a preponderance of evidence, that it is in the best interest of the child for the parents to have joint custody and share equally in parenting time. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare.
- ~~(6)~~~~(7)~~ Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.
- ➔Section 34. KRS 403.352 is amended to read as follows:
- (1) A parent or legal guardian of a child, by a properly executed power of attorney, as established in this section and KRS 403.353, may temporarily delegate to another person, named in the instrument as the attorney-in-fact, for a period not to exceed one (1) year any of the traditional parental rights and responsibilities regarding care and custody of the child except the following authorities:
    - (a) Consent for the child to marry;
    - (b) Consent for an abortion or inducement of an abortion to be performed on or for the child; or
    - (c) The termination of parental rights to the child.
  - (2) A temporary delegation of rights and responsibilities under this section shall not:
    - (a) Operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order; or
    - (b) Deprive the parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.
  - (3) The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized by this section at any time.

- (4) Upon the termination, withdrawal, expiration, or revocation of the power of attorney established by this section, the child shall be returned to the custody of the parent or legal guardian as soon as reasonably possible.
- (5) The attorney-in-fact named in the instrument as established by this section shall not be compensated for serving as the attorney-in-fact pursuant to this section.
- (6) Unless the power of attorney established by this section is terminated, revoked, or withdrawn, the attorney-in-fact named in the instrument shall exercise parental or legal authority on a continuous basis for the duration of the power of attorney established by this section.
- (7)
  - (a) An attorney-in-fact properly appointed pursuant to this section and in compliance with this section shall not be subject to any statutes dealing with the licensing or regulation of foster care homes or other child-care facility licensing statutes, and the appointment of an attorney-in-fact pursuant to this section and KRS 403.353 shall not constitute an out-of-home child placement.
  - (b) The child or children subject to the power of attorney established in this section shall not be considered placed in foster care, and the parties involved in the power of attorney established in this section shall not be subject to any requirements, monitoring, or other regulation for foster care or community care solely because of the execution of an instrument authorized pursuant to this section or KRS 403.353.
- (8) Except as otherwise provided pursuant to the Kentucky Revised Statutes, the execution of a power of attorney as established pursuant to this section by a parent or legal guardian shall not by itself constitute evidence of abandonment, abuse, or neglect, unless the parent or legal guardian fails to take custody of the child or execute a new power of attorney after the one (1) year time limit has elapsed. Nothing in this subsection shall be interpreted to prevent an investigation of abuse, neglect, abandonment, other mistreatment of a child, or other crime.
- (9)
  - (a) A parent or legal guardian shall not execute a power of attorney pursuant to this section or KRS 403.353 with the intention of permanently avoiding or divesting himself or herself of parental or legal responsibility for the care of the child or for any other illegal or fraudulent purpose.
  - (b) An attorney-in-fact or prospective attorney-in-fact designated or potentially designated pursuant to this section or KRS 403.353 shall not demand or request that a parent or guardian enter into an instrument established pursuant to this section or KRS 403.353 as a result of any person's financial or other debt or obligation, or for any other illegal or fraudulent purpose.
  - (c) A power of attorney established pursuant to this section and KRS 403.353 shall not be used solely for the purpose of establishing residency for school attendance purposes unless the child actually resides with the attorney-in-fact in the school district where the enrollment is sought, or the child otherwise resides in the district.
  - (d) Violation of this section shall be punishable under Kentucky law.
- (10) If a parent or legal guardian of a child chooses to delegate powers pursuant to this section regarding the care and custody of the child to a person or persons other than a grandparent, aunt, uncle, or adult sibling of the child, a full criminal history and child abuse and neglect background check shall be conducted on the person or persons prior to the execution of the power of attorney authorized by this section. The results of the background check shall be kept with the instrument establishing the power of attorney pursuant to this section. A child shall not be placed with an individual whose background check indicates that he or she has a criminal history of child abuse and neglect.
- (11) ~~[A parent who is a member of the Armed Forces of the United States, including any reserve component thereof, or the commissioned corps of the National Oceanic and Atmospheric Administration, or the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Armed Forces of the United States, or a parent who is otherwise required to enter or serve in the active military service of the United States under a call or order of the President of the United States or to serve on state active duty, may delegate his or her traditional parental rights and responsibilities via a power of attorney established in this section for a period longer than one (1) year while on active duty service. The term of delegation permitted by this subsection shall not exceed the term of active duty service plus thirty (30) days.]~~
- (12) ~~Any period of time during which a child resides with an attorney-in-fact under an unexpired and valid power of attorney properly executed pursuant to this section and KRS 403.353, shall not be included in determining whether the child has resided with the attorney-in-fact for the minimum period required to be designated a de facto custodian pursuant to KRS 403.270(1).~~

➔Section 35. KRS 403.353 is amended to read as follows:

- (1) A power of attorney established pursuant to this section, ~~and~~ KRS 403.352, **and KRS Chapter 403A** shall be substantially in the following form, and may include other specific directions which are in accordance with accepted legal practice and not specifically prohibited by any other statute. If any other specific directions are held by a court of appropriate jurisdiction to be invalid, that invalidity shall not affect the power of attorney or other provisions established in this section, ~~and~~ KRS 403.352, **and KRS Chapter 403A**.

"Power of Attorney for Temporary Delegation  
of Parental or Legal Custody and Care

1. I certify that I am the parent or legal guardian of:

(Full name of minor child)	(Date of birth)
(Full name of minor child)	(Date of birth)
(Full name of minor child)	(Date of birth)

2. I designate \_\_\_\_\_ (Full name of Attorney-in-fact),

\_\_\_\_\_  
(Street address, city, state, and zip code of Attorney-in-fact)

\_\_\_\_\_  
(Home phone of Attorney-in-fact)

\_\_\_\_\_  
(Work phone of Attorney-in-fact)

as the Attorney-in-fact of each minor child named above.

3. I delegate to the Attorney-in-fact all of my power and authority regarding the care, custody, and property of each minor child named above, including but not limited to the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

OR

In the event that Section 4 is completed, Section 3 does not apply.

4. I delegate to the Attorney-in-fact the following specific powers and responsibilities (write in):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

5. This power of attorney is effective for a period not to exceed one (1) year, beginning \_\_\_\_\_, 20\_\_\_\_,

and ending \_\_\_\_\_, 20\_\_\_\_.

I reserve the right to revoke this authority at any time.

OR

In the event Section 6 is completed and valid, Section 5 does not apply.

6. I am a parent or legal guardian on active duty as governed by KRS ~~Chapter 403A~~ ~~[403.352(10)]~~. My active duty service is scheduled to begin on \_\_\_\_\_, 20\_\_, and is estimated to end on \_\_\_\_\_, 20\_\_. I acknowledge that in no event may this delegation of power last more than one (1) year or the term of my active duty plus thirty (30) days, whichever is longer.

7. BY: \_\_\_\_\_  
(Parent/Legal Guardian signature)

8. I hereby accept my designation as Attorney-in-fact for the minor child or children specified in this power of attorney.

\_\_\_\_\_  
(Attorney-in-fact signature)

County of \_\_\_\_\_

ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this \_\_\_\_day of \_\_\_\_\_, 20\_\_, personally appeared

\_\_\_\_\_  
(Name of Parent/Legal Guardian)

\_\_\_\_\_  
(Name of Attorney-in-fact),

to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

\_\_\_\_\_  
(Signature of notary public)

My commission expires: \_\_\_\_\_."

(2) The power of attorney is legally sufficient under this section, ~~and~~ KRS 403.352, **and KRS Chapter 403A** if the wording of the form complies substantially with subsection (1) of this section, the form is properly completed and signed, and the form or parties are not otherwise invalid pursuant to KRS 403.352.

**Signed by Governor March 23, 2021.**

CHAPTER 95

( HB 398 )

AN ACT relating to reorganization.

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

➔Section 1. KRS 40.300 is amended to read as follows:

- (1) There is created the Department of Veterans' Affairs, which shall be attached to the Office of the Governor for administrative purposes. Notwithstanding KRS 12.028, the department's status as a separate organizational unit attached to the Office of the Governor shall not be changed except by action of the General Assembly. The department shall be headed by a commissioner appointed by the Governor pursuant to KRS 12.040. The Office of the Commissioner is created within the department.
- (2) The Department of Veterans' Affairs shall include the Governor's Advisory Board for Veterans' Affairs established by KRS 40.305.

- (3) The Department of Veterans' Affairs shall be responsible for providing services to veterans in accordance with KRS 40.310 and KRS 40.320 to 40.335.
- (4) *There is created the Office of Veteran Legal Services within the Office of the Commissioner. The office shall be headed by an executive director appointed pursuant to KRS 12.050 who shall report to the commissioner of the Department of Veterans' Affairs.*
- (5) *There is created the Office of Kentucky Veterans' Services within the Office of the Commissioner. The office shall be headed by an executive director appointed pursuant to KRS 12.050 who shall report to the commissioner of the Department of Veterans' Affairs.*

➔Section 2. KRS 40.325 is amended to read as follows:

- (1) As used in this section, "nurse aide" means an individual who has successfully completed the nurse aide training and competency evaluation program and may include a nursing student, medication aide, or a person employed through a nursing pool who provides nursing or nursing-related services to a resident in a nursing facility, excluding:
- An individual who is a licensed health professional;
  - A volunteer who provides the nursing or nursing-related services without monetary compensation; or
  - A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services.
- (2) There shall be established and maintained in the Commonwealth of Kentucky state veterans' nursing homes to provide long-term care to veterans who are residents of Kentucky.
- (3) There is created the Office of Kentucky Veterans' Centers *within the Office of the Commissioner of*~~within~~ the Department of Veterans' Affairs. The office shall be headed by an executive director appointed pursuant to KRS 12.050. The office shall operate the Kentucky state veterans' *centers and medical division*~~nursing homes~~. The Department of Veterans' Affairs may promulgate any administrative regulations necessary to operate the homes in compliance with applicable state and federal statutes and regulations.
- (4) The Department of Veterans' Affairs may seek federal and private funding for the construction or renovation, and operation of Kentucky state veterans' nursing homes.
- (5) The executive director of the Office of Kentucky Veterans' Centers, with the approval of the commissioner of the Department of Veterans' Affairs, may contract to hire licensed nurses and nurse aides in order to provide needed long-term care of veterans in residence at state veterans' nursing homes, and those contracts shall not be subject to KRS 45A.550 to 45A.554 or 45A.690 to 45A.725.

➔Section 3. The General Assembly hereby confirms Executive Order 2020-823, dated September 28, 2020, relating to the reorganization of the Department of Veterans' Affairs, to the extent it is not otherwise confirmed or superseded by this Act.

**Signed by Governor March 23, 2021.**

## CHAPTER 96

### ( HB 87 )

AN ACT relating to the state-administered retirement systems.

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

➔Section 1. KRS 16.578 is amended to read as follows:

- (1) If a member dies prior to the first day of the month in which the member would have received his or her first retirement allowance, the member's beneficiary shall be eligible for the benefits provided by this section if the member had on file a written designation of a beneficiary with the retirement office as provided by KRS 61.542 and the member met the following conditions at the date of his or her death:
- The member was eligible to retire under KRS 16.576, 16.577, or 16.583(6);



- (b) The member was in active employment or on authorized leave of absence with five (5) or more years of service credit and died prior to his or her normal retirement date; or
  - (c) The member was not in active employment or on authorized leave of absence with twelve (12) or more years of service credit and died prior to his or her normal retirement date.
- (2) If the beneficiary eligible for benefits as provided in subsection (1) of this section is a single person, then the beneficiary may elect to receive:
- (a) A monthly benefit payable for the life of the beneficiary that is equal to the benefit that would have been paid had the member retired immediately prior to his or her date of death and elected to receive benefits payable under the survivorship one hundred percent (100%) option as provided in KRS 61.635(2);
  - (b) A monthly benefit payable for the life of the beneficiary under the beneficiary Social Security adjustment option as provided in KRS 61.635(9) that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
  - (c) A monthly benefit payable for a period of sixty (60) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
  - (d) A monthly benefit payable for a period of one hundred twenty (120) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
  - (e) If the member began participating in the system prior to January 1, 2014, a monthly benefit payable for:
    1. *Sixty (60) months certain;*~~[a period of]~~
    2. One hundred twenty (120) months *certain;*
    3. *The actuarial equivalent refund; or*
    4. *The Social Security adjustment option;*

that is equivalent to the benefit the member would have been entitled to receive based on his or her years of service and final compensation at the date of his or her death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4), then reduced by fifty percent (50%), and that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection; or
  - (f) The higher of a refund of the member's accumulated account balance and interest as described in KRS 61.625(1) or a one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under paragraph (a) of this subsection for a period of sixty (60) months.
- (3) If the beneficiary eligible for benefits as provided in subsection (1) of this section are multiple beneficiaries or a trust, then the multiple beneficiaries by consensus or the trustee may elect to receive the actuarial equivalent amounts payable under subsection (2)(c), (d), (e), or (f) of this section using the assumption that the beneficiary's age is the same as the member's age.
- (4) If the beneficiary eligible for benefits as provided in subsection (1) of this section is the member's estate, then the beneficiary shall receive the higher of a refund of the member's accumulated account balance and interest as described in KRS 61.625(1) or the one (1) time lump-sum payment payable under subsection (2)(f) of this section, using the assumption that the beneficiary's age is the same as the member's age.
- (5) Payments of taxable distributions made pursuant to this section shall be subject to state and federal tax as appropriate.

➔Section 2. KRS 61.540 is amended to read as follows:

- (1) Under administrative regulations promulgated by the board, each member and each employer ~~may~~~~[shall have on]~~ file at the retirement office, in the form the board ~~may prescribe~~~~[prescribes]~~, a statement of the facts pertaining to the member and other information the system ~~may require~~~~[requires]~~. ~~Until the statement is filed, no member shall be eligible to receive any benefits under KRS 61.510 to 61.705 and 78.510 to 78.852.~~
- (2) The system shall prepare and make available upon request to all members a summary plan description, written in a manner that can be understood by the average member or beneficiary, and sufficiently accurate and comprehensive to reasonably apprise them of their rights and obligations under the provisions of KRS 16.505 to 16.652, 61.510 to 61.705 and 78.510 to 78.852.
- (3) The summary plan description shall include:

- (a) The name of the retirement system, the name and address of the executive director, and the name, address and title of each member of the board of trustees;
  - (b) The name and address of the person designated for the service of legal process;
  - (c) The system's requirements for participation and benefits;
  - (d) A description of retirement formulas for normal, early and disability retirement, and survivor benefits;
  - (e) A description of the requirements for vesting of pension benefits;
  - (f) A reasonable list of circumstances which would result in disqualification, ineligibility, or denial or loss of benefits;
  - (g) The sources of financing retirement benefits, and statutory requirements for funding;
  - (h) A statement after each actuarial valuation as to whether funding requirements are being met; and
  - (i) The procedures to be followed in presenting claims for benefits under the plan, and the remedies available under the plan for the redress of claims which are denied in whole or in part.
- (4) The system may publish the summary plan description in the form of a comprehensive pamphlet or booklet, or in the form of periodic newsletters which shall incorporate all the information required in the summary plan description within a period of two (2) years. Any changes in statutory requirements or administrative practices which alter the provisions of the plan as described in the summary plan description shall be summarized as required in subsection (2) of this section and shall be made available upon request to members in the form of a supplement to a comprehensive booklet, or reported in the periodic newsletter.
- (5) The system shall make available upon request to retirees and beneficiaries the summary plan description.

➔Section 3. KRS 61.542 is amended to read as follows:

- (1) Prior to the first day of the month in which the member receives his or her first retirement allowance and prior to the member filing a notification of retirement or a request for refund:
- (a) Each member may designate on the form prescribed by the board a principal beneficiary and contingent beneficiary for his or her account. The principal beneficiary or contingent beneficiary designated by the member shall be:
    - 1. One (1) or more persons; or
    - 2. The member's estate; or
    - 3. A trust;
  - (b) If multiple persons are designated as provided by paragraph (a)1. of this subsection, the member shall indicate the percentage of total benefits each person is to receive.
    - 1. If percentages are not indicated, payments will be disbursed equally to the named beneficiaries.
    - 2. If the percentages indicated do not total one hundred percent (100%), each beneficiary shall receive an increased or decreased percentage which is proportional to the percentage allotted him or her by the member.
    - 3. If any of the multiple beneficiaries die prior to the member's death, the remaining beneficiaries shall be entitled to the deceased beneficiary's percentage of the total benefits, and each shall receive a percentage of the deceased's share which is equal to the percentage allotted them by the member;
  - (c) The principal and contingent beneficiary designation established by the member pursuant to paragraph (a) of this subsection shall remain in full force and effect until changed by the member, except:
    - 1. A final divorce decree terminates an ex-spouse's status as beneficiary, unless the member has on file in the retirement office a beneficiary designation that redesignates the ex-spouse as beneficiary subsequent to the issuance of the divorce decree;
    - 2. If a beneficiary or beneficiaries are convicted of any crime which prohibits that person or persons from receiving the benefits under KRS 381.280, the beneficiary or beneficiaries shall not be eligible for any of the benefits and the remaining beneficiary or beneficiaries or, if none, the member's estate, shall become the beneficiary; and

3. When a notification of retirement has been filed at the retirement office, the designation of beneficiary on the notification of retirement, which shall be one (1) person, his *or her* estate, or a trust, shall supersede the designation of all previous beneficiaries, unless the notification of retirement is withdrawn, invalid, or voided. If the notification of retirement is withdrawn, invalid, or voided, the prior beneficiary designation on file with the system shall remain in full force and effect until changed by the member; and
  - (d) Except as provided by paragraph (c)3. of this subsection, if the member fails to designate a beneficiary for his or her account or if the beneficiary designation is determined to be void by the system, the member's estate shall become the beneficiary.
- (2) If the member dies prior to the first day of the month in which the member would have received his or her first retirement allowance and prior to filing a notification of retirement or a request for refund, any retirement benefits shall be payable to the principal beneficiary, except that:
  - (a) If the death of the principal beneficiary or beneficiaries precedes the death of the member, or if the principal beneficiary is terminated by a divorce decree, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries;
  - (b) If the principal beneficiary is one (1) person and is the member's spouse and they are divorced on the date of the member's death, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries;
  - (c) If the member is survived by his *or her* principal beneficiary or beneficiaries who subsequently die prior to having on file at the retirement office the necessary forms prescribed under authority of KRS 61.590, the contingent beneficiary shall become the principal beneficiary or beneficiaries;
  - (d) If the deaths of all the principal beneficiaries and all of the contingent beneficiaries precede the death of the member, the estate of the member becomes the beneficiary; and
  - (e) If the member dies as a direct result of an act in line of duty as defined in KRS 16.505 or dies as a result of a duty-related injury as defined in KRS 61.621, the surviving spouse shall supersede all previously designated principal or contingent beneficiaries, unless the deceased member files a valid beneficiary designation form with the retirement office after the date of marriage to the surviving spouse.
- (3) Prior to the first day of the month in which the member would have received his or her first retirement allowance, a monthly benefit payable for life shall not be offered if the beneficiary designated under subsection (1) of this section is more than one (1) person, the member's estate, or a trust.
- (4) When a notification of retirement *as provided by Section 5 of this Act or a form to change beneficiaries as provided by subsection (5)(a) and (b) of this section* has been filed at the retirement office:
  - (a) The designation of beneficiary on the notification of retirement *or beneficiary change form* shall supersede the designation of all previous beneficiaries;
  - (b) The beneficiary designated by the member on the member's notification of retirement *or beneficiary change form* shall be one (1) person, the member's estate, or a trust; and
  - (c) If the death of the beneficiary named on the notification of retirement precedes the first day of the month in which the member receives his or her first retirement allowance, the member may designate another beneficiary on the member's notification of retirement.
- (5) On or after the first day of the month in which the member receives his or her first retirement allowance, the member shall not have the right to change his *or her* beneficiary, except that:
  - (a) *A retired member receiving the monthly retirement allowance under the basic payment option, a period certain option as provided by KRS 61.635(5) to (7), or the Social Security adjustment option without survivor rights as provided by KRS 61.635(8)(a) may elect to change his or her beneficiary at any time by filing a beneficiary change form as prescribed by the board with the retirement office. This paragraph shall not authorize a retired member to change the payment option he or she selected upon retirement;*
  - (b) *A retired member receiving a monthly retirement allowance who marries or remarries following retirement may make a one (1) time election within one hundred twenty (120) days of marriage or remarriage to provide monthly survivorship benefits to his or her new spouse by:*

1. *Designating his or her new spouse as beneficiary by filing a beneficiary change form as prescribed by the board with the retirement office; and*
  2. *Selecting a new monthly retirement allowance option under one (1) of the survivorship options provided by KRS 61.635(2), (3), (4), and (8)(b). Any new survivorship payment option shall be actuarially equivalent to the monthly retirement allowance the retired member was receiving prior to the change and shall not impact any other benefits otherwise payable to an alternate payee under KRS 61.690;*
- (c) The estate of the retired member becomes the beneficiary if the date of death of the beneficiary precedes or coincides with the date of death of the retired member, **and the retired member had not elected a new beneficiary under this subsection;**
- ~~(d)(b)~~ The estate of the retired member becomes the beneficiary if the retired member had designated a person as beneficiary who was the spouse or who later married the member and they were divorced on the date of the retired member's death, **and the retired member had not elected a new beneficiary under this subsection.** An ex-spouse who was the named beneficiary on the member's notification of retirement shall be reinstated as the member's beneficiary for the payment options provided by KRS 61.635(2), (3), (4), and (8)(b) if they are remarried to each other as of the date of the retired member's death, **and the retired member had not elected a new beneficiary under this subsection;**~~and~~
- ~~(e)(e)~~ The estate of the member shall not receive monthly payments if the member selected one (1) of the payment options provided by KRS 61.635(2), (3), (4), and (8)(b); **and**
- (f) **For purposes of this subsection, "basic payment option" means the lifetime monthly retirement allowance otherwise provided to the retired member under KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 that is not one (1) of the optional retirement plans provided under KRS 61.635 .**
- (6) Following cessation of membership as provided by KRS 61.535, no beneficiary designation in one (1) account shall be effective for any new retirement account established pursuant to KRS 61.637 or 61.680. If the member fails to designate a beneficiary for his or her new retirement account or if the beneficiary designation is determined to be void by the system, the member's estate shall become the beneficiary.

➔Section 4. KRS 61.545 is amended to read as follows:

- (1) The board shall determine by appropriate administrative regulations how much service in any year is the equivalent of a year of service credit and how much service in any calendar month is the equivalent of a month of service credit. It shall not allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months except as provided in KRS 61.546 and in subsection (2) of this section.
- (2)
  - (a) Employees participating in one (1) of the state-administered retirement systems who are or have been employed by a school board participating in the County Employees Retirement System, a state-operated school under KRS Chapter 167, a participating community action agency, or a Kentucky institution of higher education which participates in the Kentucky Employees Retirement System, and who receive service credit for less than twelve (12) months each year, may purchase the additional months of service credit needed to total one (1) year of service credit except the amount purchased shall not exceed three (3) months. The employee may purchase the service credit by paying the retirement system a delayed contribution payment in accordance with the payment options and restrictions established by KRS 61.552(14). Employees who have service credit prior to July 1, 1992, or their employers, the state-operated school under KRS Chapter 167, the Kentucky institution of higher education, or the school board may purchase service credit on behalf of the employee for previous years by paying the retirement system the delayed contribution payment in accordance with the payment options and restrictions established by KRS 61.552(14).
  - (b) The cost of service under this subsection may be paid by both the employer and employee. The employer shall pay fifty percent (50%) of the cost and the employee shall pay fifty percent (50%) of the cost. The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payment are received by the retirement system.
  - (c) If the employee has purchased service credit under this subsection based on months reported by the employer for the fiscal year, and an audit of the employee's account reduces the number of months of service credit for which the employee is eligible to no fewer than nine (9) months, the employee shall

retain credit for the months purchased unless the employee is ineligible for any service in the fiscal year. The employee shall be eligible to purchase the additional months under this subsection to total one (1) year.

- (d) This subsection shall not apply to members who begin participating in the systems administered by Kentucky Retirement Systems on or after January 1, 2014.
- (3) (a) If an employee participates in more than one (1) of the retirement systems administered by the Kentucky Retirement Systems, the employee's service credit shall be divided between each system determined by dividing the employee's creditable compensation in each system by the employee's total creditable compensation in all systems.
  - (b) *1. If an employee earns creditable compensation in both a hazardous position, as defined by KRS 61.592, and a nonhazardous position, the employee's service credit shall be divided between the employee's hazardous and nonhazardous positions determined by dividing the employee's creditable compensation in the hazardous and nonhazardous positions by the employee's combined hazardous and nonhazardous creditable compensation, except as provided by subparagraph 2. of this paragraph.*
  - 2. If an employee is participating in a hazardous position, as defined by KRS 61.592, that meets the definition of a regular full-time position under KRS 61.510(21) or 78.510(21) based solely upon his or her service in a hazardous position, and is simultaneously employed in a nonhazardous position with a different participating employer that would not be considered a regular full-time position based solely upon his or her service in the nonhazardous position, the employee may make a one (1) time irrevocable election within thirty (30) days of employment in the nonhazardous position to not participate in the system for his or her employment in the nonhazardous position with that employer.*

➔Section 5. KRS 61.590 is amended to read as follows:

- (1) (a) A member or beneficiary eligible to receive retirement benefits under any of the provisions of KRS 61.510 to 61.705, 78.510 to 78.852, and 16.510 to 16.652 shall have on file at the retirement office on the form prescribed by the board, a correctly completed notification of retirement, giving his or her name, address, Social Security number or Kentucky Retirement Systems member identification number, last day of employment, and other information the system may require. The form entitled "Notification of Retirement" shall not be filed more than six (6) months before the member's effective retirement date.
- (b) A member eligible to receive retirement benefits under any of the provisions of KRS 61.510 to 61.705, 78.510 to 78.852, and 16.510 to 16.652 shall certify in writing on the "Notification of Retirement" form or another form prescribed by the board that no prearranged agreement existed prior to the member's retirement between the member and any participating agency in the systems administered by the Kentucky Retirement Systems for the member to return to employment with the participating agency. No retirement benefits shall be paid to the member until the member completes the certification required by this paragraph.
- (2) After receipt of the correctly completed form entitled "Notification of Retirement", the system shall cause to be prepared an estimate of the amounts the member or beneficiary may expect to receive under the various plans available to the member or beneficiary. This information shall be recorded on a form entitled "Estimated Retirement Allowance" and forwarded to the member or beneficiary.
- (3) The member or beneficiary shall file at the retirement office the form entitled "Estimated Retirement Allowance" after he *or she* has checked one (1) payment option of his *or her* choice, signed the document, and had his *or her* signature witnessed. A member shall not have the right to select a different payment option on or after the first day of the month in which the member receives his or her first retirement allowance or after the effective date of a deferred retirement option as provided by subsection (6) of this section, *except as provided by subsection (5) of Section 3 of this Act*. A beneficiary shall not have the right to select a different payment option after the effective date of the beneficiary's retirement allowance as provided in subsection (7) of this section.
- (4) A member or beneficiary choosing a monthly payment option shall have on file at the retirement office his *or her* birth certificate or other acceptable evidence of date of birth. If a survivorship option is chosen, proof of dates of birth of the beneficiary and member shall be on file at the retirement office.

- (5) (a) The effective date of normal retirement shall be the first month following the month in which employment from all employers participating in any of the systems administered by Kentucky Retirement Systems was terminated.
- (b) The effective date of disability retirement shall be the first month following the month in which the member's last day of paid employment in a regular full-time position occurred, provided the member files the form entitled "Estimated Retirement Allowance" no later than six (6) months following the date the notification of approval for disability retirement benefits is mailed. If the member fails to file the form entitled "Estimated Retirement Allowance" within six (6) months of the date the notification of approval for disability retirement benefits is mailed, then the member's form entitled "Notification of Retirement" shall be void. The member shall be required to submit a new form entitled "Notification of Retirement" to apply for disability retirement and reestablish eligibility for disability retirement benefits.
- (c) The effective date of early retirement shall be the first month following the month a correctly completed form entitled "Notification of Retirement" is filed at the retirement office or a future month designated by the member, if employment from all employers participating in any of the systems administered by Kentucky Retirement Systems has been terminated and if the member files the form entitled "Estimated Retirement Allowance" no later than six (6) months following termination. If the member fails to file the form entitled "Estimated Retirement Allowance" within six (6) months following the effective retirement date of the member, then the member's form entitled "Notification of Retirement" shall be void and the member shall be required to submit a new form entitled "Notification of Retirement" to apply for early retirement.
- (6) The effective date of a deferred retirement option as provided under KRS 16.576(5) shall be the month following age sixty-five (65), or the month following written notification from the member that he wishes to begin receiving retirement payments. In the event of the death of a member who has deferred his retirement allowance, the effective date of retirement shall be the month following the member's death.
- (7) Notwithstanding the provisions of KRS 16.578 or 61.640, the effective date of a beneficiary's retirement allowance under normal, early, or disability retirement shall be as prescribed in subsection (5) or (6) of this section if the member dies before the first day of the month in which the member would have received his or her first retirement allowance and his *or her* beneficiary becomes eligible for payments under KRS 16.578 or 61.640.

➔Section 6. KRS 61.598 is amended to read as follows:

- (1) For purposes of this section, "bona fide promotion or career advancement":
- (a) Means a professional advancement in substantially the same line of work held by the employee in the four (4) years immediately prior to the final five (5) fiscal years preceding retirement or a change in employment position based on the training, skills, education, or expertise of the employee that imposes a significant change in job duties and responsibilities to clearly justify the increased compensation to the member; and
- (b) Does not include any circumstance where an elected official participating in the Kentucky Employees Retirement System or the County Employees Retirement System takes a position of employment with a different employer participating in any of the state-administered retirement systems.
- (2) (a) For employees retiring from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System on or after January 1, 2018, the systems shall, for each of the retiring employee's last five (5) fiscal years of employment, identify any fiscal year in which the creditable compensation increased at a rate of ten percent (10%) or more annually over the immediately preceding fiscal year's creditable compensation. The employee's creditable compensation in the fiscal year immediately prior to the employee's last five (5) fiscal years of employment shall be utilized to compare the initial fiscal year in the five (5) fiscal year period.
- (b) Except as limited or excluded by subsections (3) and (4) of this section, any amount of increase in creditable compensation for a fiscal year identified under paragraph (a) of this subsection that exceeds ten percent (10%) more than the employee's creditable compensation from the immediately preceding fiscal year shall not be included in the creditable compensation used to calculate the retiring employee's monthly retirement allowance. If the creditable compensation for a specific fiscal year identified under paragraph (a) of this subsection as exceeding the ten percent (10%) increase limitation is not used to

calculate the retiring employee's monthly retirement allowance, then no reduction in creditable compensation shall occur for that fiscal year.

- (c) If the creditable compensation of the retiring employee is reduced as provided by paragraph (b) of this subsection, the retirement systems:
  - 1. Shall refund the employee contributions and interest attributable to the reduction in creditable compensation; and
  - 2. Shall not refund the employer contributions paid but shall utilize those funds to pay down the unfunded liability of the pension fund in which the retiring employee participated.
- (3) (a) In order to ensure the prospective application of the limitations on increases in creditable compensation contained in subsection (2) of this section, only the creditable compensation earned by the retiring employee on or after July 1, 2017, shall be subject to reduction under subsection (2) of this section. Creditable compensation earned by the retiring employee prior to July 1, 2017, shall not be subject to reduction under subsection (2) of this section.  
  
(b) ***If the reductions in creditable compensation during a retiring member's entire last five (5) years of employment results in a reduction in his or her monthly retirement allowance of less than twenty-five dollars (\$25) per month or an actuarially equivalent value under the various payment options, then no reduction in creditable compensation or retirement allowances shall occur under subsection (2) of this section.***
- (4) Subsection (2) of this section shall not apply to:
  - (a) A bona fide promotion or career advancement as defined by subsection (1) of this section;
  - (b) A lump-sum payment for compensatory time paid to an employee upon termination of employment;
  - (c) A lump-sum payment made pursuant to an alternate sick leave program under KRS 78.616(5) that is paid to an employee upon termination of employment;
  - (d) Increases in creditable compensation in a fiscal year over the immediately preceding fiscal year, where in the immediately preceding fiscal year the employer reported the employee as being on leave without pay for any reason, including but not limited to sick leave without pay, maternity leave, leave authorized under the Family Medical Leave Act, and any period of time where the employee received workers' compensation benefit payments that were not reported to the plan as creditable compensation;
  - (e) Increases in creditable compensation directly attributable to an employee's receipt of compensation for overtime hours worked while serving as a participating employee under any state or federal grant, grant pass-through, or similar program that requires overtime as a condition or necessity of the employer's receipt of the grant; and
  - (f) Increases in creditable compensation directly attributable to an employee's receipt of compensation for overtime performed during a state of emergency declared by the President of the United States or the Governor of the Commonwealth of Kentucky.
- (5) (a) For employees retiring on or after January 1, 2014, but prior to July 1, 2017, the last participating employer shall be required to pay for any additional actuarial costs resulting from annual increases in an employee's creditable compensation greater than ten percent (10%) over the employee's last five (5) fiscal years of employment that are not the direct result of a bona fide promotion or career advancement. The cost shall be determined by the retirement systems.  
  
(b) Lump-sum payments for compensatory time paid to an employee upon termination of employment shall be exempt from this subsection.  
  
(c) Kentucky Retirement Systems shall be required to answer inquiries from participating employers regarding this subsection. Upon request of the employer prior to the employee's change of position or hiring, the systems shall make a determination that is binding to the systems as to whether or not a change of position or hiring constitutes a bona fide promotion or career advancement.  
  
(d) For any additional actuarial costs charged to the employer under this subsection, the systems shall allow the employer to pay the costs without interest over a period of one (1) year from the date of receipt of the employer's final invoice.

- (6) The Kentucky Retirement Systems shall determine whether increases in creditable compensation during the last five (5) fiscal years of employment prior to retirement constitute a bona fide promotion or career advancement and may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section. All state-administered retirement systems shall cooperate to implement this section.
- (7) Any employer who disagrees with a determination made by the system in accordance with this section regarding whether an increase in compensation constitutes a bona fide promotion or career advancement for purposes of subsection (5) of this section may request a hearing and appeal the decision in accordance with KRS 61.645(16).
- (8) For the fiscal year beginning July 1, 2017, and subsequent years, the Kentucky Retirement Systems shall provide a means for employers to separately report the specific exceptions provided in subsection (4) of this section within the reporting system utilized by the employers for making employer reports under KRS 16.645, 61.675, and 78.545. The Kentucky Retirement Systems shall continually provide communication, instructions, training, and educational opportunities for employers regarding how to appropriately report exemptions established by subsection (4) of this section.
- (9) This section shall not apply to employees participating in the hybrid cash balance plan as provided by KRS 16.583 and 61.597 or to service in the 401(a) money purchase plan as provided by KRS 61.5956.

➔Section 7. KRS 61.615 is amended to read as follows:

- (1) If the board's medical examiner determines that a recipient of a disability retirement allowance is, prior to his *or her* normal retirement date, employed in a position with the same or similar duties, or in a position with duties requiring greater residual functional capacity and physical exertion, as the position from which he *or she* was disabled, except where the recipient has returned to work on a trial basis not to exceed nine (9) months, the system may reduce or discontinue the retirement allowance. Each recipient of a disability retirement allowance who is engaged in gainful employment shall notify the system of any employment; otherwise, the system shall have the right to recover payments of a disability retirement allowance made during the employment.
- (2) If the board's medical examiner determines that a recipient of a disability retirement allowance is, prior to his *or her* normal retirement date, no longer incapacitated by the bodily injury, mental illness, or disease for which he *or she* receives a disability retirement allowance, the board may reduce or discontinue the retirement allowance.
- (3) The system shall have full power and exclusive authority to reduce or discontinue a disability retirement allowance and the system shall utilize the services of a medical examiner as provided in KRS 61.665, in determining whether to continue, reduce, or discontinue a disability retirement allowance under this section.
  - (a) The system shall select a medical examiner to evaluate the forms and medical information submitted by the person. If there is objective medical evidence of a mental impairment, the medical examiner may request the board's licensed mental health professional to assist in determining the level of the mental impairment.
  - (b) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
  - (c) The medical examiner shall recommend that disability retirement allowance be continued, reduced, or discontinued.
    1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make retirement payments in accordance with the retirement plan selected by the person.
    2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued, the system shall send notice of the recommendation by United States first-class mail to the person's last address on file in the retirement office.
      - a. The person shall have sixty (60) days from the day that the system mailed the notice to file at the retirement office additional supporting employment or medical information and certify to the retirement office that the forms and additional supporting employment information or medical information are ready to be evaluated by the medical examiner or to appeal the recommendation of the medical examiner to reduce or discontinue the



- disability retirement allowance by filing at the retirement office a request for a formal hearing.
- b. If the person fails or refuses to file at the retirement office the forms, the additional supporting employment information, and current medical information or to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his *or her* retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the system mailed the notice of the recommendation to the person's last address on file in the retirement office.
- (d) The medical examiner shall make a recommendation based upon the evaluation of additional supporting medical information submitted in accordance with paragraph (c)2.a. of this subsection.
1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make disability retirement payments in accordance with the retirement plan selected by the person.
  2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued based upon the evaluation of additional supporting medical information, the system shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office.
    - a. The person shall have sixty (60) days from the day that the system mailed the notice of the recommendation to appeal the recommendation to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for formal hearing.
    - b. If the person fails or refuses to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his *or her* retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the system mailed the notice of the recommendation to the person's last address on file in the retirement office.
- (e) Any person whose disability benefits have been reduced or discontinued, pursuant to paragraph (c)2. or (d)2. of this subsection, may file at the retirement office a request for formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of sixty (60) days after the person had notice, as described in paragraph (c) or (d) of this subsection. The request for formal hearing shall be filed with the system, at the retirement office in Frankfort. The request for formal hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability retirement is being contested.
- (f) Failure of the person to request a formal hearing within the period of time specified shall preclude the person from proceeding any further with contesting the reduction or discontinuation of disability retirement allowance, except as provided in subsection (6)(d) of this section. This paragraph shall not limit the person's right to appeal to a court.
- (g) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based. If the board orders that the person's disability retirement allowance be discontinued or reduced, the order shall take effect on the first day of the month following the day the system mailed the order to the person's last address on file in the retirement office. Judicial review of the final board order shall not operate as a stay and the system shall discontinue or reduce the person's disability retirement allowance as provided in this section.
- (h) Notwithstanding any other provisions of this section, the system may require the person to submit to one (1) or more medical or psychological examinations at any time. The system shall be responsible for any costs associated with any examinations of the person requested by the medical examiner or the system for the purpose of providing medical information deemed necessary by the medical examiner or the system. Notice of the time and place of the examination shall be mailed to the person or his *or her* legal representative. If the person fails or refuses to submit to one (1) or more medical examinations, his *or her* rights to further disability retirement allowance shall cease.
- (i) All requests for a hearing pursuant to this section shall be made in writing.

- (4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.
- (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.
- (6) If a disability retirement allowance is reduced or discontinued for a person who began participating in the system prior to January 1, 2014, the person may apply for early retirement benefits as provided under KRS 61.559, subject to the following provisions:
  - (a) The person may not change his *or her* beneficiary or payment option, ***except as provided by subsection (5) of Section 3 of this Act;***
  - (b) If the person has returned to employment with an employer participating in one (1) of the systems administered by Kentucky Retirement Systems, the service and creditable compensation shall be used in recomputing his *or her* benefit, except that the person's final compensation shall not be less than the final compensation last used in determining his *or her* retirement allowance;
  - (c) The benefit shall be reduced as provided by KRS 61.595(2);
  - (d) The person shall remain eligible for reinstatement of his *or her* disability allowance upon reevaluation by the medical review board until his *or her* normal retirement age. The person shall apply for reinstatement of disability benefits in accordance with the provisions of this section. An application for reinstatement of disability benefits shall be administered as an application under KRS 61.600, and only the bodily injuries, mental illnesses, diseases, or conditions for which the person was originally approved for disability benefits shall be considered. Bodily injuries, mental illnesses, diseases, or conditions that came into existence after the person's last day of paid employment shall not be considered as a basis for reinstatement of disability benefits. Bodily injuries, mental illnesses, diseases, or conditions alleged by the person as being incapacitating, but which were not the basis for the award of disability retirement benefits, shall not be considered. If the person establishes that the disability benefits should be reinstated, the retirement system shall pay disability benefits effective from the first day of the month following the month in which the person applied for reinstatement of the disability benefits; and
  - (e) Upon attaining normal retirement age, the person shall receive the higher of either his *or her* disability retirement allowance or his *or her* early retirement allowance.
- (7) No disability retirement allowance shall be reduced or discontinued by the system after the person's normal retirement date except in case of reemployment as provided for by KRS 61.637. If a disability retirement allowance has been reduced or discontinued, except if the person is reemployed as provided for by KRS 61.637, the retirement allowance shall be reinstated upon attainment of the person's normal retirement date to the retirement allowance prior to adjustment. No reinstated payment shall be less than the person is receiving upon attainment of the person's normal retirement date.

➔Section 8. KRS 61.630 is amended to read as follows:

- (1) If a retired member who did not elect an optional retirement plan dies at any time on or after the first day of the month in which the member received or would have received his or her first retirement allowance but before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to his accumulated contributions as of the date of his *or her* retirement, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the properly designated beneficiary. ***Except as otherwise provided by subsection (5) of Section 3 of this Act,*** if a living person designated as the beneficiary predeceases the retired member, the estate shall become the beneficiary. ***Except as otherwise provided by subsection (5) of Section 3 of this Act,*** if a spouse designated as the beneficiary is divorced from the retired member as of the member's death, the estate shall become the beneficiary.
- (2) If a retired member who elected an optional retirement plan and his *or her* beneficiary both die at any time on or after the first day of the month in which the member received or would have received his or her first retirement allowance but before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to the retired member's accumulated contributions as of the date of his *or her* retirement, the difference between the accumulated contributions and the total

allowances shall be payable in a lump sum to the estate of the last deceased, except that the retired member's estate shall receive the payment if the beneficiary was the spouse and they were divorced as of the date of the member's death. If the retired member and beneficiary die simultaneously, the estate of the retired member shall become the beneficiary.

- (3) If a beneficiary receiving a lifetime retirement allowance under KRS 16.578 or 61.640 dies before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to the member's accumulated contributions as of the date of the member's death, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the estate of the beneficiary.
- (4) If a beneficiary receiving a retirement allowance for sixty (60) or one hundred twenty (120) months certain under KRS 16.576, 16.578, or 61.640, or a beneficiary receiving a retirement allowance under KRS 61.635(5), (6), or (7), dies before receiving all payments under the plan, the executor or administrator of his *or her* estate shall receive a lump sum payment which shall be the actuarial equivalent to the remaining payments.
- (5) If the system is unable to verify a recipient's whereabouts or whether the recipient is living, the system shall suspend the recipient's retirement allowance. If the recipient is located, the system shall restore to the recipient all suspended retirement allowances.

➔Section 9. KRS 61.640 is amended to read as follows:

- (1) If a member dies prior to the first day of the month in which the member would have received his or her first retirement allowance, the member's beneficiary shall be eligible for the benefits provided by this section if the member had on file a written designation of a beneficiary with the retirement office as provided by KRS 61.542 and the member met the following conditions at the date of his or her death:
  - (a) The member was eligible to retire under KRS 61.559(2) or (3), 61.5956(5)(a) or (b), or 61.597(6)(a) or (b);
  - (b) The member was in active employment or on authorized leave of absence with five (5) or more years of service credit and died prior to his or her normal retirement date or was normal retirement age or older and had at least four (4) years of service credit; or
  - (c) The member was not in active employment or on authorized leave of absence with twelve (12) or more years of service credit and died prior to his or her normal retirement date.
- (2) If the beneficiary eligible for benefits as provided in subsection (1) of this section is a single person, then the beneficiary may elect to receive:
  - (a) A monthly benefit payable for the life of the beneficiary that is equal to the benefit that would have been paid had the member retired immediately prior to his or her date of death and elected to receive benefits payable under the survivorship one hundred percent (100%) option as provided in KRS 61.635(2);
  - (b) A monthly benefit payable for the life of the beneficiary under the beneficiary Social Security adjustment option as provided in KRS 61.635(9) that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
  - (c) A monthly benefit payable for a period of sixty (60) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
  - (d) A monthly benefit payable for a period of one hundred twenty (120) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
  - (e) If the member began participating in the system prior to January 1, 2014, a monthly benefit payable for:
    1. ***Sixty (60) months certain;***~~[a period of]~~
    2. One hundred twenty (120) months ***certain;***
    3. ***The actuarial equivalent refund; or***
    4. ***The Social Security adjustment option;***

that is equivalent to the benefit the member would have been entitled to receive based on his or her years of service and final compensation at the date of his or her death reduced by the survivorship fifty

percent (50%) factor as provided for in KRS 61.635(4), then reduced by fifty percent (50%), and that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection; or

- (f) The higher of a refund of the member's accumulated account balance as described in KRS 61.625(1) or one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under paragraph (a) of this subsection for a period of sixty (60) months.
- (3) If the beneficiary eligible for benefits as provided by subsection (1) of this section are multiple beneficiaries or a trust, then the multiple beneficiaries by consensus or the trustee may elect to receive the actuarial equivalent amounts payable under subsection (2)(c), (d), (e), or (f) of this section using the assumption that the beneficiary's age is the same as the member's age.
- (4) If the beneficiary eligible for benefits as provided in subsection (1) of this section is the member's estate, then the beneficiary shall receive the higher of a refund of the member's accumulated account balance as described in KRS 61.625(1) or the one (1) time lump-sum payment payable under subsection (2)(f) of this section, using the assumption that the beneficiary's age is the same as the member's age.
- (5) Payments of taxable distributions made pursuant to this section shall be subject to state and federal income tax as appropriate.

➔Section 10. KRS 61.680 is amended to read as follows:

Except as limited by KRS 6.525, 21.374, 61.5955, or 61.5956:

- (1) Prior to August 1, 1982, every employee shall be deemed to consent and agree to any deduction from his compensation required by KRS 6.500 to 6.535, 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852, and to all other provisions thereof. Thereafter, employee contributions shall be picked up by the employer pursuant to KRS 61.560(4).
- (2) (a) Notwithstanding any other provisions of KRS 6.500 to 6.535, 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852 and 161.220 to 161.714:
  - 1. Upon death, disability, or service retirement, a member's accounts under the Legislators' Retirement Plan, State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and Teachers' Retirement System, except for service prohibited by KRS 161.623(2), shall be consolidated for the purpose of determining eligibility and amount of benefits, including those members who participate in the hybrid cash balance plan or 401(a) money purchase plans within the Kentucky Employees Retirement System, the County Employees Retirement System, the State Police Retirement System, or the Teachers' Retirement System;
  - 2. Vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education and accepted by the Kentucky Employees Retirement System or the County Employees Retirement System, may be used to determine eligibility for twenty-seven (27) year retirement for an employee who begins participating before September 1, 2008, but not the amount of benefits;
  - 3. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, but the final compensation, excluding compensation earned under KRS 161.155(10), shall be determined as if all service were in one (1) system;
  - 4. If the member has prior service in more than one (1) system administered by Kentucky Retirement Systems, he shall obtain at least twelve (12) months' current service in each system in which he has prior service in order to validate the prior service in each system for purposes of determining consolidated benefits under this subsection; and
  - 5. Upon the determination of benefits, each system shall pay the applicable amount of benefits due the member.
- (b) The provisions of paragraph (a) of this subsection shall be waived if the member:
  - 1. Notifies the system of his desire to maintain separate retirement accounts in the State Police Retirement System, Kentucky Employees Retirement System, or County Employees Retirement System; or
  - 2. Fails to simultaneously retire from all state-administered retirement systems in which the member has an account or fails to retire from any other systems not administered by Kentucky

Retirement Systems within one (1) month of the member's effective retirement date in the systems administered by Kentucky Retirement Systems.

- (c) If the member has not contributed at least one (1) year in a system in which he has prior service, his current service in the system shall be valid for purposes of determining eligibility and in computation of benefits on a consolidated basis.
- (3)
- (a) A member with service credit in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System who becomes the holder of an office entitling him to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, but who does not elect within thirty (30) days after taking office in such service to participate in the plan, in accordance with KRS 6.505 or 21.360, shall be deemed to have elected to retain membership in the system in which he is a member, either the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System. In that event, the agency employing the member shall withhold employee contributions, or picked-up employee contributions after August 2, 1982, make employer contributions and remit these contributions to the system in which the member retained his membership.
  - (b) Any person entitled to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, who does not elect within thirty (30) days after taking office to participate in the plan, in accordance with KRS 6.505 or 21.360, and who at the time of taking office is not a contributing member of, or does not have service credit in, any of the retirement systems mentioned in this section, or the Teachers' Retirement System, shall participate in the Kentucky Employees Retirement System.
  - (c) A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is employed in a nonelected position by an agency participating in the Kentucky Retirement Systems or Kentucky Teachers' Retirement System shall be deemed to have elected membership in the system in which the employer of the nonelected position participates. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is not employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the Kentucky Employees Retirement System.
- (4)
- (a) Prior to July 1, 1976, a person entering the service of an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System with service credit in the Teachers' Retirement System and who desires to retain membership in the Teachers' Retirement System, and who is permitted by that system to continue, shall be exempt from participating in the Kentucky Employees Retirement System or the County Employees Retirement System.
  - (b) Any person who has elected to retain membership in the Teachers' Retirement System as provided in paragraph (a) of this subsection may cancel his election and participate in the system under which his position would normally participate, if he elects to cancel his option prior to January 1, 1977.
  - (c) Any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System and who does not elect within thirty (30) days after taking office to participate in the Legislators' Retirement Plan, in accordance with KRS 6.505, shall during his term of office participate in the Kentucky Employees Retirement System unless an election to retain membership in the Teachers' Retirement System is filed in writing within ninety (90) days after his term of office begins. No contributions may be made to the Teachers' Retirement System for the same period of service under the Legislators' Retirement Plan or the Kentucky Employees Retirement System as a member of the General Assembly, but contributions made to the Teachers' Retirement System while a member of the General Assembly shall be transferred to the Legislators' Retirement Plan, as provided for in KRS 6.535, when the member elects to join the Legislators' Retirement Plan, and service credit in the Legislators' Retirement Plan shall be granted as provided for in KRS 6.505(5).
- (5) Any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in a position covered by one (1) of these retirement systems and his employee contributions, service credit and employer contributions made on his behalf are being transferred to the other retirement system shall contribute to the system in which his employer participates, or after August 1, 1982, the employer shall pick up the employee contributions, and no further contributions or service credit shall be transferred to the system in which he elected to retain membership, as subsection (2) of this section eliminates the necessity of the transfers.

- (6) *Except as provided by subsection (3)(b)2. of Section 4 of this Act*, any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in more than one (1) position covered by the same retirement system, shall have his wages and contributions consolidated and his retirement account administered as a single account. If part-time positions are involved, an accumulation of all hours worked within the same retirement system shall be used to determine eligibility under KRS 61.510(21).
- (7) (a) Notwithstanding the provisions of subsection (2) of this section, a person who does not have the amount of service required for service retirement in the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System, but who is a member of one (1) of the systems or is a former member of one (1) or more of the systems with valid service credit therein, shall become eligible for service retirement benefits attributable to the amount of his actual service credit in each system in which he has service credit when his combined service credit in all the systems, plus any service credit he has in the Judicial Retirement Plan, is equal to that required for service retirement in each respective system. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, except that total service in all systems, unless prohibited by KRS 161.623(2), shall be used to determine the reduction for early retirement, if any. Except as provided in KRS 21.360, the final compensation shall be determined by using the creditable compensation reported to the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System and only as much of the compensation earned in the Judicial Retirement Plan as is needed to satisfy the final compensation requirement applicable in the respective retirement systems.
- (b) Paragraph (a) of this subsection shall be waived if the member fails to simultaneously retire from all state-administered retirement systems in which the member has an account or fails to retire from any other systems not administered by Kentucky Retirement Systems within one (1) month of the member's effective retirement date in the systems administered by the Kentucky Retirement Systems.
- (8) Each retirement system from which the member retires shall pay a retirement allowance upon receipt of required forms and documents, except that no retirement system shall pay a retirement allowance or annuity until all forms and documents are filed at all retirement systems in compliance with each system's requirements.

➔Section 11. KRS 161.520 is amended to read as follows:

Upon the death of an active contributing member or upon the death of a member retired for disability, except as provided in KRS 161.661(6), the survivors of the deceased member in the following named order, may elect to receive a survivor's benefit payable as follows:

- (1) Where there is a surviving widow or widower who is named as the primary beneficiary of the member's retirement account, the benefit shall be:
- (a) One hundred eighty dollars (\$180) per month with no restriction on other income;
- (b) Two hundred forty dollars (\$240) per month when the surviving widow or widower's total income from all sources does not exceed six thousand six hundred dollars (\$6,600) per year or five hundred fifty dollars (\$550) per month; or
- (c) If the deceased member has a minimum of ten (10) years of service credit with the Teachers' Retirement System, the surviving widow or widower may apply for an annuity actuarially equivalent to the annuity that would have been paid to the deceased member when eligibility conditions were met. Eligibility for payments would begin at the time the age of the deceased member would have met the requirements of KRS 161.235(6) or 161.600(1), as applicable. In exercising this right, the surviving widow or widower shall be entitled to receive an annuity for life ~~except as provided in subsection (6) of this section~~. This subsection applies to surviving spouses of members who die on or after July 1, 1978. A surviving widow or widower of a member who dies after July 1, 1978, shall be eligible for benefit payments provided under paragraphs (a) and (b) of this subsection until they begin receiving payments under this provision;
- (2) (a) Where there are surviving unmarried children under age eighteen (18) or under age nineteen (19) if a full-time student in high school, the benefit shall be two hundred dollars (\$200) per month in the case of one (1) child, three hundred forty dollars (\$340) per month in the case of two (2) children, four hundred dollars (\$400) per month in the case of three (3) children, and four hundred forty dollars (\$440) per

month in the case of four (4) or more children. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (3) of this section.

- (b) Notwithstanding any provision of law to the contrary, the surviving spouse may elect to receive a lump-sum refund of the member's accumulated account balance in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section only if the surviving spouse is designated as the primary beneficiary and:
    - 1. Is a biological or adoptive parent of all children eligible for a benefit under this subsection and has not had his or her parental rights terminated; or
    - 2. Has been appointed as legal guardian of all of the children eligible under paragraph (a) of this subsection.
  - (c) To elect a lump-sum refund of the member's accumulated account balance under paragraph (b) of this subsection, the surviving spouse who is designated as the primary beneficiary must sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsection (1) of this section. The surviving spouse shall not waive the survivorship benefits available under this subsection or subsections (1) and (6) of this section if any of the member's children have attained age eighteen (18) or older unless all of those children consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection;
- (3) (a) Where the survivor is a child age eighteen (18) or older whose mental or physical condition is sufficient to cause his dependency on the deceased member at the time of the member's death, the benefit shall be two hundred dollars (\$200) per month, payable for the life of the child or until the time as the mental or physical condition creating the dependency no longer exists or the child marries. The mental or physical condition of the adult child shall be revealed by a competent examination by a licensed physician and shall be approved by a majority of a medical review committee as defined in KRS 161.661(14). Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (2) of this section.
  - (b) Notwithstanding any provision of law to the contrary, the surviving spouse shall not elect to receive a lump-sum refund of the member's accumulated account balance in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section unless:
    - 1. The surviving spouse is designated as the primary beneficiary;
    - 2. The surviving spouse has been appointed by the court as guardian, conservator, or other fiduciary with sufficient general or specific authority to waive the survivorship benefits available under this subsection for any child or children age eighteen (18) or older who have been adjudicated incompetent to make decisions on their own behalf by a court of law; and
    - 3. Any child or children age eighteen (18) or older who are mentally competent to make decisions on their own behalf as attested to by two (2) physicians' statements consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection.
  - (c) If eligible to elect a lump-sum refund of the member's accumulated account balance, the surviving spouse shall sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsections (1) and (2) of this section;
- (4) Where the sole eligible survivors are dependent parents aged sixty-five (65) or over, the benefit shall be two hundred dollars (\$200) per month for one (1) parent or two hundred ninety dollars (\$290) per month for two (2) parents. Dependency of a parent shall be established as of the date of the death of the member;
  - (5) Where the sole eligible survivor is a dependent brother or sister, the benefit shall be one hundred sixty five dollars (\$165) per month. In order to qualify the brother or sister must have been a resident of the deceased member's household for at least one (1) full year prior to the member's death or must have been receiving care in a hospital, nursing home, or other institution at the member's expense for same period;
  - (6) The benefit to a child as defined in subsection (2) of this section shall terminate upon the attainment of age eighteen (18) or upon reaching age nineteen (19), if a full-time student in high school, or upon marriage, except that benefits shall continue until the attainment of age twenty-three (23) for an unmarried child who is a

full-time student in a recognized educational program beyond the high school level. The benefit to a ~~widow, widower,~~ dependent parent ~~or dependent brother or sister or dependent child age eighteen (18) or older~~ shall terminate upon marriage, or upon termination of the condition creating the dependency;

- (7) The board of trustees shall be the sole judge of eligibility or dependency of any beneficiary, and may require formal application or information relating to eligibility or dependency, including proof of annual income satisfactory to the board. The board of trustees may subpoena records and individuals whenever it deems this action necessary;
- (8) No payment of benefits shall be made unless the board of trustees authorizes the payment. The board shall promulgate administrative regulations for the administration of the provisions in this section and in every case the decision of the board of trustees shall be final as to eligibility, dependency, or disability, and the amount of benefits payable;
- (9) In the event that there are no eligible survivors as defined in subsections (1) to (5) of this section, or in the event that the surviving spouse elects not to receive survivorship benefits on his or her own behalf or on behalf of any of the member's children as permitted under subsections (2) and (3) of this section, the board of trustees shall pay to the estate or the designated beneficiaries of the deceased member a refund of his accumulated account balance as provided in KRS 161.470(7). If the benefits paid or payable under subsections (1) to (5) of this section and KRS 161.661 shall amount to a sum less than the member's accumulated account balance at the time of death, the board of trustees shall pay to the estate or designated beneficiaries of the deceased member the balance of the accumulated account balance;
- (10) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits; and
- (11) Benefits under subsections (2) and (3) of this section shall apply to a child who is a legally adopted survivor at the time of the death of the member. This provision shall be retroactive to include a child who was born after January 1, 1990, and is a legally adopted survivor of a member whose death occurred prior to July 15, 2008.

➔Section 12. The amendments to Sections 1 and 9 of this Act shall be retroactive to June 25, 2009.

➔Section 13. Notwithstanding any other provision to the contrary, a retired member receiving a monthly retirement allowance from one of the systems administered by the Kentucky Retirement Systems or the County Employees Retirement System who married or remarried prior to the effective date of this Act, and who is married to that same spouse on the effective date of this Act, may exercise a one (1) time election to select a survivorship payment option for their new spouse in accordance with subsection (5)(b) of Section 3 of this Act by filing a beneficiary change form with the retirement office on or before January 1, 2022.

➔Section 14. The amendments to subsection (3)(b) of Section 4 of this Act shall only apply to any initial employment on or after the effective date of this Act in a nonhazardous position that is not considered a regular full-time position by those members who are simultaneously participating in a hazardous duty position as provided by KRS 61.592 that is considered a regular full-time position. For purposes of this section, "regular full-time position" shall have the same meaning as provided in KRS 61.510(21) or 78.510(21).

➔Section 15. Notwithstanding the provisions of 2017 Ky. Acts ch. 32 to the contrary, the implementation date of the amendments in subsection (28) of Section 9 of 2017 Ky. Acts ch. 32 by the Kentucky Retirement Systems shall be December 1, 2019.

**Signed by Governor March 24, 2021.**

## CHAPTER 97

( HB 438 )

AN ACT relating to Medicaid provider credentialing.



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

➔Section 1. KRS 205.532 is amended to read as follows:

- (1) As used in KRS 205.532 to 205.536:
- (a) "Clean application" means:
1. For credentialing purposes, a credentialing application submitted by a provider to a credentialing verification organization that:
    - a. Is complete and correct;
    - b. Does not lack any required substantiating documentation; and
    - c. Is consistent with the requirements for the National Committee for Quality Assurance requirements; or
  2. For enrollment purposes, an enrollment application submitted by a provider to the department that:
    - a. Is complete and correct;
    - b. Does not lack any required substantiating documentation;
    - c. Complies with all provider screening requirements pursuant to 42 C.F.R. pt. 455; and
    - d. Is on behalf of a provider who does not have accounts receivable with the department;
- (b) "Credentialing application date" means the date that a credentialing verification organization receives a clean application from a provider;
- (c) "Credentialing verification organization" means an organization that gathers data and verifies the credentials of providers in a manner consistent with federal and state laws and the requirements of the National Committee for Quality Assurance~~[- "Credentialing verification organization" is limited to the following:~~
1. ~~An organization designated by the department pursuant to subsection (3)(a) of this section; and~~
  2. ~~Any bona fide, nonprofit, statewide, health care provider trade association, organized under the laws of Kentucky, that has an existing contract with the department or a managed care organization, as of July 1, 2018, to perform credentialing verification activities];~~
- (d) "Department" means the Department for Medicaid Services;
- (e) "Medicaid managed care organization" or "managed care organization" means an entity *with*~~[for]~~ which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. sec. 438.2; *and*
- (f) "Provider" has the same meaning as in KRS 304.17A-700~~[- and~~
- ~~(g) "Request for proposals" has the same meaning as in KRS 45A.070].~~
- (2) On and after January 1, 2019, every contract entered into or renewed for the delivery of Medicaid services by a managed care organization shall be in compliance with KRS 205.522, 205.532 to 205.536, and 304.17A-515.
- (3) (a) ***The department shall formally recognize a credentialing alliance formed in the private sector that is:***~~[Through a request for proposals, the department shall designate a single organization as a credentialing verification organization to verify the credentials of providers on behalf of all managed care organizations.]~~
1. ***For the purpose of promoting a centralized process for credentialing providers;***
  2. ***Accredited by the National Committee for Quality Assurance; and***
  3. ***Owned by or affiliated with a statewide health care provider trade association that has at least one (1) year of experience providing credentialing services to at least one (1) Medicaid managed care organization in Kentucky.***
- (b) ***A credentialing alliance shall:***~~[Following the department's designation pursuant to this subsection, the contract between the department and the designated credentialing verification organization shall be~~

~~submitted to the Government Contract Review Committee of the Legislative Research Commission for comment and review.]~~

1. *Implement a single credentialing application via a Web-based portal available to all providers seeking to be credentialed for any Medicaid managed care organization that participates in the credentialing alliance;*
  2. *Perform primary source verification and credentialing committee review of each credentialing application that results in a recommendation on the provider's credentialing within thirty (30) days of receipt of a clean application;*
  3. *Notify providers within five (5) business days of receipt of a credentialing application if the application is incomplete;*
  4. *Provide provider outreach and help desk services during common business hours to facilitate provider applications and credentialing information;*
  5. *Expediently communicate the credentialing recommendation and supporting credentialing information electronically to the department and to each participating Medicaid managed care organization with which the provider is seeking credentialing; and*
  6. *Conduct reevaluation of provider documentation when required pursuant to state or federal law or when necessary for the provider to maintain participation status with a Medicaid managed care organization.*
- (c) *If on or before December 31, 2021, sixty percent (60%) or more, with any fraction of a percent rounded down, of the total number of Medicaid managed care organizations have entered into contracts with a credentialing alliance, the procurement provisions of this section shall be null and void and the department shall discontinue any contracts for credentialing verification services so that each Medicaid managed care organization shall bear its own costs for provider credentialing [~~A credentialing verification organization, designated by the department, shall be reimbursed on a per provider credentialing basis by the department. The reimbursements shall be offset or deducted equally from each Medicaid managed care organizations capitation payments.~~]*
- (d) *If a Medicaid managed care organization assumes responsibility and costs for their own provider credentialing pursuant to this subsection, the timely credentialing of providers shall be given significant weight as a factor in the scoring process when the department evaluates the Medicaid managed care organization's response to requests for proposals for all contract awards [~~The department shall enroll and screen providers in accordance with 42 C.F.R. pt. 455 and applicable state and federal law.~~]*
- ~~(e) Each provider seeking to be enrolled and screened with the department shall make application via electronic means as determined by the department.~~
- ~~(f) Pursuant to federal law, all providers seeking to participate in the Medicaid program with a managed care organization shall be enrolled as a provider with the department.~~
- ~~(g) Each provider seeking to be credentialed with a Medicaid managed care organization shall submit a single credentialing application to the designated credentialing verification organization, or to an organization meeting the requirements of subsection (1)(c)2. of this section, if applicable. The credentialing verification organization shall:~~
- ~~1. Gather all necessary documentation from each provider;~~
  - ~~2. Within five (5) days of receipt of a credentialing application, notify the provider in writing if the application is complete;~~
  - ~~3. Review an application for any misstatement of fact or lack of substantiating documentation;~~
  - ~~4. Credential and provide verified credentialing information electronically to the department and to each managed care organization as requested by the provider within thirty (30) calendar days of receipt of a clean application; and~~
  - ~~5. Conduct reevaluations of provider documentation when required pursuant to state or federal law or for the provider to maintain participation status with a managed care organization].~~

- (4) (a) The department shall enroll a provider within sixty (60) calendar days of receipt of a clean provider enrollment application. The date of enrollment shall be the date that the provider's clean application was initially received by the department. The time limits established in this section shall be tolled or paused by a delay caused by an external entity. Tolling events include but are not limited to the screening requirements contained in 42 C.F.R. pt. 455 and searches of federal databases maintained by entities such as the United States Centers for Medicare and Medicaid Services.
- (b) A Medicaid managed care organization shall:
1. Determine whether it will contract with the provider within thirty (30) calendar days of receipt of the verified credentialing information from ~~a~~~~the~~ credentialing verification organization; and
  2. a. Within ten (10) days of an executed contract, ensure that any internal processing systems of the managed care organization have been updated to include:
    - i. The accepted provider contract; and
    - ii. The provider as a participating provider.
  - b. In the event that the loading and configuration of a contract with a provider will take longer than ten (10) days, the managed care organization may take an additional fifteen (15) days if it has notified the provider of the need for additional time.
- (5) (a) Nothing in this section requires a Medicaid managed care organization to contract with a provider if the managed care organization and the provider do not agree on the terms and conditions for participation.
- (b) Nothing in this section shall prohibit a provider and a managed care organization from negotiating the terms of a contract prior to the completion of the department's enrollment and screening process.
- (6) (a) For the purpose of reimbursement of claims, once a provider has met the terms and conditions for credentialing and enrollment, the provider's credentialing application date shall be the date from which the provider's claims become eligible for payment.
- (b) A Medicaid managed care organization shall not require a provider to appeal or resubmit any clean claim submitted during the time period between the provider's credentialing application date and ~~the~~~~the~~ ~~managed care organization's~~ completion of ~~the~~~~its~~ credentialing process.
- (c) Nothing in this section shall limit the department's authority to establish criteria that allow a provider's claims to become eligible for payment in the event of lifesaving or life-preserving medical treatment, such as, for an illustrative but not exclusive example, an organ transplant.
- (7) Nothing in this section shall prohibit a university hospital, as defined in KRS 205.639, from performing the activities of a credentialing verification organization for its employed physicians, residents, and mid-level practitioners where such activities are delineated in the hospital's contract with a Medicaid managed care organization. The provisions of subsections (3), (4), (5), and (6) of this section with regard to payment and timely action on a credentialing application shall apply to a credentialing application that has been verified through a university hospital pursuant to this subsection.
- (8) To promote seamless integration of licensure information, the relevant provider licensing boards in Kentucky are encouraged to forward and provide licensure information electronically to the department and any credentialing verification organization.

**Signed by Governor March 24, 2021.**

## CHAPTER 98

( HB 176 )

AN ACT relating to reorganization.

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

➔Section 1. The General Assembly hereby confirms the Auditor of Public Accounts' Executive Order APA #2020-01, dated October 16, 2020, to the extent it is not otherwise confirmed or superseded by this Act, relating to

reorganization of the Office of the Auditor of Public Accounts. The reorganization creates the Office of the Assistant Auditor of Public Accounts, headed by the assistant auditor of public accounts appointed by the Auditor, and consisting of organizational units as set out in the administrative order; creates the Office of Local Government Audits, headed by an executive director appointed by the Auditor, and consisting of such organizational units as set forth in the administrative order; creates the Office of State Government Audits and Technology, headed by an executive director appointed by the Auditor, and consisting of such organizational units as set forth in the administrative order; creates the Office of Special Examinations, headed by an executive director appointed by the Auditor, and consisting of such organizational units as set forth in the administrative order; abolishes the Office of Financial Audits and transfers all personnel, records, files, equipment, and funds to the Office of Local Government Audits and the Office of State Government Audits and Technology; abolishes the Office of Technology and Special Audits and transfers all personnel, records, files, equipment, and funds to the to the Office of Special Examinations and the Office of State Government Audits and Technology.

**Signed by Governor March 24, 2021.**

**CHAPTER 99**  
**( SB 221 )**

AN ACT relating to reorganization.

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

→Section 1. KRS 12.020 is amended to read as follows:

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

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

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

II. Program cabinets headed by appointed officers:

- (1) Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Department of Public Advocacy.
- (2) Education and Workforce Development Cabinet:
  - (a) Office of the Secretary.
    - 1. Governor's Scholars Program.
    - 2. Governor's School for Entrepreneurs Program.
    - 3. Office of the Kentucky Workforce Innovation Board.
    - 4. Foundation for Adult Education.
    - 5. Early Childhood Advisory Council.
  - (b) Office of Legal and Legislative Services.
    - 1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Administrative Services.
    - 1. Division of Human Resources.
    - 2. Division of Operations and Support Services.
    - 3. Division of Fiscal Management.
  - (e) Office of Technology Services.
  - (f) Office of Educational Programs.
  - (g) Office of the Kentucky Center for Statistics.
  - (h) Board of the Kentucky Center for Statistics.
  - (i) Board of Directors for the Center for School Safety.
  - (j) Department of Education.
    - 1. Kentucky Board of Education.
    - 2. Kentucky Technical Education Personnel Board.
  - (k) Department for Libraries and Archives.
  - (l) Department of Workforce Investment.
    - 1. Office of Vocational Rehabilitation.

## ACTS OF THE GENERAL ASSEMBLY

- a. Division of Kentucky Business Enterprise.
- b. Division of the Carl D. Perkins Vocational Training Center.
- c. Division of Blind Services.
- d. Division of Field Services.
- e. Statewide Council for Vocational Rehabilitation.
- 2. Office of Unemployment Insurance.
- 3. Office of Employer and Apprenticeship Services.
  - a. Division of Apprenticeship.
- 4. ~~Office of~~ Career Development *Office*.
- 5. Office of Adult Education.
- 6. Unemployment Insurance Commission.
- 7. Kentucky Apprenticeship Council.
- 8. ***Division of Technical Assistance.***
- (m) Foundation for Workforce Development.
- (n) Kentucky Workforce Investment Board.
- (o) Education Professional Standards Board.
  - 1. Division of Educator Preparation.
  - 2. Division of Certification.
  - 3. Division of Professional Learning and Assessment.
  - 4. Division of Legal Services.
- (p) Kentucky Commission on the Deaf and Hard of Hearing.
- (q) Kentucky Educational Television.
- (r) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
  - (a) Office of the Secretary.
    - 1. Office of Legislative and Intergovernmental Affairs.
    - 2. Office of Legal Services.
      - a. Legal Division I.
      - b. Legal Division II.
    - 3. Office of Administrative Hearings.
    - 4. Office of Communication.
    - 5. Mine Safety Review Commission.
    - 6. Office of Kentucky Nature Preserves.
    - 7. Kentucky Public Service Commission.
  - (b) Department for Environmental Protection.
    - 1. Office of the Commissioner.
    - 2. Division for Air Quality.
    - 3. Division of Water.
    - 4. Division of Environmental Program Support.

5. Division of Waste Management.
6. Division of Enforcement.
7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
  1. Office of the Commissioner.
  2. Division of Mine Permits.
  3. Division of Mine Reclamation and Enforcement.
  4. Division of Abandoned Mine Lands.
  5. Division of Oil and Gas.
  6. Division of Mine Safety.
  7. Division of Forestry.
  8. Division of Conservation.
  9. Office of the Reclamation Guaranty Fund.
- (d) Office of Energy Policy.
  1. Division of Energy Assistance.
- (e) Office of Administrative Services.
  1. Division of Human Resources Management.
  2. Division of Financial Management.
  3. Division of Information Services.
- (4) Public Protection Cabinet.
  - (a) Office of the Secretary.
    1. Office of Communications and Public Outreach.
    2. Office of Legal Services.
      - a. Insurance Legal Division.
      - b. Charitable Gaming Legal Division.
      - c. Alcoholic Beverage Control Legal Division.
      - d. Housing, Buildings and Construction Legal Division.
      - e. Financial Institutions Legal Division.
      - f. Professional Licensing Legal Division.
    3. Office of Administrative Hearings.
    4. Office of Administrative Services.
      - a. Division of Human Resources.
      - b. Division of Fiscal Responsibility.
  - (b) Kentucky Claims Commission.
  - (c) Kentucky Boxing and Wrestling Commission.
  - (d) Kentucky Horse Racing Commission.
    1. Office of Executive Director.
      - a. Division of Pari-mutuel Wagering and Compliance.
      - b. Division of Stewards.

- c. Division of Licensing.
- d. Division of Enforcement.
- e. Division of Incentives and Development.
- f. Division of Veterinary Services.
- (e) Department of Alcoholic Beverage Control.
  - 1. Division of Distilled Spirits.
  - 2. Division of Malt Beverages.
  - 3. Division of Enforcement.
- (f) Department of Charitable Gaming.
  - 1. Division of Licensing and Compliance.
  - 2. Division of Enforcement.
- (g) Department of Financial Institutions.
  - 1. Division of Depository Institutions.
  - 2. Division of Non-Depository Institutions.
  - 3. Division of Securities.
- (h) Department of Housing, Buildings and Construction.
  - 1. Division of Fire Prevention.
  - 2. Division of Plumbing.
  - 3. Division of Heating, Ventilation, and Air Conditioning.
  - 4. Division of Building Code Enforcement.
- (i) Department of Insurance.
  - 1. Division of Insurance Product Regulation.
  - 2. Division of Administrative Services.
  - 3. Division of Financial Standards and Examination.
  - 4. Division of Agent Licensing.
  - 5. Division of Insurance Fraud Investigation.
  - 6. Division of Consumer Protection.
- (j) Department of Professional Licensing.
  - 1. Real Estate Authority.
- (5) Labor Cabinet.
  - (a) Office of the Secretary.
    - 1. Office of General Counsel.
      - a. Workplace Standards Legal Division.
      - b. Workers' Claims Legal Division.
    - 2. Office of Administrative Services.
      - a. Division of Human Resources Management.
      - b. Division of Fiscal Management.
      - c. Division of Professional Development and Organizational Management.
      - d. Division of Information Technology and Support Services.



3. Office of Inspector General.
  - (b) Department of Workplace Standards.
    1. Division of Occupational Safety and Health Compliance.
    2. Division of Occupational Safety and Health Education and Training.
    3. Division of Wages and Hours.
  - (c) Department of Workers' Claims.
    1. Division of Workers' Compensation Funds.
    2. Office of Administrative Law Judges.
    3. Division of Claims Processing.
    4. Division of Security and Compliance.
    5. Division of Information Services.
    6. Division of Specialist and Medical Services.
    7. Workers' Compensation Board.
  - (d) Workers' Compensation Funding Commission.
  - (e) Occupational Safety and Health Standards Board.
  - (f) State Labor Relations Board.
  - (g) Employers' Mutual Insurance Authority.
  - (h) Kentucky Occupational Safety and Health Review Commission.
  - (i) Workers' Compensation Nominating Committee.
- (6) Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Project Development.
    2. Office of Project Delivery and Preservation.
    3. Office of Highway Safety.
    4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    1. Office of Local Programs.
    2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    1. Office of Public Affairs.
    2. Office for Civil Rights and Small Business Development.
    3. Office of Budget and Fiscal Management.
    4. Office of Inspector General.
  - (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.
  - (i) Office of Human Resource Management.

- (j) Office of Information Technology.
- (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
  - (a) Office of the Secretary.
    - 1. Office of Legal Services.
    - 2. Department for Business Development.
    - 3. Department for Financial Services.
      - a. Kentucky Economic Development Finance Authority.
      - b. Finance and Personnel Division.
      - c. IT and Resource Management Division.
      - d. Compliance Division.
      - e. Incentive Administration Division.
      - f. Bluegrass State Skills Corporation.
    - 4. Office of Marketing and Public Affairs.
      - a. Communications Division.
      - b. Graphics Design Division.
    - 5. Office of Workforce, Community Development, and Research.
    - 6. Office of Entrepreneurship.
      - a. Commission on Small Business Advocacy.
- (8) Cabinet for Health and Family Services:
  - (a) Office of the Secretary.
    - 1. Office of the Ombudsman and Administrative Review.
    - 2. Office of Public Affairs.
    - 3. Office of Legal Services.
    - 4. Office of Inspector General.
    - 5. Office of Human Resource Management.
    - 6. Office of Finance and Budget.
    - 7. Office of Legislative and Regulatory Affairs.
    - 8. Office of Administrative Services.
    - 9. Office of Application Technology Services.
  - (b) Department for Public Health.
  - (c) Department for Medicaid Services.
  - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (e) Department for Aging and Independent Living.
  - (f) Department for Community Based Services.
  - (g) Department for Income Support.
  - (h) Department for Family Resource Centers and Volunteer Services.
  - (i) Office for Children with Special Health Care Needs.
  - (j) Office of Health Data and Analytics.

- (9) Finance and Administration Cabinet:
- (a) Office of the Secretary.
  - (b) Office of the Inspector General.
  - (c) Office of Legislative and Intergovernmental Affairs.
  - (d) Office of General Counsel.
  - (e) Office of the Controller.
  - (f) Office of Administrative Services.
  - (g) Office of Policy and Audit.
  - (h) Department for Facilities and Support Services.
  - (i) Department of Revenue.
  - (j) Commonwealth Office of Technology.
  - (k) State Property and Buildings Commission.
  - (l) Office of Equal Employment Opportunity and Contract Compliance.
  - (m) Kentucky Employees Retirement Systems.
  - (n) Commonwealth Credit Union.
  - (o) State Investment Commission.
  - (p) Kentucky Housing Corporation.
  - (q) Kentucky Local Correctional Facilities Construction Authority.
  - (r) Kentucky Turnpike Authority.
  - (s) Historic Properties Advisory Commission.
  - (t) Kentucky Tobacco Settlement Trust Corporation.
  - (u) Kentucky Higher Education Assistance Authority.
  - (v) Kentucky River Authority.
  - (w) Kentucky Teachers' Retirement System Board of Trustees.
  - (x) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Tourism.
    - 1. Division of Tourism Services.
    - 2. Division of Marketing and Administration.
    - 3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - 1. Division of Information Technology.
    - 2. Division of Human Resources.
    - 3. Division of Financial Operations.
    - 4. Division of Facilities Management.
    - 5. Division of Facilities Maintenance.
    - 6. Division of Customer Services.
    - 7. Division of Recreation.
    - 8. Division of Golf Courses.

9. Division of Food Services.
  10. Division of Rangers.
  11. Division of Resort Parks.
  12. Division of Recreational Parks and Historic Sites.
- (c) Department of Fish and Wildlife Resources.
1. Division of Law Enforcement.
  2. Division of Administrative Services.
  3. Division of Engineering, Infrastructure, and Technology.
  4. Division of Fisheries.
  5. Division of Information and Education.
  6. Division of Wildlife.
  7. Division of Marketing.
- (d) Kentucky Horse Park.
1. Division of Support Services.
  2. Division of Buildings and Grounds.
  3. Division of Operational Services.
- (e) Kentucky State Fair Board.
1. Office of Administrative and Information Technology Services.
  2. Office of Human Resources and Access Control.
  3. Division of Expositions.
  4. Division of Kentucky Exposition Center Operations.
  5. Division of Kentucky International Convention Center.
  6. Division of Public Relations and Media.
  7. Division of Venue Services.
  8. Division of Personnel Management and Staff Development.
  9. Division of Sales.
  10. Division of Security and Traffic Control.
  11. Division of Information Technology.
  12. Division of the Louisville Arena.
  13. Division of Fiscal and Contract Management.
  14. Division of Access Control.
- (f) Office of the Secretary.
1. Office of Finance.
  2. Office of Government Relations and Administration.
  3. Office of Film and Tourism Development.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Arts and Cultural Heritage.

- (k) Kentucky African-American Heritage Commission.
  - (l) Kentucky Foundation for the Arts.
  - (m) Kentucky Humanities Council.
  - (n) Kentucky Heritage Council.
  - (o) Kentucky Arts Council.
  - (p) Kentucky Historical Society.
    - 1. Division of Museums.
    - 2. Division of Oral History and Educational Outreach.
    - 3. Division of Research and Publications.
    - 4. Division of Administration.
  - (q) Kentucky Center for the Arts.
    - 1. Division of Governor's School for the Arts.
  - (r) Kentucky Artisans Center at Berea.
  - (s) Northern Kentucky Convention Center.
  - (t) Eastern Kentucky Exposition Center.
- (11) Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department of Human Resources Administration.
  - (c) Office of Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Office of Administrative Services.
  - (f) Office of Legal Services.
  - (g) Governmental Services Center.
  - (h) Department of Employee Insurance.
  - (i) Office of Diversity, Equality, and Training.
  - (j) Office of Public Affairs.

III. Other departments headed by appointed officers:

- (1) Council on Postsecondary Education.
- (2) Department of Military Affairs.
- (3) Department for Local Government.
- (4) Kentucky Commission on Human Rights.
- (5) Kentucky Commission on Women.
- (6) Department of Veterans' Affairs.
- (7) Kentucky Commission on Military Affairs.
- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.
- (10) Kentucky Communications Network Authority.

➔Section 2. KRS 151B.020 is amended to read as follows:

- (1) The Education and Workforce Development Cabinet is hereby created, which shall constitute a cabinet of the state government within the meaning of KRS Chapter 12. The cabinet shall consist of a secretary and those administrative bodies and employees as provided by law.
  - (2) The cabinet, subject to the provisions of KRS Chapter 12, shall be composed of the major organizational units listed below, units listed in KRS 12.020, and other departments, divisions, and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet:
    - (a) The Department of Workforce Investment, which is hereby created and established within the Education and Workforce Development Cabinet. The department shall be directed and managed by a commissioner who shall be appointed by the Governor under the provisions of KRS 12.040, and who shall report to the secretary of the Education and Workforce Development Cabinet. The department shall be composed of the following offices:
      1. The Office of Vocational Rehabilitation, which is created by KRS 151B.185;
      2. The Office of Unemployment Insurance;
      3. The Office of Employer and Apprenticeship Services;
      4. The ~~Office of~~ Career Development *Office*;
      5. The Office of Adult Education, which is created by KRS 151B.406;
      6. The Unemployment Insurance Commission established by KRS 341.110; ~~and~~
      7. The Kentucky Apprenticeship Council, which shall be attached to the department for administrative purposes only; and
      8. *The Division of Technical Assistance; and*
    - (b) The Early Childhood Advisory Council, which is attached to the Office of the Secretary for administrative purposes only.
  - (3) The executive officer of the cabinet shall be the secretary of the Education and Workforce Development Cabinet. The secretary shall be appointed by the Governor pursuant to KRS 12.255 and shall serve at the pleasure of the Governor. The secretary shall have general supervision and direction over all activities and functions of the cabinet and its employees and shall be responsible for carrying out the programs and policies of the cabinet. The secretary shall be the chief executive officer of the cabinet and shall have authority to enter into contracts, subject to the approval of the secretary of the Finance and Administration Cabinet, when the contracts are deemed necessary to implement and carry out the programs of the cabinet. The secretary shall have the authority to require coordination and nonduplication of services provided under the Federal Workforce Investment Act of 1998, 20 U.S.C. secs. 9201 et seq. The secretary shall have the authority to mandate fiscal responsibility dispute resolution procedures among state organizational units for services provided under the Federal Workforce Investment Act of 1998, 20 U.S.C. secs. 9201 et seq.
  - (4) The secretary of the Education and Workforce Development Cabinet and the secretary's designated representatives, in the discharge of the duties of the secretary, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.
  - (5) The secretary of the Education and Workforce Development Cabinet may delegate any duties of the secretary's office to employees of the cabinet as he or she deems necessary and appropriate, unless otherwise prohibited by statute.
  - (6) The secretary of the Education and Workforce Development Cabinet shall promulgate, administer, and enforce administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs except for programs and federal funds within the authority of the Department of Education, the Kentucky Board of Education, and the Education Professional Standards Board.
- ➔Section 3. KRS 200.700 is amended to read as follows:
- (1) The Early Childhood Advisory Council is established as a public agency and political subdivision of the Commonwealth with all powers, duties, and responsibilities conferred upon it by statute and essential to

perform its functions including but not limited to employing other persons, consultants, attorneys, and agents. The council shall be attached to the ~~Office of the Governor~~ **Education and Workforce Development Cabinet** for administrative purposes and shall establish necessary advisory councils. The secretary of the Education and Workforce Development Cabinet or the secretary's designee shall be the appointing authority for the council pursuant to KRS Chapter 18A. The council shall have the ability to make expenditures from the early childhood development fund and shall ensure that expenditures made from the early childhood development fund are in conformance with its duties as established by the General Assembly.

- (2) The council shall be headed by an executive director appointed by the Governor pursuant to KRS 12.040. The executive director shall report to the secretary of the Education and Workforce Development Cabinet or the secretary's designee.
- (3) The council shall consist of the following twenty-six (26) members:
  - (a) The state director of Head Start Collaboration;
  - (b) The secretary of the Education and Workforce Development Cabinet or designee;
  - (c) The secretary of the Cabinet for Health and Family Services or designee;
  - (d) One (1) nonvoting ex officio member from the House of Representatives who shall be appointed by and serve at the pleasure of the Speaker of the House;
  - (e) One (1) nonvoting ex officio member from the Senate who shall be appointed by and serve at the pleasure of the President of the Senate;
  - (f) Six (6) private sector members knowledgeable about the health, mental health, education, and development of prenatal to school entry children who shall be appointed by the Governor. One (1) private sector member shall be appointed from each congressional district;
  - (g) Seven (7) citizens at large of the Commonwealth who shall be appointed by the Governor;
  - (h) One (1) early childhood development advocate who shall be appointed by the Governor;
  - (i) One (1) member representing higher education with expertise in early childhood who shall be appointed by the Governor; and
  - (j) Six (6) members appointed by the Governor, including one (1) member from a Head Start program located in the state, one (1) member from a local education agency, one (1) member from the state agency responsible for education, one (1) member from the state agency responsible for child care, one (1) member from the state agency responsible for Part C of the Individuals with Disabilities Education Act (IDEA), and one (1) member from the state agency for health and mental health.
- (4)
  - (a) The initial terms of the private sector and citizen-at-large members of the council shall be for:
    1. One (1) year for five (5) of the initial terms;
    2. Two (2) years for five (5) of the initial terms;
    3. Three (3) years for six (6) of the initial terms; and
    4. Four (4) years for five (5) of the initial appointments.
  - (b) All succeeding appointments shall be for four (4) years from the expiration date of the preceding appointment. The private and citizen-at-large members shall serve no more than two (2) full successive terms. A term shall expire on June 30 in the appropriate year.
  - (c) Members shall serve until a successor has been appointed. If a vacancy on the council occurs, the Governor shall appoint a replacement for the remainder of the unexpired term except for the members appointed by the Speaker of the House and President of the Senate.
  - (d) The members and nonmember appointees of the council shall comply with the gift and conflict of interest statutes in KRS Chapter 11A. Any conflict of interest issue shall be submitted to the Executive Branch Ethics Commission for resolution.
  - (e) The Governor shall appoint the chair of the council from the private sector or citizen-at-large membership.
  - (f) The chair may appoint nonmembers of the council to committees or workgroups.

- (5) Private sector and citizen-at-large members and nonmembers appointed to a committee or workgroup shall serve without compensation but shall be reimbursed for reasonable and necessary expenses in accordance with state travel expenses and reimbursement administrative regulations.
- (6) In making appointments to the council, the Governor shall assure broad geographical, ethnic, and gender diversity representation from the major sectors of Kentucky's early childhood development community. In filling vacancies, the Governor shall attempt to assure the continuing representation on the council of broad constituencies of Kentucky's early childhood development community.
- (7) The council shall meet at least quarterly and at other times upon call of the chair or a majority of the council.
- (8) Members of the council shall serve on a voluntary basis and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

➔Section 4. The General Assembly confirms Executive Order 2020-529, dated June 23, 2020, to the extent it is not otherwise confirmed or superseded by this Act.

**Signed by Governor March 24, 2021.**

## CHAPTER 100

### ( SB 133 )

AN ACT relating to emergency management.

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

➔Section 1. KRS 39E.030 is amended to read as follows:

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

**Signed by Governor March 24, 2021.**



**CHAPTER 101****( SB 102 )**

AN ACT relating to Kentucky-grown agricultural products.

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

➔Section 1. KRS 260.016 is amended to read as follows:

As used in KRS 260.016 to 260.019:

- (1) "Agricultural product" means any farm product grown, raised, or produced as a result of being in the business of "agriculture," as defined by KRS 246.010; and
- (2) "Kentucky-grown agricultural product" means any agricultural product grown, raised, produced, processed, or manufactured in Kentucky; ***and any product processed or manufactured from one (1) of the following fish species, provided the fish were harvested from a river, lake, or other body of water located in Kentucky: Asian carp, paddlefish, or sturgeon.***

➔Section 2. KRS 260.019 is amended to read as follows:

- (1) The Kentucky Proud™ promotion fund is created in the State Treasury as a trust and agency account to be administered by the department for the purposes provided in this section.
- (2) Notwithstanding the provisions of KRS 45.229, any moneys accruing to this fund in any fiscal year, including state appropriations, gifts, grants, federal funds, interest, and any other funds both public and private, shall not lapse but shall be carried forward to the next fiscal year.
- (3) Moneys received in the fund shall be used for administrative expenses to support the Kentucky Proud™ Program, provide grants-in-aid, and other purposes and expenses related to promoting Kentucky-grown agricultural products.
- (4) ***No producer or processor of wild caught Asian carp, paddlefish, or sturgeon shall be eligible for moneys from the Kentucky Proud™ promotion fund or the rural development fund as provided under KRS 248.655. An aquaculture producer who raises paddlefish or sturgeon in Kentucky under controlled or semi-controlled conditions shall be eligible for such funds.***

Signed by Governor March 24, 2021.

**CHAPTER 102****( HB 9 )**

AN ACT relating to retirement and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) ***The provisions of this section shall only apply to members of the County Employees Retirement System who began participating in the system prior to January 1, 2014, who have service in a nonhazardous position.***
- (2) (a) ***A member who began participating prior to September 1, 2008, is eligible for a retirement allowance determined under subsection (4)(a) or (4)(b) of this section, as applicable, for his or her service if:***
  1. ***The member has attained normal retirement age and has four (4) or more years of service, at least one (1) of which is current service;***

2. *The member has twenty-seven (27) or more years of service, at least fifteen (15) of which are current service;*
  3. *The member has attained age fifty-five (55) and has five (5) or more years of service, at least one (1) of which is current service; or*
  4. *The member is less than age fifty-five (55) and has twenty-five (25) or more years of service, at least fifteen (15) of which are current service.*
- (b) *In lieu of any other benefits due under KRS 78.510 to 78.852, a member who began participating prior to September 1, 2008, who has attained normal retirement age and who has obtained at least one (1) month of service credit but no more than forty-seven (47) months of service may elect to receive an annual retirement allowance payable monthly or less frequently, as determined by the board, which shall be determined by multiplying his or her accumulated contributions by two (2) and converting this amount to an annual retirement allowance based on an annuity rate adopted by the board which would pay the actuarial equivalent of twice his or her accumulated contributions over the lifetime of the retired member.*
- (c) *A member who began participating prior to September 1, 2008, who has earned vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority, may count the vested service toward attaining the necessary years of service credit as provided in paragraph (a)2. and 4. of this subsection to qualify for a retirement allowance. The credit from a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority shall not be used toward the minimum fifteen (15) years of current service required by paragraph (a)2. and 4. of this subsection or to calculate his or her retirement allowance pursuant to this section. The provisions of this paragraph shall not be construed to limit the use of Teachers' Retirement System credit pursuant to KRS 61.680(2)(a).*
- (3) *A member who began participating on or after September 1, 2008, but prior to January 1, 2014, is eligible for a retirement allowance determined under subsection (4)(c) of this section if:*
- (a) *The member has attained normal retirement age and has at least five (5) years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system;*
  - (b) *The member is fifty-seven (57) years of age or older and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for a retirement allowance under this paragraph shall only include years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system; or*
  - (c) *The member is sixty (60) years of age or older and has at least ten (10) years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system .*
- (4) *Upon retirement under the conditions specified by subsections (2) and (3) of this section except as provided by subsection (2)(b) of this section, a member covered by this section may receive an annual retirement allowance, payable monthly during his or her lifetime, which shall consist of an amount equal to:*
- (a) *Two and two-tenths percent (2.2%) of final compensation multiplied by the number of years of service credit, if the member began participating prior to August 1, 2004;*
  - (b) *Two percent (2%) of final compensation multiplied by the number of years of service credit, if the member began participating on or after August 1, 2004, but prior to September 1, 2008;*
  - (c) *If the member began participating on or after September 1, 2008, but prior to January 1, 2014:*
    1. a. *One and one-tenth percent (1.1%) of final compensation for each year of service if the member has earned ten (10) or less years of service at retirement;*
    - b. *One and three-tenths percent (1.3%) of final compensation for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;*
    - c. *One and one-half percent (1.5%) of final compensation for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or*

- d. *One and three-quarters percent (1.75%) of final compensation for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and*
- 2. *Two percent (2%) of final compensation for each year of service earned in excess of thirty (30) years of service at retirement; and*
- (d) *The annual retirement allowance determined under this subsection shall:*
  - 1. *Not be reduced for a member retiring under the provisions specified by subsections (2)(a)1., (2)(a)2., (3)(a), and (3)(b) of this section; and*
  - 2. *Be reduced for a member retiring under the provisions specified by subsections (2)(a)3., (2)(a)4., and (3)(c) of this section by an amount determined by the board's actuary to reflect the earlier commencement of benefits.*

➔SECTION 2. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *A member of the County Employees Retirement System who is participating in a nonhazardous position and who began participating in the system on or after January 1, 2014, or a member who makes an election pursuant to KRS 61.5955, shall receive the retirement benefits provided by this section in lieu of the retirement benefits provided under Section 1 of this Act. The retirement benefit provided by this section shall be known as the hybrid cash balance plan and shall operate as another benefit tier within the County Employees Retirement System.*
- (2) *The hybrid cash balance plan shall provide a retirement benefit based upon the member's accumulated account balance, which shall include:*
  - (a) *Contributions made by the member as provided by KRS 78.510 to 78.852, except for employee contributions prescribed by paragraph (3)(b) of Section 14 of this Act;*
  - (b) *An employer pay credit of four percent (4%) of the creditable compensation earned by the employee for each month the employee is contributing to the hybrid cash balance plan provided by this section; and*
  - (c) *Interest credits added annually to the member's accumulated account balance as provided by this section.*
- (3) (a) *Member contributions and employer pay credits as provided by subsection (2)(a) and (b) of this section shall be credited to the member's account monthly as contributions are reported and posted to the system in accordance with KRS 78.625.*
  - (b) *Interest credits, as provided by subsection (2)(c) of this section, shall be credited to the member's account annually on June 30 of each fiscal year, as determined by subsection (4) of this section.*
- (4) (a) *On June 30 of each fiscal year, the system shall determine if the member contributed to the hybrid cash balance plan or the Kentucky Retirement Systems during the fiscal year.*
  - (b) *If the member contributed to the hybrid cash balance plan or the Kentucky Retirement Systems during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to:*
    - 1. *Four percent (4%); plus*
    - 2. *Seventy-five percent (75%) of the system's geometric average net investment return in excess of a four percent (4%) rate of return.*
  - (c) *If the member did not contribute to the hybrid cash balance plan or the Kentucky Retirement Systems during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by four percent (4%).*
  - (d) *For purposes of this subsection, "system's geometric average net investment return":*
    - 1. *Means the annual average geometric investment return, net of administrative and investment fees and expenses, over the last five (5) fiscal years as of the date the interest is credited to the member's account; and*

2. *Shall be expressed as a percentage and based upon the system in which the member has an account.*
- (e) *No employer pay credits or interest credits shall be provided to a member who has taken a refund of contributions as provided by KRS 61.625 or who has retired and annuitized his or her accumulated account balance as prescribed by this section.*
- (5) (a) *Upon termination of employment, a member who has less than five (5) years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall forfeit the accumulated employer credit, and shall only receive a refund of his or her accumulated contributions.*
- (b) *Upon termination of employment, a member who has five (5) or more years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall receive a full refund of his or her accumulated account balance.*
- (6) *A member participating in the hybrid cash balance plan provided by this section may retire:*
- (a) *At his or her normal retirement age, provided he or she has earned five (5) or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system; or*
- (b) *If the member is at least age fifty-seven (57) and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for retirement under this paragraph shall only include years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system.*
- (7) *A member eligible to retire under subsection (6) of this section may elect to:*
- (a) *Receive a monthly retirement allowance payable for life by having his or her accumulated account balance annuitized by the system in accordance with the actuarial assumptions and actuarial methods adopted by the board and in effect on the member's retirement date;*
- (b) *Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options set forth in KRS 61.635, except for the option provided by KRS 61.635(11); or*
- (c) *Take a refund of his or her account balance as provided by KRS 61.625.*
- (8) *The provisions of this section shall not apply to members who began participating in the Kentucky Employees Retirement System, County Employees Retirement System, or the State Police Retirement System prior to January 1, 2014, except as provided by KRS 61.5955.*

➔SECTION 3. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *The provisions of this section shall only apply to members of the County Employees Retirement System who began participating in the system prior to January 1, 2014, who have service in a hazardous position.*
- (2) (a) *A member who began participating prior to September 1, 2008, is eligible for a retirement allowance determined under subsection (4)(a) of this section for his or her service if:*
1. *The member has attained normal retirement age and has five (5) or more years of service, at least one (1) of which is current service;*
  2. *The member has twenty (20) or more years of service, at least fifteen (15) of which are current service; or*
  3. *The member has attained age fifty (50) and has fifteen (15) or more years of service.*
- (b) *In lieu of any other benefits due under 78.510 to 78.852, a member who began participating prior to September 1, 2008, who has attained normal retirement age and who has obtained at least one (1) month of service credit but no more than fifty-nine (59) months of service may elect to receive an annual retirement allowance payable monthly or less frequently, as determined by the board, which shall be determined by multiplying his or her accumulated contributions by two (2) and converting this amount to an annual retirement allowance based on an annuity rate adopted by the board which would pay the actuarial equivalent of twice his or her accumulated contributions over the lifetime of the retired member.*

- (3) *A member who began participating on or after September 1, 2008, but prior to January 1, 2014, is eligible for a retirement allowance determined under paragraph (4)(b) of this section for his or her service if:*
- (a) *The member has attained normal retirement age and has five (5) years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system;*
  - (b) *The member has twenty-five (25) or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system; or*
  - (c) *The member has attained age fifty (50) and has fifteen (15) years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system.*
- (4) (a) *A member of the system covered by this section who began participating prior to September 1, 2008, may elect to receive an annual retirement allowance, payable monthly during his lifetime, equal to two and five-tenths percent (2.5%) of final compensation for each year of service credit.*
- (b) *A member of the system covered by this section, who begins participating in the system on or after September 1, 2008, but prior to January 1, 2014, shall be eligible to receive an annual retirement allowance, payable monthly during his or her lifetime, equal to:*
- 1. *One and three-tenths percent (1.3%) of final compensation for each year of service credit if the employee has earned ten (10) or less years of service at retirement;*
  - 2. *One and one-half percent (1.5%) of final compensation for each year of service credit if the employee has earned greater than ten (10) but no more than twenty (20) years of service at retirement;*
  - 3. *Two and one-quarter percent (2.25%) of final compensation for each year of service credit if the employee has earned greater than twenty (20) but less than twenty-five (25) years of service at retirement; or*
  - 4. *Two and one-half percent (2.5%) of final compensation for each year of service credit if the employee has earned twenty-five (25) or more years of service at retirement.*
- (c) *The annual retirement allowance determined under this subsection shall:*
- 1. *Not be reduced for a member retiring under the provisions specified by subsections (2)(a)1., (2)(a)2., (3)(a), and (3)(b) of this section; and*
  - 2. *Be reduced for a member retiring under the provisions specified by subsections (2)(a)3. and (3)(c) of this section by an amount determined by the board's actuary to reflect the earlier commencement of benefits.*

➔SECTION 4. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *A member of the County Employees Retirement System in a hazardous position covered by this section, who begins participating in the system on or after January 1, 2014, or a member who makes an election pursuant to KRS 61.5955, shall receive the retirement benefits provided by this section in lieu of the retirement benefits provided under Section 3 of this Act. The retirement benefit provided by this section shall be known as the hybrid cash balance plan and shall operate as another benefit tier within the County Employees Retirement System.*
- (2) *The hybrid cash balance plan shall provide a retirement benefit based upon the member's accumulated account balance, which shall include:*
- (a) *Contributions made by the member as provided by KRS 78.510 to 78.852, except for employee contributions prescribed by paragraph (3)(b) of Section 14 of this Act;*
  - (b) *An employer pay credit of seven and one-half percent (7.5%) of the creditable compensation earned by the employee for each month the employee is contributing to the hybrid cash balance plan provided by this section; and*
  - (c) *Interest credits added annually to the member's accumulated account balance as provided by this section.*
- (3) (a) *Member contributions and employer pay credits as provided by subsection (2)(a) and (b) of this section shall be credited to the member's account monthly as contributions are reported and posted to the system in accordance with KRS 78.625.*

- (b) *Interest credits, as provided by subsection (2)(c) of this section, shall be credited to the member's account annually on June 30 of each fiscal year, as determined by subsection (4) of this section.*
- (4) (a) *On June 30 of each fiscal year, the system shall determine if the member contributed to the hybrid cash balance plan or the Kentucky Retirement Systems during the fiscal year.*
  - (b) *If the member contributed to the hybrid cash balance plan or the Kentucky Retirement Systems during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to:*
    - 1. *Four percent (4%); plus*
    - 2. *Seventy-five percent (75%) of the system's geometric average net investment return in excess of a four percent (4%) rate of return.*
  - (c) *If the member did not contribute to the hybrid cash balance plan or the Kentucky Retirement Systems during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by four percent (4%).*
  - (d) *For purposes of this subsection, "system's geometric average net investment return":*
    - 1. *Means the annual average geometric investment return, net of administrative and investment fees and expenses, over the last five (5) fiscal years as of the date the interest is credited to the member's account; and*
    - 2. *Shall be expressed as a percentage and based upon the system in which the member has an account.*
  - (e) *No employer pay credits or interest credits shall be provided to a member who has taken a refund of contributions as provided by KRS 61.625 or who has retired and annuitized his or her accumulated account balance as prescribed by this section.*
- (5) (a) *Upon termination of employment, a member who has less than five (5) years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall forfeit the accumulated employer credit, and shall only receive a refund of his or her accumulated contributions.*
  - (b) *Upon termination of employment, a member who has five (5) or more years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall receive a full refund of his or her accumulated account balance.*
- (6) *A member participating in the hybrid cash balance plan provided by this section may retire:*
  - (a) *At his or her normal retirement date, provided he or she has earned five (5) or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system; or*
  - (b) *At any age, provided he or she has earned twenty-five (25) or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system.*
- (7) *A member eligible to retire under subsection (6) of this section may elect to:*
  - (a) *Receive a monthly retirement allowance payable for life by having his or her accumulated account balance annuitized by the system in accordance with the actuarial assumptions and actuarial methods adopted by the board and in effect on the member's retirement date;*
  - (b) *Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options set forth in KRS 61.635, except for the option provided by KRS 61.635(11); or*
  - (c) *Take a refund of his or her account balance as provided by KRS 61.625.*
- (8) *The provisions of this section shall not apply to members who began participating in the Kentucky Employees Retirement System, County Employees Retirement System, or the State Police Retirement System prior to January 1, 2014, except as provided by KRS 61.5955.*

➔SECTION 5. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *Effective August 1, 1996, to July 1, 2008, a recipient of a retirement allowance under KRS 78.510 to 78.852 shall have his or her retirement allowance increased on July 1 of each year by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the federal Bureau of Labor Statistics, not to exceed five percent (5%). In determining the annual employer contribution rate, only the cost of increases granted as of the most recent valuation date shall be recognized. The benefits of this subsection as provided on August 1, 1996, to July 1, 2008, shall not be considered as benefits protected by the inviolable contract provisions of KRS 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in their judgment the welfare of the Commonwealth so demands.*
- (2)
  - (a) *Effective July 1, 2009, and on July 1 of each year thereafter, a recipient of a retirement allowance under KRS 78.510 to 78.852 shall have his or her retirement allowance increased by one and one-half percent (1.5%), if:*
    1. *The funding level of the pension fund is greater than one hundred percent (100%) and subsequent legislation authorizes the use of any surplus actuarial assets to provide an increase in retirement allowances described by this subsection for the pension fund which has the surplus actuarial assets; or*
    2. *The General Assembly directs payment of employer contributions to fully prefund the increase described by this subsection in the year the increase is provided.*
  - (b) *The board of trustees of the system shall, at least thirty (30) days prior to the beginning of regular sessions of the General Assembly held in even-numbered years, advise the General Assembly of the following:*
    1. *Which pension funds have a funding level greater than one hundred percent (100%) and can support an increase in recipients' retirement allowances as provided by paragraph (a) of this subsection over the next budget biennium without reducing the funding level of the pension fund below one hundred percent (100%); and*
    2. *If no surplus actuarial assets are available, the level of employer contribution funds needed to fully prefund an increase for pension fund recipients over the next budget biennium if a one and one-half percent (1.5%) increase is provided annually over the biennium.*
  - (c) *For purposes of this subsection, "funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the system's actuary in the system's actuarial valuation for each pension fund.*
  - (d) *The full increase described by this subsection shall only be provided if the recipient has been receiving a benefit for at least twelve (12) months prior to the effective date of the increase. If the recipient has been receiving a benefit for less than twelve (12) months prior to the effective date of the increase provided by this subsection, the increase shall be reduced on a pro rata basis for each month the recipient has not been receiving benefits in the twelve (12) months preceding the effective date of the increase.*
  - (e) *The benefits of this subsection as provided on July 1, 2009, and thereafter shall not be considered as benefits protected by the inviolable contract provisions of KRS 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if, in its judgment, the welfare of the Commonwealth so demands.*

➔SECTION 6. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section:*
  - (a) *"Hazardous position" for employees who began participating in the County Employees Retirement System prior to September 1, 2008, means any position whose principal duties involve active law enforcement, including the positions of probation and parole officer, active fire suppression or prevention, correctional officers with duties that routinely and regularly require face-to-face contact with inmates, or other positions, including but not limited to paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning; and*

- (b) *"Hazardous position" for employees who begin participating in the County Employees Retirement System on or after September 1, 2008, means police officers and firefighters as defined in KRS 61.315(1), paramedics, correctional officers with duties that routinely and regularly require face-to-face contact with inmates, and emergency medical technicians, if:*
1. *The employee's duties require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning; and*
  2. *The employee's duties are not primarily clerical or administrative.*
- (2) (a) *Each employer may request of the board hazardous coverage for those positions as defined in subsection (1) of this section. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the employer indicating that the required employer contributions have been provided for in the budget of the employer. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.*
- (b) *Each employer shall also certify, under penalty of perjury in accordance with KRS Chapter 523, that each employee's actual job duties are accurately reflected in the job description provided to the system. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as defined in subsection (1) of this section.*
- (c) *The board shall have the authority to remove any employee from hazardous coverage if the board determines the employee is not working in a hazardous position or if the employee is classified in a hazardous position but has individual job duties that do not meet the definition of a hazardous position or are not accurately reflected in the job descriptions filed by the employer with the system.*
- (3) (a) *If the employer participated in the system prior to electing hazardous coverage, the employer may pay to the system the cost of converting the nonhazardous service to hazardous service from the date of participation to the date the payment is made, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement or retiree health fund and shall not be considered accumulated contributions of the individual members.*
- (b) *If the employer elects not to make the additional payment as provided by paragraph (a) of this subsection, the employee may pay the cost of converting the service and provide payment for the cost as provided by subsection (9) of Section 52 of this Act. Payments made by the employee under this subsection shall not be picked up, as described in KRS 78.610(4), by the employer.*
- (c) *If neither the employer nor employee makes the payment, the service prior to hazardous position coverage shall remain nonhazardous.*
- (d) *The provisions of this subsection shall not apply to members who begin participating in the system on or after January 1, 2014.*
- (4) *Any person employed in a hazardous position shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the person's employer and made available to the system upon request.*
- (5) *If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 78.510 to 78.852.*

➔SECTION 7. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

*The disability retirement provisions contained in this section shall apply to a person whose last date of paid employment was in a nonhazardous position.*

- (1) *Any person may qualify to retire on disability, subject to the following conditions:*



- (a) *The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1);*
  - (b) *For a person whose membership date is prior to August 1, 2004, the person shall not be eligible for an unreduced retirement allowance;*
  - (c) *The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time position, as defined in KRS 78.510; and*
  - (d) *The person shall receive a satisfactory determination pursuant to Section 69 of this Act.*
- (2) *A person's disability reapplication based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The reapplication shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time position.*
- (3) *Upon the examination of the objective medical evidence by licensed physicians pursuant to Section 69 of this Act, it shall be determined that:*
- (a) *The person, since his or her last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he or she received his or her last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. pt. 1630 shall be considered;*
  - (b) *The incapacity is a result of bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;*
  - (c) *The incapacity is deemed to be permanent; and*
  - (d) *The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent. For purposes of this subsection, reemployment shall not mean a change of employment between employers participating in the Kentucky Retirement Systems or the County Employees Retirement System with no loss of service credit.*
- (4) *Subsection (3)(d) of this section shall not apply if:*
- (a) *The incapacity is a result of bodily injury, mental illness, disease, or condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or*
  - (b) *The person has at least sixteen (16) years' current or prior service for employment with employers participating in the Kentucky Retirement Systems or the County Employees Retirement System.*
- (5) (a) 1. *An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a regular full-time position.*
2. *The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.*
- (b) *The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.*
  - (c) *The person's physical exertion requirements shall be determined based on the following standards:*

1. *Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.*
  2. *Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.*
  3. *Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.*
  4. *Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.*
  5. *Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.*
- (6) *Upon disability retirement, an employee may receive a disability retirement allowance during his or her lifetime which shall be:*
- (a) *For a member who began participating prior to August 1, 2004, an annual retirement allowance payable monthly and determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his or her disability, except that service credit shall be added to the person's total service beginning with his or her last date of paid employment and continuing to his or her sixty-fifth birthday; however, the maximum service credit added shall not exceed the total service the person had upon his or her last day of paid employment, and the maximum combined service credit for calculating his or her disability retirement allowance, including total service and added service shall not exceed twenty-five (25) years. If, however, a person covered by this paragraph has accumulated twenty-five (25) or more years of total service, he or she shall receive added service necessary to bring his or her combined service credit, including total and added service, to twenty-seven (27) years;*
  - (b) *For a member who began participating on or after August 1, 2004, but prior to January 1, 2014, the higher of twenty percent (20%) of the member's monthly final rate of pay or the monthly retirement allowance determined in the same manner as for retirement at his or her normal retirement date with years of service and final compensation being determined as of the date of his or her disability; or*
  - (c) *For a member who begins participating on or after January 1, 2014, in the hybrid cash balance plan as provided by Section 2 of this Act, the higher of twenty percent (20%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his or her normal retirement date under Section 2 of this Act.*
- (7) *No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is normal retirement age or older.*
- (8) *A person whose last day of paid employment was in a nonhazardous position who is totally and permanently disabled due to a duty-related injury may be eligible for benefits based upon the definitions, criteria, and requirements specified by KRS 61.621.*

➔SECTION 8. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

*The disability retirement provisions contained in this section shall apply to a person whose last date of paid employment was in a hazardous position.*

- (1) (a) *For purposes of this section:*
1. *"Total and permanent disability" means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent; and*
  2. *"Hazardous disability" means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit.*
- (b) *In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. pt. 1630 shall be considered.*
- (c) *If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability as defined by KRS 78.510.*
- (2) *Any person may qualify to retire on disability, subject to the following:*
- (a) *The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;*
  - (b) *For a person whose membership date is prior to August 1, 2004, the person shall not be eligible for an unreduced retirement allowance;*
  - (c) *The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment, as defined in KRS 78.510, in a regular full-time position that has been approved as a hazardous position in accordance with Section 6 of this Act;*
  - (d) *The person shall receive a satisfactory determination pursuant to Section 69 of this Act; and*
  - (e) *A person's disability application based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time hazardous position.*
- (3) *Upon the examination of the objective medical evidence by licensed physicians pursuant to Section 69 of this Act, it shall be determined that:*
- (a) *The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;*
  - (b) *The incapacity is deemed to be permanent; and*
  - (c) *The incapacity does not result directly or indirectly from:*
    1. *Injury intentionally self-inflicted while sane or insane; or*
    2. *Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:*
      - a. *The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or*
      - b. *The person has at least sixteen (16) years' current or prior service for employment with employers participating in the County Employees Retirement System or the Kentucky Retirement Systems.*

*For purposes of this subparagraph, "reemployment" shall not mean a change of employment between employers participating in the County Employees Retirement System or the Kentucky Retirement Systems with no loss of service credit.*

- (4) (a) 1. *An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a hazardous position.*
2. *The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.*
- (b) *The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.*
- (c) *The person's physical exertion requirements shall be determined based on the following standards:*
1. *Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.*
2. *Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.*
3. *Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.*
4. *Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.*
5. *Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.*
- (5) *Upon disability retirement, an employee may receive a disability retirement allowance payable during his or her lifetime which shall be:*
- (a) *For a member who began participating in the system prior to August 1, 2004, an annual retirement allowance payable monthly and determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability, except that service shall be added beginning with his or her last date of paid employment and continuing to his or her fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his or her last day of paid employment, and the maximum service*

*credit for calculating his or her retirement allowance, including his or her total service and service added under this section, shall not exceed twenty (20) years;*

- (b) *For a member who begins participating on or after August 1, 2004, but prior to January 1, 2014, the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his or her normal retirement date with years of service and final compensation being determined as of the date of his or her disability; or*
  - (c) *For a member who begins participating on or after January 1, 2014, in the hybrid cash balance plan as provided by Section 4 of this Act, the disability retirement allowance shall be the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his or her normal retirement date under Section 4 of this Act.*
- (6) *If the member receives a satisfactory determination of total and permanent disability or hazardous disability pursuant to Section 69 of this Act and the disability is the direct result of an act in line of duty, the member's retirement allowance shall be calculated as follows:*
- (a) *For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and*
  - (b) *For each dependent child of the member on his or her disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system.*
- (7) *No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is normal retirement age or older.*
- (8) *If a regular full-time member in a hazardous position has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the Authority's medical examiner.*

➔SECTION 9. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *Once each year following the retirement of a person on a disability retirement allowance, or less frequently as determined by the Authority's medical examiner but not less than once every five (5) years, the system may require the person, prior to his or her normal retirement date, to undergo an employment and medical staff review and, if necessary, be required to file at the retirement office on the review form prescribed by the Authority current employment information and current medical information for the bodily injury, mental illness, or disease for which he or she receives a disability retirement allowance. The person shall have one hundred eighty (180) days from the day the Authority mailed the review form to the person's last address on file in the retirement office to file at the retirement office the review form and the current employment and medical information. The person shall certify to the Authority that the review form, including current employment and medical information, is ready to be evaluated by the medical examiner in accordance with Section 10 of this Act.*
- (2) *If, after good faith efforts, the person informs the Authority that he or she has been unable to obtain the employment or medical information, the Authority shall assist the person in obtaining the records and may use the powers granted pursuant to KRS 61.685(1) to obtain the records.*
- (3) *If the person fails or refuses to file at the retirement office the review form, including the current employment and medical information, his or her retirement allowance shall be discontinued or reduced on the first day of the month following the expiration of the one hundred eighty (180) days from the day the Authority mailed the review form to the person's last address on file in the retirement office. The Authority shall send notice of the discontinuance or reduction of the disability retirement allowance by United States first-class mail to the person's last address on file in the retirement office. If the person's benefits are discontinued or reduced under this section, his or her rights to further disability retirement allowances shall cease, except as provided by Section 10 of this Act.*

➔SECTION 10. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *If the Authority's medical examiner determines that a recipient of a disability retirement allowance is, prior to his or her normal retirement date, employed in a position with the same or similar duties, or in a position with duties requiring greater residual functional capacity and physical exertion, as the position from which he or she was disabled, except where the recipient has returned to work on a trial basis not to exceed nine (9) months, the system may reduce or discontinue the retirement allowance. Each recipient of a disability retirement allowance who is engaged in gainful employment shall notify the Authority of any employment; otherwise, the system shall have the right to recover payments of a disability retirement allowance made during the employment.*
- (2) *If the Authority's medical examiner determines that a recipient of a disability retirement allowance is, prior to his or her normal retirement date, no longer incapacitated by the bodily injury, mental illness, or disease for which he or she receives a disability retirement allowance, the system may reduce or discontinue the retirement allowance.*
- (3) *The system shall have full power and authority to reduce or discontinue a disability retirement allowance and the Authority shall utilize the services of a medical examiner as provided in Section 69 of this Act, in determining whether to continue, reduce, or discontinue a disability retirement allowance under this section.*
  - (a) *The Authority shall select a medical examiner to evaluate the forms and medical information submitted by the person. If there is objective medical evidence of a mental impairment, the medical examiner may request the Authority's licensed mental health professional to assist in determining the level of the mental impairment.*
  - (b) *The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.*
  - (c) *The medical examiner shall recommend that the disability retirement allowance be continued, reduced, or discontinued.*
    1. *If the medical examiner recommends that the disability retirement allowance be continued, the system shall make retirement payments in accordance with the retirement plan selected by the person.*
    2. *If the medical examiner recommends that the disability retirement allowance be reduced or discontinued, the Authority shall send notice of the recommendation by United States first-class mail to the person's last address on file in the retirement office.*
      - a. *The person shall have sixty (60) days from the day that the Authority mailed the notice to file at the retirement office additional supporting employment or medical information and certify to the Authority that the forms and additional supporting employment information or medical information are ready to be evaluated by the medical examiner or to appeal the recommendation of the medical examiner to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for a formal hearing.*
      - b. *If the person fails or refuses to file at the retirement office the forms, the additional supporting employment information, and current medical information or to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his or her retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the Authority mailed the notice of the recommendation to the person's last address on file in the retirement office.*
  - (d) *The medical examiner shall make a recommendation based upon the evaluation of additional supporting medical information submitted in accordance with paragraph (c)2.a. of this subsection.*
    1. *If the medical examiner recommends that the disability retirement allowance be continued, the system shall make disability retirement payments in accordance with the retirement plan selected by the person.*
    2. *If the medical examiner recommends that the disability retirement allowance be reduced or discontinued based upon the evaluation of additional supporting medical information, the Authority shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office.*

- a. *The person shall have sixty (60) days from the day that the Authority mailed the notice of the recommendation to appeal the recommendation to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for formal hearing.*
  - b. *If the person fails or refuses to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the Authority mailed the notice of the recommendation to the person's last address on file in the retirement office.*
- (e) *Any person whose disability benefits have been reduced or discontinued, pursuant to paragraph (c)2. or (d)2. of this subsection, may file at the retirement office a request for formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of sixty (60) days after the person had notice, as described in paragraph (c) or (d) of this subsection. The request for formal hearing shall be filed with the Authority, at the retirement office in Frankfort. The request for formal hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability retirement is being contested.*
  - (f) *Failure of the person to request a formal hearing within the period of time specified shall preclude the person from proceeding any further with contesting the reduction or discontinuation of disability retirement allowance, except as provided in subsection (6)(d) of this section. This paragraph shall not limit the person's right to appeal to a court.*
  - (g) *A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based. If the board orders that the person's disability retirement allowance be discontinued or reduced, the order shall take effect on the first day of the month following the day the Authority mailed the order to the person's last address on file in the retirement office. Judicial review of the final board order shall not operate as a stay and the system shall discontinue or reduce the person's disability retirement allowance as provided in this section.*
  - (h) *Notwithstanding any other provisions of this section, the Authority may require the person to submit to one (1) or more medical or psychological examinations at any time. The system shall be responsible for any costs associated with any examinations of the person requested by the medical examiner or the system for the purpose of providing medical information deemed necessary by the medical examiner or the system. Notice of the time and place of the examination shall be mailed to the person or his or her legal representative. If the person fails or refuses to submit to one (1) or more medical examinations, his or her rights to further disability retirement allowance shall cease.*
  - (i) *All requests for a hearing pursuant to this section shall be made in writing.*
- (4) *The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board. The board may also establish a joint appeals committee with the Kentucky Retirement Systems.*
  - (5) *Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.*
  - (6) *If a disability retirement allowance is reduced or discontinued for a person who began participating prior to January 1, 2014, the person may apply for early retirement benefits as provided under Section 1 or 3 of this Act, as applicable, subject to the following provisions:*
    - (a) *The person may not change his or her beneficiary or payment option;*
    - (b) *If the person has returned to employment with an employer participating in the County Employees Retirement System or the Kentucky Retirement Systems, the service and creditable compensation shall be used in recomputing his or her benefit, except that the person's final compensation shall not be less than the final compensation last used in determining his or her retirement allowance;*
    - (c) *The benefit shall be reduced as provided by subsection (4) of Section 1 of this Act or subsection (4) of Section 3 of this Act;*

- (d) *The person shall remain eligible for reinstatement of his or her disability allowance upon reevaluation by the medical examiners until his or her normal retirement age. The person shall apply for reinstatement of disability benefits in accordance with the provisions of this section. An application for reinstatement of disability benefits shall be administered as an application under Sections 8 or 9 of this Act, as applicable, and only the bodily injuries, mental illnesses, diseases, or conditions for which the person was originally approved for disability benefits shall be considered. Bodily injuries, mental illnesses, diseases, or conditions that came into existence after the person's last day of paid employment shall not be considered as a basis for reinstatement of disability benefits. Bodily injuries, mental illnesses, diseases, or conditions alleged by the person as being incapacitating, but which were not the basis for the award of disability retirement benefits, shall not be considered. If the person establishes that the disability benefits should be reinstated, the system shall pay disability benefits effective from the first day of the month following the month in which the person applied for reinstatement of the disability benefits; and*
- (e) *Upon attaining normal retirement age, the person shall receive the higher of either his or her disability retirement allowance or his or her early retirement allowance.*
- (7) *No disability retirement allowance shall be reduced or discontinued by the system after the person's normal retirement date except in case of reemployment as provided for by Section 16 of this Act. If a disability retirement allowance has been reduced or discontinued, except if the person is reemployed as provided for by Section 16 of this Act, the retirement allowance shall be reinstated upon attainment of the person's normal retirement date to the retirement allowance prior to adjustment. No reinstated payment shall be less than the person is receiving upon attainment of the person's normal retirement date.*

➔SECTION 11. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any other provisions of KRS 78.510 to 78.852, a maximum disability benefit is hereby established which shall apply, upon disability retirement, to any disabled employee's account to which service credit is added to determine disability benefits or in any case where disability benefits are determined by computing a percentage of the disabled employee's final monthly rate of pay. The maximum disability benefit shall be determined by the following formula:*

- (1) *Add the monthly benefit payable to the disabled employee from the County Employees Retirement System and the Kentucky Retirement Systems, using the monthly disability retirement allowance without any reduction due to the selection of an optional payment plan under KRS 61.635 but excluding dependent children's allowances, if any, to his monthly benefit, if any, from Social Security, even though these payments may not begin for a period of time as required for qualification under the federal Social Security law, excluding spouse or dependent benefits, and his monthly benefit, if any, from workers' compensation, even though these payments may not have begun as of the date the disabled member applies for disability retirement benefits, excluding spouse or dependent children's allowances, from workers' compensation, to arrive at a projected combined monthly benefit.*
- (2) *If the projected combined monthly benefit exceeds one hundred percent (100%) of the disabled employee's final rate of pay or his final compensation, whichever is greater, his disability retirement allowance from the County Employees Retirement System and the Kentucky Retirement Systems shall be reduced to an amount which would cause his projected combined monthly benefit to equal one hundred percent (100%) of his final rate of pay or his final compensation, whichever is greater; however, the disability retirement allowance shall not be reduced below an amount which would result from a computation of his disability retirement allowance from the County Employees Retirement System and the Kentucky Retirement Systems using the disabled employee's actual total service.*
- (3) *The system may pay estimated benefits to a disabled employee, upon qualification for disability retirement, based on an estimate of his Social Security and workers' compensation benefits until the amounts are actually determined, at which time a final calculation of the member's actual benefits shall be determined and his account corrected retroactive to his effective retirement date.*
- (4) *Any increase in Social Security benefits or workers' compensation benefits which becomes law, regardless of their effective date, subsequent to the disabled employee's effective retirement date, shall not be considered in determination of the maximum benefit payable, as the maximum benefit payable is based on the amount of combined benefits under these programs as of the disabled employee's effective retirement date.*



- (5) *Any disabled recipient whose potential payments from the system were reduced as provided for in this section shall advise the Authority if his payments under the federal Social Security Act or Workers' Compensation Act cease at any time subsequent to his effective retirement date. Upon investigation, if the system determines that the disabled recipient continues to be eligible for disability benefits, the system may increase his retirement allowance by adding to his payment an amount equal to the reduction applied upon the effective retirement date in accordance with subsection (2) of this section.*
- (6) *The amount of combined disability benefit payments made to an individual on or after April 1 2021, from the Kentucky Retirement Systems and the County Employees Retirement System shall not be increased as a result of the passage of this Act.*

➔SECTION 12. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *If a member dies prior to the first day of the month in which the member would have received his or her first retirement allowance, the member's beneficiary shall be eligible for the benefits provided by this section if the member had on file a written designation of a beneficiary with the retirement office as provided by KRS 61.542 and the member met the following conditions at the date of his or her death:*
- (a) *1. The member had service in a nonhazardous position and was eligible to retire under subsection (2) or (3) of Section 1 of this Act or subsection (6) of Section 2 of this Act; or*
- 2. The member had service in a hazardous position and was eligible to retire under subsection (2) or (3) of Section 3 of this Act or subsection (6) of Section 4 of this Act;*
- (b) *The member was in active employment or on authorized leave of absence with five (5) or more years of service credit and died prior to his or her normal retirement date or in the case of a nonhazardous member, was normal retirement age or older and had at least four (4) years of service credit; or*
- (c) *The member was not in active employment or on authorized leave of absence with twelve (12) or more years of service credit and died prior to his or her normal retirement date.*
- (2) *If the beneficiary eligible for benefits as provided in subsection (1) of this section is a single person, then the beneficiary may elect to receive:*
- (a) *A monthly benefit payable for the life of the beneficiary that is equal to the benefit that would have been paid had the member retired immediately prior to his or her date of death and elected to receive benefits payable under the survivorship one hundred percent (100%) option as provided in KRS 61.635(2);*
- (b) *A monthly benefit payable for the life of the beneficiary under the beneficiary Social Security adjustment option as provided in KRS 61.635(9) that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
- (c) *A monthly benefit payable for a period of sixty (60) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
- (d) *A monthly benefit payable for a period of one hundred twenty (120) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
- (e) *If the member began participating prior to January 1, 2014, a monthly benefit payable for a period of one hundred twenty (120) months that is equivalent to the benefit the member would have been entitled to receive based on his or her years of service and final compensation at the date of his or her death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4), then reduced by fifty percent (50%), and that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection; or*
- (f) *The higher of a refund of the member's accumulated account balance as described in KRS 61.625(1) or one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under paragraph (a) of this subsection for a period of sixty (60) months.*
- (3) *If the beneficiary eligible for benefits as provided by subsection (1) of this section is multiple beneficiaries or a trust, then the multiple beneficiaries by consensus or the trustee may elect to receive the actuarial equivalent amounts payable under subsection (2)(c), (d), (e), or (f) of this section using the assumption that the beneficiary's age is the same as the member's age.*
- (4) *If the beneficiary eligible for benefits as provided in subsection (1) of this section is the member's estate, then the beneficiary shall receive the higher of a refund of the member's accumulated account balance as*

*described in KRS 61.625(1) or the one (1) time lump-sum payment payable under subsection (2)(f) of this section, using the assumption that the beneficiary's age is the same as the member's age.*

- (5) *Payments of taxable distributions made pursuant to this section shall be subject to state and federal income tax as appropriate.*
- (6) (a) *The beneficiary of a member with service in a nonhazardous position who dies as a result of a duty-related injury may be eligible for benefits based upon the definitions, criteria, and benefits specified by KRS 61.621.*
- (b) *The beneficiary of a member with service in a hazardous position who dies as a direct result of an act in line of duty may be eligible for benefits from the system based upon the definitions, criteria, and benefits specified by Section 13 of this Act.*

➔SECTION 13. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

*The provisions of this section shall apply to members in a hazardous position.*

- (1) *If a member dies as a direct result of an act in line of duty as defined in Section 18 of this Act and is survived by a spouse:*
- (a) *The surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased member's retirement account except as provided in KRS 61.542(2)(e);*
- (b) *The surviving spouse, provided he or she supersedes all previously designated beneficiaries, may elect to receive a lump-sum payment of ten thousand dollars (\$10,000) and a monthly payment equal to seventy-five percent (75%) of the member's monthly average pay beginning in the month following the member's death and continuing each month until the death of the surviving spouse; and*
- (c) *In addition, if the member is also survived by dependent children, monthly payments shall be made for each dependent child equal to ten percent (10%) of the deceased member's monthly average pay, except that the combined maximum payment made to the:*
1. *Surviving spouse and dependent children under this subsection shall not exceed one hundred percent (100%) of the deceased member's monthly average pay; and*
  2. *Dependent children, while the surviving spouse is living, shall not exceed twenty-five percent (25%) of the deceased member's monthly average pay. Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.*
- (2) *If a member dies as a result of an act in line of duty as defined in Section 18 of this Act and is not survived by a spouse but is survived by a dependent child or children, the following benefits shall be paid to the dependent child or children:*
- (a) *Fifty percent (50%) of the deceased member's monthly average pay, if the deceased member has one (1) dependent child;*
- (b) *Sixty-five percent (65%) of the deceased member's monthly average pay, if the deceased member has two (2) dependent children; or*
- (c) *Seventy-five percent (75%) of the deceased member's monthly average pay, if the deceased member has three (3) or more dependent children.*

*Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.*

- (3) *If a member dies as a direct result of an act in line of duty as defined in Section 18 of this Act and the member has on file in the retirement office at the time of his or her death a written designation of only one (1) beneficiary other than his or her spouse who has not been superseded by the surviving spouse as provided by subsection (1)(a) of this section, and who is a dependent receiving at least one-half (1/2) of his or her support from the deceased member, the beneficiary may elect to receive a lump-sum payment of ten thousand dollars (\$10,000).*
- (4) *The payments provided by this section shall commence in the month following the date of death of the member and shall be payable to the spouse, dependent children, beneficiaries, or to a legally appointed guardian or as directed by the system. Benefits to a dependent child under this section shall be payable notwithstanding an election by a surviving spouse or beneficiary to withdraw the deceased member's*

*accumulated account balance as provided in KRS 61.625 or to elect benefits under any other provisions of KRS 78.510 to 78.852.*

- (5) *A surviving spouse or beneficiary eligible for benefits under subsection (1) or (3) of this section who is also eligible for benefits under any other provisions of KRS 78.510 to 78.852 may elect benefits under this section or any other section of KRS 78.510 to 78.852 but cannot elect to receive both.*
- (6) (a) *A surviving spouse or beneficiary applying for benefits under subsection (1) or (3) of this section who is also eligible for benefits under Section 12 of this Act may elect to receive benefits under paragraph (2)(a) or (b) of Section 12 of this Act while the application for benefits under subsection (1) or (3) of this section is pending.*
- (b) *If a final determination results in a finding of eligibility for benefits under subsection (1) or (3) of this section, the system shall recalculate the benefits due the surviving spouse or beneficiary in accordance with this subsection.*
- (c) *If the surviving spouse or beneficiary has been paid less than the amount of benefits which the surviving spouse or beneficiary was entitled to receive under this section, the system shall pay the additional funds due to the surviving spouse or beneficiary.*
- (d) *If the surviving spouse or beneficiary has been paid more than the amount of benefits which the surviving spouse or beneficiary was entitled to receive under this section, the system shall deduct the amount overpaid to the surviving spouse or beneficiary from the ten thousand dollars (\$10,000) lump-sum payment and from the monthly retirement allowance payments until the amount owed to the systems has been recovered.*

➔SECTION 14. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

(1) *For purposes of this section:*

- (a) *"Hospital and medical insurance plan" may include, at the board's discretion, any one (1) or more of the following:*
1. *Any hospital and medical expense policy or certificate, provider-sponsored integrated health delivery network, self-insured medical plan, health maintenance organization contract, or other health benefit plan;*
  2. *Any health savings account as permitted by 26 U.S.C. sec. 223 or health reimbursement arrangement or a similar account as may be permitted by 26 U.S.C. sec. 105 or 106. Such arrangement or account, at the board's discretion, may reimburse any medical expense permissible under 26 U.S.C. sec. 213; or*
  3. *A medical insurance reimbursement program established by the board through the promulgation of administrative regulation under which members purchase individual health insurance coverage through a health insurance exchange established under 42 U.S.C. sec. 18031 or 18041;*
- (b) *"Monthly contribution rate" shall be the amount determined by the board based upon the requirements of subsection (4)(a) to (c) of this section, except that for members who began participating in the system on or after July 1, 2003, the term shall mean the amount determined in subsection (4)(d) of this section; and*
- (c) *"Months of service" shall mean the total months of combined service used to determine benefits under the system, except service added to determine disability benefits or service otherwise prohibited from being used to determine retiree health benefits under KRS 78.510 to 78.852 shall not be counted as "months of service."*

- (2) (a) 1. *The board of trustees of the system shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan coverage for:*
- a. *Present and future recipients of a retirement allowance from the County Employees Retirement System; and*
  - b. *The spouse and each qualified dependent of a recipient who is a former member or the beneficiary, provided the spouse and dependent meet the requirements to participate in the hospital and medical insurance plans established, contracted, or authorized by the system.*

2. *Any recipient who chooses coverage under a hospital and medical insurance plan shall pay, by payroll deduction from the retirement allowance, electronic funds transfer, or by another method, the difference between the premium cost of the hospital and medical insurance plan coverage selected and the monthly contribution rate to which he or she would be entitled under this section.*
- (b)
  1. *For present and future recipients of a retirement allowance from the system who are not eligible for Medicare, the board may authorize these participants to be included in the Kentucky Employees Health Plan as provided by KRS 18A.225 to 18A.2287 and shall provide benefits for recipients in the plan equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status. Notwithstanding the provisions of any other statute, system recipients shall be included in the same class as current state employees for purposes of determining medical insurance policies and premiums in the Kentucky Employees Health Plan as provided by KRS 18A.225 to 18A.2287.*
  2. *Regardless of age, if a recipient or the spouse or dependent child of a recipient who elects coverage becomes eligible for Medicare, he or she shall participate in the plans offered by the systems for Medicare eligible recipients. Individuals participating in the Medicare eligible plans may be required to obtain and pay for Medicare Part A and Part B coverage in order to participate in the Medicare eligible plans offered by the system.*
  3. *The system shall continue to provide the same hospital and medical insurance plan coverage for recipients and qualifying dependents after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage.*
- (c) *For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (6) of this section.*
- (d) *Notwithstanding anything in KRS Chapter 78 to the contrary, the board of trustees, in its discretion, may take necessary steps to ensure compliance with 42 U.S.C. secs. 300bb-1 et seq.*
- (3)
  - (a) *Each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852 shall contribute to the insurance trust fund established by KRS 61.701 the amount necessary to provide the monthly contribution rate as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate determined under KRS 78.635.*
  - (b)
    1. *Each employer described in paragraph (a) of this subsection shall deduct from the creditable compensation of each member whose membership date begins on or after September 1, 2008, an amount equal to one percent (1%) of the member's creditable compensation. The deducted amounts shall, at the discretion of the board, be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 78.520, or the insurance trust fund established under KRS 61.701. Notwithstanding the provisions of this paragraph, a transfer of assets between the accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 78.520, and the insurance trust fund established under KRS 61.701 shall not be allowed.*
    2. *The employer shall file the contributions as provided by subparagraph 1. of this paragraph at the retirement office in accordance with KRS 78.625. Any interest or penalties paid on any delinquent contributions shall be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 78.520, or the insurance trust fund established under KRS 61.701. Notwithstanding any minimum compensation requirements provided by law, the deductions provided by this paragraph shall be made, and the compensation of the member shall be reduced accordingly.*
    3. *Each employer shall submit payroll reports, contributions lists, and other data as may be required by administrative regulation promulgated by the board of trustees pursuant to KRS Chapter 13A.*
    4. *Every member shall be deemed to consent and agree to the deductions made pursuant to this paragraph, and the payment of salary or compensation less the deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered*

*by the payment, except as to any benefits provided by KRS 78.510 to 78.852. No member may elect whether to participate in, or choose the contribution amount to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 78.520, or the insurance trust fund established under KRS 61.701. The member shall have no option to receive the contribution required by this paragraph directly instead of having the contribution paid to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 78.520, or the insurance trust fund established under KRS 61.701. No member may receive a rebate or refund of contributions. If a member establishes a membership date prior to September 1, 2008, pursuant to subsection (2) or (3) of Section 52 of this Act, then this paragraph shall not apply to the member and all contributions previously deducted in accordance with this paragraph shall be refunded to the member without interest. The contribution made pursuant to this paragraph shall not act as a reduction or offset to any other contribution required of a member or recipient under KRS 78.510 to 78.852.*

5. *The board of trustees, at its discretion, may direct that the contributions required by this paragraph be accounted for within accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 78.520, or the insurance trust fund established under KRS 61.701, through the use of separate accounts.*
- (4) (a) *The premium required to provide hospital and medical insurance plan coverage under this section shall be paid wholly or partly from funds contributed by:*
1. *The recipient of a retirement allowance, by payroll deduction from his or her retirement allowance, electronic funds transfer, or by other method;*
  2. *The insurance trust fund established by KRS 61.701 or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 78.520;*
  3. *Another state-administered retirement system, including the systems administered by Kentucky Retirement Systems, under a reciprocal arrangement, except that any portion of the premium paid from the funds specified by subparagraph 2. of this paragraph under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in the County Employees Retirement System. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the insurance trust fund established under KRS 61.701 or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 78.520, shall pay the balance; or*
  4. *A combination of the fund sources described by subparagraph 1. to 3. of this paragraph.*
- Group rates under the hospital and medical insurance plan shall be made available to the spouse, each dependent child, and each disabled child, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the hospital and medical insurance for the spouse, each dependent child, and each disabled child, or beneficiary is paid by payroll deduction from the retirement allowance, electronic funds transfer, or by another method. For purposes of this subsection only, a child shall be considered disabled if he or she has been determined to be eligible for federal Social Security disability benefits or meets the dependent disability standard established by the Department of Employee Insurance in the Personnel Cabinet.*
- (b) *For a member who began participating in the system prior to July 1, 2003, the monthly contribution rate shall be paid by the system from the funds specified under paragraph (a)2. of this subsection and shall be equal to a percentage of the single premium to cover the retired member as follows:*
1. *One hundred percent (100%) of the monthly premium for single coverage shall be paid for a retired member who had two hundred forty (240) months of service or more upon retirement or for a retired member who when he or she was an employee was disabled as a direct result of an act in line of duty as defined in subsection (48) of Section 18 of this Act or as a result of a duty-related injury as defined in KRS 61.621;*
  2. *Seventy-Five percent (75%) of the monthly premium for single coverage shall be paid for a retired member who had less than two hundred forty (240) months of service but at least one hundred eighty (180) months of service upon retirement, provided such retired member agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method;*

3. *Fifty percent (50%) of the monthly premium for single coverage shall be paid for a retired member who had less than one hundred eighty (180) months of service but had at least one hundred twenty (120) months of service upon retirement, provided such retired member agrees to pay the remaining fifty percent (50%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method; or*
4. *Twenty-five percent (25%) of the monthly premium for single coverage shall be paid for a retired member who had less than one hundred twenty (120) months of service but had at least forty-eight (48) months of service upon retirement, provided such retired member agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method.*

*Notwithstanding the foregoing provisions of this paragraph, an employee participating in the system prior to July 1, 2003, who is killed as a direct result of an act in line of duty as defined in subsection (48) of Section 18 of this Act or as a result of a duty-related injury as defined in KRS 61.621, shall have the monthly premium paid for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child, so long as they individually remain eligible for a monthly retirement benefit.*

- (c)
  1. *For a member who began participating in the system prior to July 1, 2003, who was determined to be in a hazardous position in the County Employees Retirement System, the funds specified under paragraph (a)2. of this subsection shall also pay a percentage of the monthly contribution rate sufficient to fund the premium costs for hospital and medical insurance coverage for the spouse and for each dependent child of a recipient.*
  2. *The percentage of the monthly contribution rate paid for the spouse and each dependent child of a recipient who was in a hazardous position in accordance with subparagraph 1. of this paragraph shall be based solely on the member's service in a hazardous position using the formula in paragraph (b) of this subsection, except that for any recipient of a retirement allowance from the County Employees Retirement System who was contributing to the system on January 1, 1998, for service in a hazardous position, the percentage of the monthly contribution shall be based on the total of hazardous service and any nonhazardous service as a police or firefighter with the same agency, if that agency was participating in the County Employees Retirement System but did not offer hazardous duty coverage for its police and firefighters at the time of initial participation.*
- (d) *For members who begin participating in the system on or after July 1, 2003:*
  1. *Participation in the insurance benefits provided under this section shall not be allowed until the member has earned at least one hundred twenty (120) months of service in the state-administered retirement systems, except that for members who begin participating in the system on or after September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the member has earned at least one hundred eighty (180) months of service credited under KRS 78.615(1) or another state-administered retirement system.*
  2. *A member who meets the minimum service requirements as provided by subparagraph 1. of this paragraph shall upon retirement be eligible for the following monthly contribution rate to be paid on their behalf from the funds specified under paragraph (a)2. of this subsection:*
    - a. *For members with service in a nonhazardous position, a monthly insurance contribution of ten dollars (\$10) for each year of service as a participating employee in a nonhazardous position; and*
    - b. *For members with service in a hazardous position, a monthly insurance contribution of fifteen dollars (\$15) for each year of service as a participating employee in a hazardous position. Upon the death of the retired member, the beneficiary, if the beneficiary is the member's spouse, shall be entitled to a monthly insurance contribution of ten dollars (\$10) for each year of service the member attained as a participating employee in a hazardous position.*
  3. *The minimum service requirement to participate in benefits as provided by subparagraph 1. of this paragraph shall be waived for a member who is disabled as a result of an act in line of duty as defined in subsection (48) of Section 18 of this Act or as a result of a duty-related injury as defined by KRS 61.621 and the member shall be entitled to the benefits payable*

*under this subsection as though the member had twenty (20) years of service in the position for which the disabling condition occurred.*

4. *Notwithstanding the provisions of this paragraph, the minimum service requirement to participate in benefits as provided by subparagraph 1. of this paragraph shall be waived for a for a member who dies a as a result of an act in line of duty as defined in subsection (48) of Section 18 of this Act or as a result of a duty-related injury as defined in KRS 61.621, and the premium for the member's spouse and for each dependent child as defined in Section 18 of this Act shall be paid in full by the systems so long as they individually remain eligible for a monthly retirement benefit.*
  5. *Except as provided by subparagraph 4. of this paragraph, the monthly insurance contribution amount shall be increased July 1 of each year by one and one-half percent (1.5%). The increase shall be cumulative and shall continue to accrue after the member's retirement for as long as a monthly insurance contribution is payable to the retired member or beneficiary.*
  6. *The benefits of this paragraph provided to a member whose participation begins on or after July 1, 2003, shall not be considered as benefits protected by the inviolable contract provisions of KRS 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this paragraph if in its judgment the welfare of the Commonwealth so demands.*
  7. *An employee whose membership date is on or after September 1, 2008, who retires and is reemployed in a regular full-time position required to participate in the system or the Kentucky Retirement Systems shall not be eligible for health insurance coverage or benefits provided by this section and shall take coverage with his or her employing agency during the period of reemployment in a regular full-time position.*
- (e) *For members with service in another state-administered retirement system who select hospital and medical insurance plan coverage through the system:*
1. *The system shall compute the member's combined service, including service credit in another state-administered retirement system, and calculate the portion of the member's premium monthly contribution rate to be paid by the funds specified under paragraph (a)2. of this subsection according to the criteria established in paragraphs (a) to (d) of this subsection. Each state-administered retirement system shall pay annually to the insurance trust fund established under KRS 61.701 the portion of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance plan which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his or her total combined service and in conjunction with the reciprocal agreement established between the system and the other state-administered retirement systems. The amounts paid by the other state-administered retirement plans and by the County Employees Retirement System from funds specified under paragraph (a)2. of this subsection shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees;*
  2. *A member may not elect coverage for hospital and medical benefits through more than one (1) of the state-administered retirement systems; and*
  3. *A state-administered retirement system shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.*
- (5) *Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the funds described by subsection (4)(a)2. of this section shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.*
- (6) *The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance plan premiums of recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance plan coverage with the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to*

*exceed the total monthly contribution rate determined under subsection (4) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.*

➔SECTION 15. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Upon the death of a retired member of the system, who was receiving a monthly retirement allowance based on a minimum of forty-eight (48) months of service, a death benefit of five thousand dollars (\$5,000) shall be paid.*
- (b) *If the retired member had more than one (1) account in the County Employees Retirement System or is eligible for a benefit from the Kentucky Retirement Systems under the provisions of KRS 61.705, the combined payment from the County Employees Retirement System under this section and the Kentucky Retirement Systems under KRS 61.705 shall not exceed five thousand dollars (\$5,000). Each system's cost shall be prorated between the systems based upon the level of service credit in each system.*
- (c) *Application for the death benefit made to the system shall include acceptable evidence of death and of the eligibility of the applicant to act on the deceased retired member's behalf.*
- (2) (a) *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 provided by this section or Section 74 of this Act. The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1) but only one (1) designation shall be available to a retired member who has service in both the County Employees Retirement System and the Kentucky Retirement Systems.*
- (b) *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.*
- (c) *If a licensed funeral home is designated as beneficiary and the licensed funeral home cannot be reasonably identified or located by the system 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 County Employees Retirement System 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 16. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

- (1) *A retired member whose disability retirement was discontinued pursuant to Section 10 of this Act and who is reemployed by an employer participating in the system or 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.*
- (2) (a) *If a retired member accepts employment or begins serving as a volunteer with an employer participating in the systems administered by Kentucky Retirement Systems or the County Employees Retirement System within twelve (12) months of his or her retirement date, the retired member shall notify the Authority and the participating employer shall submit the information required or requested by the Authority to confirm the individual's employment or volunteer status. The retired member shall not be required to notify the Authority regarding any employment or volunteer service with a participating agency that is accepted after twelve (12) months following his or her retirement date.*
- (b) *If the retired member is under a contract to provide services as an independent contractor or leased employee to an employer participating in the systems administered by Kentucky Retirement Systems*



*or the County Employees Retirement System within twelve (12) months of his or her retirement date, the member shall submit a copy of that contract to the Authority, and the Authority shall determine if the member is an independent contractor or leased employee for purposes of retirement benefits. The retired member and the participating employer shall submit the information required or requested by the Authority to confirm the individual's status as an independent contractor or leased employee. The retired member shall not be required to notify the Authority regarding any services entered into as an independent contractor or leased employee with a participating agency that the employee enters into after twelve (12) months following his or her retirement date.*

- (3) *Retired members of the County Employees Retirement System who returned to work with an employer that participates in the County Employees Retirement System or Kentucky Retirement Systems prior to September 1, 2008, shall be governed by the provisions of subsections (1) to (16) of Section 65 of this Act.*
- (4) *The following shall apply to retired members of the County Employees Retirement System who are reemployed on or after September 1, 2008, by an agency participating in the systems administered by the County Employees Retirement System or the Kentucky Retirement Systems:*
  - (a) *Except as provided by paragraphs (c) and (d) of this subsection, if a retired member is receiving a retirement allowance from the County Employees Retirement System, or has filed the forms required to receive a retirement allowance from the County Employees Retirement System, and is employed in a regular full-time position required to participate in the County Employees Retirement System or the Kentucky Retirement Systems or is employed in a position that is not considered regular full-time with an employer participating in the County Employees Retirement System or the 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 system all benefits received, including any health insurance benefits. If the retired member is returning to work in a regular full-time position required to participate in the County Employees Retirement System:*
    1. *The member shall contribute to a member account established for him or her in the County Employees Retirement System or the Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer to the system; 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 retired member is receiving a retirement allowance from the County Employees Retirement System and is employed in a regular full-time position required to participate in the County Employees Retirement System or the 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. *If a member is reemployed by a participating employer within twelve (12) months of the member's retirement date, the participating employer shall certify in writing on a form prescribed by the Authority that no prearranged agreement existed between the employee and employer prior to the employee's retirement for the employee to return to work with the participating employer. If the participating employer fails to complete the certification or the Authority determines a prearranged agreement exists, the member's retirement shall be voided and the provisions of paragraph (a) of this subsection shall apply to the member and the employer. For purposes of this paragraph:*
      - a. *If an elected official is reelected to a new term of office in the same position and has retired from the elected office within twelve (12) months prior to taking the new term of office, he or she shall be deemed by the Authority as having a prearranged agreement; and*
      - b. *Employment that is accepted by the retired member after twelve (12) months following the member's retirement date shall not constitute a prearranged agreement under this paragraph;*

2. *Notwithstanding any other provision of KRS Chapter 78 to the contrary, the member shall not contribute to the system and shall not earn any additional benefits for any work performed during the period of reemployment;*
  3. *Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall pay employer contributions as specified by KRS 78.635 and Section 14 of this Act 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 system; and*
  4. *Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall be required to reimburse the system for the cost of the health insurance premium paid by the system to provide coverage for the retiree, not to exceed the cost of the single premium. Effective July 1, 2015, local school boards shall not be required to pay the reimbursement required by this subparagraph for retirees employed by the board for eighty (80) days or less during the fiscal year;*
- (c) *If a member is receiving a retirement allowance from hazardous position coverage with the County Employees Retirement System, or has filed the forms required to receive a retirement allowance from the County Employees Retirement System for service in a hazardous position, and is employed in a regular full-time hazardous position required to participate in the County Employees Retirement System or the Kentucky Retirement Systems 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 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 the County Employees Retirement System or the Kentucky Retirement Systems:*
1. *The member shall contribute to a member account established for him or her in the County Employees Retirement System or the 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;*
- (d) *If a member is receiving a retirement allowance from the hazardous position coverage with the County Employees Retirement System and is employed in a regular full-time hazardous position required to participate in the County Employees Retirement System or the Kentucky Retirement Systems 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. *If a member is reemployed by a participating employer within twelve (12) months of the member's retirement date, the participating employer shall certify in writing on a form prescribed by the Authority that no prearranged agreement existed between the employee and employer prior to the employee's retirement for the employee to return to work with the participating employer. If the participating employer fails to complete the certification or the Authority determines a prearranged agreement exists, the member's retirement shall be voided and the provisions of paragraph (c) of this subsection shall apply to the member and the employer. For purposes of this paragraph:*
    - a. *If an elected official is reelected to a new term of office in the same position and has retired from the elected office within twelve (12) months prior to taking the new term of office, he or she shall be deemed by the system as having a prearranged agreement; and*
    - b. *Employment that is accepted by the retired member after twelve (12) months following the member's retirement date shall not constitute a prearranged agreement under this paragraph;*
  2. *Notwithstanding any other provision of KRS Chapter 78 to the contrary, the member shall not contribute to the system or the Kentucky Retirement Systems and shall not earn any additional benefits for any work performed during the period of reemployment;*

3. *Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall pay employer contributions as specified by Sections 14 of this Act and KRS 78.635 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 system; and*
  4. *Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall be required to reimburse the system for the cost of the health insurance premium paid by the system to provide coverage for the retiree, not to exceed the cost of the single premium;*
- (e) *Notwithstanding paragraphs (a) to (d) of this subsection, a retired member who qualifies as a volunteer for an employer participating in the County Employees Retirement System or the Kentucky Retirement Systems and who is receiving reimbursement of actual expenses, a nominal fee for his or her volunteer services, or both, shall not be considered an employee of the participating employer and shall not be subject to paragraphs (a) to (d) of this subsection if:*
1. *Prior to the retired member's most recent retirement date, he or she did not receive creditable compensation from the participating employer in which the retired member is performing volunteer services;*
  2. *Any reimbursement or nominal fee received prior to the retired member's most recent retirement date has not been credited as creditable compensation to the member's account or utilized in the calculation of the retired member's benefits;*
  3. *The retired member has not purchased or received service credit under any of the provisions of KRS 78.510 to 78.852 for service with the participating employer for which the retired member is performing volunteer services; and*
  4. *Other than the status of volunteer, the retired member does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twelve (12) months following the retired member's most recent retirement date.*

*If a retired member, who provided volunteer services with a participating employer under this paragraph violates any provision of this paragraph, then he or she shall be deemed an employee of the participating employer as of the date he or she began providing volunteer services and both the retired member and the participating employer shall be subject to paragraphs (a) to (d) of this subsection for the period of volunteer service;*

- (f) *Notwithstanding any provision of this section, any mayor or member of a city legislative body shall not be required to resign from his or her position as mayor or as a member of the city legislative body in order to begin drawing benefits from the systems administered by the Kentucky Retirement Systems or the County Employees Retirement System or subject to any provision of this section as it relates solely to his or her service as a mayor or member of the city legislative body, if the mayor or member of a city legislative body:*
1. *Has not participated in the County Employees Retirement System prior to retirement, but is otherwise eligible to retire from the Kentucky Employees Retirement System or the State Police Retirement System; or*
  2. *Has been or is participating in the County Employees Retirement System and is at least sixty-two (62) years of age. If a mayor or member of a city legislative body who is at least sixty-two (62) years of age retires from the systems administered by Kentucky Retirement Systems or the County Employees Retirement System but remains in office after his or her effective retirement date, the mayor or member of the city legislative body shall not accrue any further service credit or benefits in the systems administered by Kentucky Retirement Systems or the County Employees Retirement System for any employment occurring on or after the effective retirement date;*
- (g) *If a member is receiving a retirement allowance from the County Employees Retirement System and enters into a contract or becomes a leased employee of an employer under contract with an employer participating in the County Employees Retirement System or the Kentucky Retirement Systems:*

1. *At any time following retirement, if the Authority determines the employment arrangement does qualify as an independent contractor or leased employee, the member may continue to receive his or her retirement allowance during the period of the contract;*
  2. *Within three (3) months following the member's initial retirement date, if the Authority determines the employment arrangement does not qualify as an independent contractor or leased employee, the member's retirement shall be voided in accordance with paragraph (a) of this subsection;*
  3. *After three (3) months but within twelve (12) months following the member's initial retirement, if the Authority determines the employment arrangement does not qualify as an independent contractor or leased employee and that a prearranged agreement existed between the member and the agency for the member to return to work with the agency, the member's retirement shall be voided in accordance with paragraph (a) of this subsection; and*
  4. *After a twelve (12) month period following the member's initial retirement, the member may continue to receive his or her retirement allowance during the period of the contract and the member shall not be required to notify the Authority or submit any documentation for purposes of this section to the Authority. The initiation of a contract or the initial date of the leased employment of a retired member by a participating agency that occurs after twelve (12) months or more following the retired member's retirement date shall not constitute a prearranged agreement under this subsection;*
- (h) *The Authority shall issue a final determination regarding a certification of the absence of a prearranged agreement or the retired member's qualification as an independent contractor or leased employee as required under this section no later than thirty (30) days after the retired member and participating employer provide all required forms and additional information required by the Authority; and*
- (i) *Retired members of one (1) of the systems administered by Kentucky Retirement Systems who are reemployed by an employer in the County Employees Retirement System on or after September 1, 2008, shall not be eligible to earn a second retirement account in the County Employees Retirement System for his or her service to the employer.*
- (5) *The Authority shall promulgate administrative regulations to implement the requirements of this section, including incorporating by reference Authority-prescribed forms that a retired member and participating agency shall provide the systems under subsections (1) and (4) of this section.*
- (6) *"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. 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 or her retirement by reimbursing the system in the full amount of his or her retirement allowance payments received.*

➔SECTION 17. A NEW SECTION OF KRS 78.510 TO 78.852 IS CREATED TO READ AS FOLLOWS:

*The provisions of KRS 61.680 are hereby recognized and shall be followed in computing benefits of any member of the County Employees Retirement System who also has an account with the Kentucky Employees Retirement System, the State Police Retirement System, or the Kentucky Teachers' Retirement System.*

➔Section 18. KRS 78.510 (Effective April 1, 2021) 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 78.782;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his or her employees, county clerk and his or her employees, circuit clerk and his or her deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, cities, charter county governments, urban-county governments, consolidated local governments, or unified local governments 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 or she 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 ceased under KRS 78.535;
- (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' 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. "Accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the fund established in KRS 78.520, as prescribed by **subsection (3)(b) of Section 14 of this Act**~~(KRS 61.702(2)(b))~~;
- (13) "Creditable compensation":
  - (a) Except as limited by paragraph (c) of this subsection, 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). The creditable compensation of fee officers who receive salary, fees, maintenance, or other perquisites as a result of their official duties is the gross amount received decreased by the cost of salary paid deputies and clerks and the cost of office supplies and other official expenses;
  - (b) Includes:
    1. Lump-sum bonuses, severance pay, or employer-provided payments for purchase of service credit, which 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);
    2. Cases where compensation includes maintenance and other perquisites, but the board shall fix the value of that part of the compensation not paid in money;
    3. Lump-sum payments for creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, or for any creditable compensation paid in anticipation of settlement of an action before a court of

competent jurisdiction, the Personnel Board, or the Commission on Human Rights, including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes, which shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer. This subparagraph shall also include lump-sum payments for reinstated wages pursuant to KRS 61.569, which shall be credited to the period during which the wages were earned or should have been paid by the employer;

4. 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; and
  5. 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); and
- (c) Excludes:
1. 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;
  2. For employees who begin participating on or after September 1, 2008, lump-sum payments for compensatory time;
  3. Training incentive payments for city officers paid as set out in KRS 64.5277 to 64.5279;
  4. For employees who begin participating on or after August 1, 2016, nominal fees paid for services as a volunteer; and
  5. Any salary or wages paid to an employee for services as a Kentucky State Police school resource officer as defined by KRS 158.441;

(14) "Final compensation" means:

- (a) For a member who begins participating before September 1, 2008, who is employed in a nonhazardous position, the creditable compensation of the member during the five (5) fiscal years he or she 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 employed in a nonhazardous position, 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;
- (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 or she 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, which may contain less than twelve (12) months of service credit, shall be used;
- (d) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, who is employed in a nonhazardous position, 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, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least sixty (60) months; or

- (e) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, 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 or she 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. If the member does not have three (3) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least thirty-six (36) months;
- (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. For members who begin participating in the system prior to January 1, 2014, no disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date", *unless otherwise provided in KRS 78.510 to 78.852*, means:
- (a) *For a member with service in a nonhazardous position*, the sixty-fifth birthday of a member~~[unless otherwise provided in KRS 78.510 to 78.852]~~;
  - (b) *For a member with service in a hazardous position who begins participating before September 1, 2008, the first day of the month following a member's fifty-fifth birthday; or*
  - (c) *For a member with service in a hazardous position who begins participating on or after September 1, 2008, the first day of the month following a member's sixtieth birthday;*
- (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 employer 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 positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable;
  - (d) Probationary positions which are positions of employment with a participating employer that do not exceed twelve (12) months and that are used uniformly by the participating agency on new employees who would otherwise be eligible for participation in the system. Probationary positions shall not be

- renewable by the participating employer for the same employee, unless the employee has not been employed with the participating employer for a period of at least twelve (12) months; or
- (e) 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 **Section 14 of this Act** [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 Public Pensions Authority office building in Frankfort, **unless otherwise designated by the Kentucky Public Pensions Authority**;
- (30) **"Vested" for purposes of determining eligibility for purchasing service credit under Section 52 of this Act means the employee has at least forty-eight (48) months of service if age sixty-five (65) or older or at least sixty (60) months of service if under the age of sixty-five (65). For purposes of this subsection, "service" means service in the systems administered by the Kentucky Retirement Systems and County Employees Retirement System.** [~~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 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;



- (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;
- (37) "Accumulated employer credit" means the employer pay credit deposited to the member's account and interest credited on such amounts as provided by **Sections 2 and 4 of this Act**~~[KRS 16.583 and 61.597]~~;
- (38) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by **Sections 2 and 4 of this Act**~~[KRS 16.583 and 61.597]~~, the combined sum of the member's accumulated contributions and the member's accumulated employer credit;
- (39) "Volunteer" means an individual who:
- (a) Freely and without pressure or coercion performs hours of service for an employer participating in one (1) of the systems administered by Kentucky Retirement Systems or the County Employees Retirement System without receipt of compensation for services rendered, except for reimbursement of actual expenses, payment of a nominal fee to offset the costs of performing the voluntary services, or both; and
  - (b) If a retired member, does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twelve (12) months following the retired member's most recent retirement date;
- (40) "Nominal fee" means compensation earned for services as a volunteer that does not exceed five hundred dollars (\$500) per month. Compensation earned for services as a volunteer from more than one (1) participating employer during a month shall be aggregated to determine whether the compensation exceeds the five hundred dollars (\$500) per month maximum provided by this subsection;
- (41) "Nonhazardous position" means a position that does not meet the requirements of **Section 6 of this Act**~~[KRS 61.592]~~ or has not been approved by the board as a hazardous position;
- (42) "Hazardous position" means a position that meets the requirements of **Section 6 of this Act**~~[KRS 61.592]~~ and has been approved by the board as hazardous;
- (43) "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;
- (44) "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;
- (45) ***"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;***
- (46) ***"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;***
- (47) ***"Hazardous disability" as used in KRS 78.510 to 78.852 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;***

- (48) *"Act in line of duty" means, for purposes of members serving in a hazardous position, an act occurring which was required in the performance of the principal duties of the hazardous position as defined by the job description;*
- (49) *"Dependent child" means a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22). Solely in the case of a member who dies as a direct result of an act in line of duty as defined in this section or who dies as a result of a duty-related injury as defined in KRS 61.621, "dependent child" also means a naturally or legally adopted disabled child of the member, regardless of the child's age, if the child has been determined to be eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability;*
- (50) *"Normal retirement age" means the age at which the member meets the requirements for his or her normal retirement date as provided by subsection (18) of this section;*
- (51) *"Disability retirement date" means the first day of the month following the last day of paid employment;*
- (52)~~(45)~~ *"Monthly average pay" means the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the deceased member during his or her last twelve (12) months of employment;*
- (53)~~(46)~~ *"Authority" means the Kentucky Public Pensions Authority as provided by KRS 61.505; and*
- (54)~~(47)~~ *"Executive director" means the executive director of the Kentucky Public Pensions Authority.*

➔Section 19. KRS 78.540 (Effective April 1, 2021) is amended to read as follows:

Membership in the system shall consist of the following:

- (1) (a) All persons who become employees of a participating county after the date the county first participates in the system, except that:
1. Mayors and members of city legislative bodies may decline prior to their participation in the system; and
  2. City managers or other appointed local government executives who participate in a retirement system, other than Social Security, may decline prior to their participation in the system;
- (b) All persons who are employees of a county on the date the county first participates in the system, either in service or on authorized leave from service, and who elect within thirty (30) days next following the county's participation, or in the case of persons on authorized leave, within thirty (30) days of their return to active service, to become members and thereby agree to make contributions as provided in KRS 78.520 to 78.852;
- (c) All persons who are employees of a county who did not elect to participate within thirty (30) days of the date the county first participated in the system or within thirty (30) days of their return to active service and who subsequently elect to participate the first day of a month after the county's date of participation;
- (d) All persons who declined participation as provided by paragraph (a) of this subsection and who later elect to participate. Persons who elect to participate under this paragraph may purchase service credit for any prior years *in accordance with subsection (5)(a) of Section 52 of this Act* ~~by paying a delayed contribution payment~~, provided the person began participating in the system prior to January 1, 2014. The service shall not be included in the member's total service for purposes of determining benefits under *Section 14 of this Act* ~~KRS 61.702~~; and
- (e) All persons electing coverage in the system under KRS 78.530(3)(d).
- (2) The provisions of subsection (1)(a) to (c) of this section notwithstanding, cities which participate in the CERS and close existing local pension systems to new, or all members pursuant to the provisions of KRS 78.530, 95.520, 95.621, or 95.852 shall not be required to provide membership in the County Employees Retirement System to employees in any employee category not covered by a city pension system at the date of participation.
- (3) Membership in the system shall not include:
- (a) Persons who are not eligible to participate in the system as provided by KRS 78.535; or

- (b) Employees who are simultaneously participating in another state-administered defined benefit plan within Kentucky other than those administered by the Kentucky Retirement Systems or the County Employees Retirement System, ~~except for employees who have ceased to contribute to one (1) of the state-administered retirement plans as provided in KRS 21.360.~~
- (4) (a) The membership of any person in the system shall cease:
1. Upon withdrawal of his or her accumulated account balance at or any time after termination of employment, regardless of length of service;
  2. Upon retirement;
  3. Upon death;
  4. For persons hired prior to August 1, 2000, upon termination of employment with prejudice, as defined by paragraph (b) of this subsection; or
  5. For persons hired on or after August 1, 2000, upon conviction of a felony relating to the person's employment as provided in paragraph (c) of this subsection.
- (b) For purposes of KRS 78.510 to 78.852, termination of employment with prejudice shall mean termination as the result of conviction of the member in a court of competent jurisdiction of embezzlement or larceny of public funds or property or malfeasance in office, or the forcing of a member to make restitution for any funds or property criminally taken by the member at the time of termination of employment.
- (c) Notwithstanding any provision of law to the contrary, an employee hired on or after August 1, 2000, who participates in the system and who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his or her employment shall forfeit rights and benefits earned under the system, except for the return of his or her accumulated contributions and interest credited on those contributions. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefit shall be forfeited. The employer shall notify the system when an employee is convicted under the provisions of this subsection.
- (d) When membership ceases, except in the case of retirement, the member shall thereafter lose all right to any retirement allowance or benefits under KRS 78.510 to 78.852 arising from service prior to the date of such cessation of membership.

➔Section 20. KRS 78.545 (Effective April 1, 2021) is amended to read as follows:

The following matters shall be administered for the County Employees Retirement System in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Statement of member and employer, as provided for by KRS 61.540;
- (2) Beneficiary to be designated by member, change, rights, as provided for by KRS 61.542;
- (3) Service credit determination, as provided for by KRS 61.545;
- (4) ~~{Service credit, Armed Forces, as provided for by KRS 61.555;~~
- ~~(5) Normal and early retirement eligibility requirements, as provided for by KRS 61.559;~~
- ~~(6) Retirement allowance increases as provided for by KRS 61.691;~~
- ~~(7) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;~~
- ~~{(8) Disability retirement, conditions, as provided for by KRS 61.600;~~
- ~~(9) Disability retirement, allowance, as provided for by KRS 61.605;~~
- ~~(10) Medical examination after disability retirement, as provided for by KRS 61.610;~~
- ~~(11) Disability retirement allowance, reduction, as provided for by KRS 61.615;~~
- ~~(12) Determination of retirement allowance, as provided for by KRS 61.595;}~~
- (5){(13)} Refund of contributions, conditions, as provided for by KRS 61.625;

- (6)~~(14)~~ Refund of contributions, death after retirement, as provided for by KRS 61.630;
- (7)~~(15)~~ Recontribution and delayed contribution payments, purchase of service credit, interest, and installment payments, as provided for by KRS 61.552;
- (8)~~(16)~~ Optional retirement plans, as provided for by KRS 61.635;
- ~~(17) Suspension of retirement payments on reemployment, reinstatement, as provided for by KRS 61.637;~~
- ~~(18) Death before retirement, beneficiary's options, as provided for by KRS 61.640;]~~
- (9)~~(19)~~ Board of trustees, conflict of interest, as provided for by KRS 61.655;
- (10)~~(20)~~ Custodian of funds, payments made, when, as provided for by KRS 61.660;
- (11)~~(21)~~ Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (12)~~(22)~~ Correction of errors in records, as provided for by KRS 61.685;
- (13)~~(23)~~ Exemptions of retirement allowances, and qualified domestic relations orders, as provided for by KRS 61.690;
- (14)~~(24)~~ Credit for service prior to membership date, as provided for by KRS 61.526;
- (15)~~(25)~~ Members' account, confidential, as provided for by KRS 61.661;
- ~~(26) Retirement plan for employees determined to be in a hazardous position, as provided for by KRS 61.592;~~
- ~~(27) Maximum disability benefit, as provided for by KRS 61.607;]~~
- (16)~~(28)~~ Consent of employees to deductions and reciprocal arrangement between systems, as provided for by KRS 61.680;
- ~~(29) Hospital and medical insurance plan, as provided by KRS 61.702;~~
- ~~(30) Death benefit, as provided by KRS 61.705;]~~
- (17)~~(31)~~ Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- (18)~~(32)~~ Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;
- ~~(33) Disability procedure for members in hazardous positions as provided for in KRS 16.582;]~~
- (19)~~(34)~~ Direct deposit of recipient's retirement allowance as provided for in KRS 61.623;
- (20)~~(35)~~ Death or disability from a duty-related injury as provided in KRS 61.621;
- ~~(36) Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;]~~
- (21)~~(37)~~ Payment of small accounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703;
- ~~(38) Hybrid cash balance plan provided to new members as provided by KRS 61.597;]~~
- (22)~~(39)~~ Employer payment of increases in creditable compensation and adjustments to creditable compensation during the last five (5) years of employment as provided by KRS 61.598;
- (23)~~(40)~~ Calculation of retirement allowance, as provided by KRS 61.599; and
- (24)~~(41)~~ Benefit election for members of the Kentucky Retirement Systems as provided by KRS 61.5955.

Effective April 1, 2021, as it relates to KRS~~[16.582, 61.545, 61.552,]~~ 61.590, 61.598, ~~[61.600, 61.615, ]~~61.655, ~~[61.660, ]~~61.665, *and*~~[61.691, ]~~ 61.703~~[, and 61.705,]~~, references to "Kentucky Retirement Systems" or "systems administered by Kentucky Retirement Systems" as it relates to benefit eligibility shall include the County Employees Retirement System and references to "Kentucky Retirement Systems" or the "Kentucky Retirement Systems board of trustees" as it relates to administrative decisions, duties, requirements, or conflict of interest provisions shall for purposes of the County Employees Retirement System mean the County Employees Retirement System or County Employees Retirement System board of trustees, as applicable.

➔Section 21. KRS 78.610 (Effective April 1, 2021) is amended to read as follows:

- (1) Each employee shall~~[, commencing on August 1, 1990,]~~ contribute, for each pay period for which he or she receives compensation:~~[;]~~

- (a)
    - 1. Five percent (5%) of his or her creditable compensation *if the employee is participating in a nonhazardous position; or*
    - 2. *Eight percent (8%) of his creditable compensation if the employee is participating in a hazardous position; and*
  - (b) *The amount specified by paragraph (3)(b) of Section 14 of this Act for employees who begin participating on or after September 1, 2008.*
- (2) The agency reporting official of a participating county shall cause to be deducted from the "creditable compensation" of each employee for each and every payroll period subsequent to the date the county participated in the system the contribution payable by the member as provided in KRS 78.510 to 78.852. The agency reporting official shall promptly pay the deducted employee contributions to the system in accordance with KRS 78.625.
  - (3) The deductions provided for in subsection (2) of this section shall be made notwithstanding that the minimum compensation provided by law for any employee shall be reduced thereby. Every employee shall be deemed to consent and agree to the deductions made as provided in subsection (2) of this section; and payment of salary or compensation less the deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by the payment, except as to any benefits provided by KRS 78.510 to 78.852.
  - (4) Each employer shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010. These contributions shall not be included as gross income of the employee until the contributions are distributed or made available to the employee. The picked-up employee contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. Each employer shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of KRS 78.510 to 78.852 in the same manner and to the same extent as employee contributions made prior to August 1, 1982.
  - (5) The provisions of this section shall not apply to individuals who are not eligible for membership as provided by KRS 78.535.

➔Section 22. KRS 78.615 (Effective April 1, 2021) is amended to read as follows:

- (1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an **employer**~~agency~~ participating in the system while he or she is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 78.540 or is not eligible to participate in the system as provided by KRS 78.535. After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).
  - (a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he or she receives creditable compensation for one hundred (100) hours of work.
  - (b) For noncertified employees of school boards, for service prior to July 1, 2000, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted calendar days worked by twenty (20) and rounded to the nearest whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of calendar days worked, the rate of pay, and the hours in a work day for each employee monthly or annually. The employer shall file at the retirement office the final monthly report or the annual report for a fiscal year no later than twenty (20) days following the completion of the fiscal year. The retirement system shall impose a penalty on the employer of one thousand dollars (\$1,000) if the information is not submitted by the date required with

an additional two hundred and fifty dollars (\$250) for each additional thirty (30) day period the information is reported late.

1. If the employee works fewer than the number of contracted calendar days, the employee shall receive service credit determined by dividing the actual number of contracted calendar days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.
  2. If the employee works fewer than the number of contracted calendar days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he or she worked eighty (80) or more hours.
  3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.
- (c) For noncertified employees of school boards, for service on and after July 1, 2000, at the close of each fiscal year, the retirement system shall add service credit to the account of each employee who made contributions to his or her account during the year. Employees shall be entitled to a full year of service credit if their total paid calendar days were not less than one hundred eighty (180) calendar days for a regular school or fiscal year. In the event an employee is paid for less than one hundred eighty (180) calendar days, the employee may purchase credit according to administrative regulations promulgated by the system. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Employees who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1. Employees who are employed and paid for less than the number of calendar days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. This credit shall be based upon the number of calendar days employed and the number of calendar days in the employee's annual employment agreement or normal employment year. Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the employee is employed during that year.
- (d) Notwithstanding paragraph (c) of this subsection, a noncertified employee of a school board who retires between July 1, 2000, and August 1, 2001, may choose to have service earned between July 1, 2000, and August 1, 2001, credited as described in paragraph (b) of this subsection, if the employee or retired member notifies the retirement system within one (1) year of his or her initial retirement. The decision once made shall be irrevocable.
- (2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he or she is seasonal, emergency, temporary, or part-time. No service credit shall be earned.
  - (3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:
    - (a) A member on military leave shall be entitled to service credit in accordance with *Section 52 of this Act* [KRS 61.555]; and
    - (b) A member on *approved* educational leave [~~who meets the criteria established by the state Personnel Cabinet for approved educational leave~~], who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions in accordance with KRS 78.610, and his or her employer shall pay employer contributions [~~for the contributions shall be picked up~~] in accordance with KRS 78.635. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.
  - (4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.
- ➔Section 23. KRS 78.616 is amended to read as follows:
- (1) Any *employer* [~~agency~~] participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees may purchase service credit with the retirement system for up to six (6) months of unused sick leave for each retiring employee.

- (2) Participation under this section shall be at the option of each participating employer. The election to participate shall be made by the governing authority of the participating employer and shall be certified in writing to the system on forms prescribed by the board. The certification shall provide for equal treatment of all employees participating under this section. ~~[Any employer in the County Employees Retirement System who has not elected to participate in a sick leave program established by this section prior to August 1, 2018, shall not be eligible to elect to participate in a sick leave program established by this section.]~~
- (3) (a) Upon the member's notification of retirement as prescribed in KRS 61.590, the employer shall certify the retiring employee's unused, accumulated sick-leave balance to the system. The member's sick-leave balance, expressed in days, shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. A maximum of six (6) months of the member's sick-leave balance, expressed in months, shall be added to his service credit for the purpose of determining his annual retirement allowance under KRS 78.510 to 78.852 and for the purpose of determining whether the member is eligible to receive a retirement allowance under KRS 78.510 to 78.852, except as provided by ~~paragraph~~~~(paragraphs)~~ (d) ~~and (e)~~ of this subsection. Accumulated sick-leave in excess of six (6) months shall be added to the member's service credit if the member or employer pays to the retirement system the value of the additional service credit based on the formula adopted by the board, subject to the restrictions provided by paragraph (d) of this subsection.
- (b) The employer may elect to pay fifty percent (50%) of the cost of the sick leave in excess of six (6) months on behalf of its employees. The employee shall pay the remaining fifty percent (50%). The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payments are received by the retirement system.
- (c) Once the employer elects to pay all or fifty percent (50%) of the cost on behalf of its employees, it shall continue to pay the same portion of the cost.
- (d) For a member who begins participating in the retirement system on or after September 1, 2008, but prior to January 1, 2014, whose employer has established a sick-leave program under subsections (1) to (4) and (6) of this section:
1. The member shall receive no more than twelve (12) months of service credit upon retirement for accumulated unused sick leave accrued while contributing to the retirement system from which the retirement benefit is to be paid;
  2. The service added to the member's service credit shall be used for purposes of determining the member's annual retirement allowance under KRS 78.510 to 78.852;
  3. The service added to the member's service credit shall not be used to determine whether a member is eligible to receive a retirement allowance under KRS 78.510 to 78.852 ~~or to reduce any applicable actuarial reductions~~; and
  4. The cost of the service provided by this paragraph shall be paid by the employer.
- ~~[(e) For members who began participating in the retirement system prior to September 1, 2008, who retire on or after July 1, 2023, any service added for accumulated sick leave to the member's service credit shall not be used to determine whether a member is eligible to receive a retirement allowance under KRS 78.510 to 78.852 or to reduce any applicable actuarial reductions.]~~
- (4) The system shall compute the cost of the sick-leave credit of each retiring employee and bill each employer with whom the employee accrued sick leave accordingly. The employer shall remit payment within thirty (30) days from receipt of the bill.
- (5) (a) As an alternative to subsections (1), (3), (4), and (6) of this section, any agency participating in the County Employees Retirement System which has formally adopted a sick-leave program that is universally administered to its employees, or administered to a majority of eligible employees in accordance with subsection (6) of this section, shall, at the time of termination, or as **provided in** ~~authorized by~~ KRS 161.155 in the case of school boards, compensate the employee for unused sick-leave days the employee has accumulated which it is the uniform policy of the agency to allow.
- (b) The rate of compensation for each unused sick-leave day shall be based on the daily salary rate calculated from the employee's current rate of pay. Payment for unused sick-leave days shall be

incorporated into the employee's final compensation if the employee and employer make the regular employee and employer contributions, respectively, on the sick-leave payment.

- (c) The number of sick-leave days for which the employee is compensated shall be divided by the average number of working days per month in county service and rounded to the nearest number of whole months. This number of months shall be added to the employee's total service credit and to the number of months used to determine creditable compensation, pursuant to KRS 78.510, but no more than sixty (60) months shall be used to determine final compensation. For an employee who begins participating on or after September 1, 2008, but prior to January 1, 2014, the number of months added to the employee's total service credit under this paragraph shall not exceed twelve (12) months, and the additional service shall not be used to determine whether a member is eligible to receive a retirement allowance under KRS 78.510 to 78.852 ~~or to reduce any applicable actuarial reductions.~~

~~[(d) For members who began participating in the retirement system prior to September 1, 2008, who retire on or after July 1, 2023, any service added for accumulated sick leave to the member's service credit shall not be used to determine whether a member is eligible to receive a retirement allowance under KRS 78.510 to 78.852 or to reduce any applicable actuarial reductions.]~~

- (6) Any city of the first class that has two (2) or more sick-leave programs for its employees may purchase service credit with the retirement system for up to six (6) months of unused sick leave for each retiring employee who participates in the sick-leave program administered to a majority of the eligible employees of the city. An employee participating in a sick-leave program administered to a minority of the eligible employees shall become eligible for the purchase of service credit under this subsection when the employee commences participating in the sick-leave program that is administered to a majority of the eligible employees of the city.
- (7) The provisions of this section shall not apply to employees who begin participating in the system on or after January 1, 2014, and no service credit shall be provided for accumulated sick leave balances of those employees who begin participating in the system on or after January 1, 2014.

➔Section 24. KRS 78.625 (Effective April 1, 2021) is amended to read as follows:

- (1) The employer shall prepare the reporting records necessary for the system to administer the provisions of KRS 78.510 to 78.852 and, from time to time, shall furnish the information the system may require in the discharge of its duties. Upon employment of an employee, the employer shall inform him or her of his or her duties and obligations in connection with the system as a condition of employment.
- (2) The agency reporting official of the county shall file the following at the retirement office on or before the tenth day of the month following the period being reported:
- (a) The employee and employer contributions required under KRS ~~61.702,~~ 78.610, and 78.635;
- (b) The employer contributions and reimbursements for retiree health insurance premiums required under **Section 16 of this Act** ~~KRS 61.637~~; and
- (c) A record of all contributions to the system on the forms prescribed by the systems.
- (3) (a) If the agency reporting official fails to file at the retirement office all contributions and reports on or before the tenth day of the month following the period being reported, interest on the delinquent contributions at the actuarial rate adopted by the board compounded annually, but not less than one thousand dollars (\$1,000), may be added to the amount due the system.
- (b) Delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties may be recovered by action in the Franklin Circuit Court against the county liable or may, at the request of the board, be deducted from any other moneys payable to the county by any department or agency of the state.
- (4) If an agency is delinquent in the payment of contributions due in accordance with any of the provisions of KRS 78.510 to 78.852, refunds and retirement allowance payments to members of this agency may be suspended until the delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties have been paid to the system.
- (5) The system may at any time conduct an audit of the employer in order to determine if the employer is complying with the provisions of KRS 78.510 to 78.852. The system shall have access to and may examine all books, accounts, reports, correspondence files, and records of any employer. Every employer, employee, or agency reporting official of a county, as defined in KRS 78.510(3), having records in its possession or under its control, shall permit access to and examination of the records upon the request of the system.



➔Section 25. KRS 78.630 is amended to read as follows:

***Except as provided by KRS 61.701***, all of the assets of the system shall be held ~~and invested~~ in the county employees' retirement fund and credited, according to the purpose for which they are held, to one (1) of three (3) accounts, namely, the members' account, the retirement allowance account, and 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 ***paragraph (3)(b) of Section 14 of this Act***~~[KRS 61.702(2)(b)]~~.

➔Section 26. KRS 78.635 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) Except as provided by subsection ~~(4)~~~~(5)~~ of this section, each employer participating in the County Employees Retirement System as provided for in KRS 78.510 to 78.852 shall contribute annually to the system an amount ***determined by the actuarial valuation completed in accordance with KRS 78.784 and as specified by this section. Employer contributions for the system shall be equal to the sum of*** ~~[equal to the percent, as computed under subsection (2) of this section, of the creditable compensation of its employees to be known as ]~~the "normal ***cost contribution***~~[contributions,]~~ and ~~[an additional amount to be known as ]~~the "actuarially accrued liability contribution." ~~[which shall be computed by amortizing the total unfunded actuarially accrued liability over a period of thirty (30) years using the level percentage of payroll amortization method. The thirty (30) year amortization period shall begin with the 2013 actuarial valuation.~~
- ~~(b) Any significant increase in the actuarially accrued liability due to benefit improvements shall be amortized using the level percentage of payroll amortization method over a separate thirty (30) year period commencing in the year of the actuarial valuation in which the benefit improvements are first reflected.]~~
- ~~(b)(2)~~ ***For purposes of this section, the normal cost contribution shall be computed as a percentage of pay and shall be an annual amount that is sufficient when combined with employee contributions to fund benefits earned during the year in the system. The amount shall be:***
1. ***Paid as a percentage of creditable compensation reported for each employee participating in the system and accruing benefits; and***
  2. ***The same percentage of pay for all employees who are participating in the system, except that separate percentage rates shall be developed in each system for those employers whose employees are participating in hazardous duty retirement coverage as provided by Section 6 of this Act***~~[The normal contribution rate shall be determined by the entry age normal cost funding method. The actuarially accrued liability shall be determined by actuarial method consistent with the methods prescribed for determining the normal contribution rate. Normal contributions and the actuarially accrued liability contribution shall be determined on actuarial assumptions and methods adopted by the board].~~
- (c) ***For purposes of this section, the actuarially accrued liability contribution shall be:***
1. ***Computed by amortizing the total unfunded actuarially accrued liability of the system over a closed period of thirty (30) years beginning with the 2019 actuarial valuation using the level percentage of payroll amortization method, except that any increase or decrease in the unfunded actuarially accrued liability occurring after the completion of the 2019 actuarial valuation shall be amortized over a closed period of twenty (20) years beginning with the actuarial valuation in which the increase or decrease in the unfunded actuarially accrued liability is recognized. An increase or decrease in the unfunded actuarially accrued liability may result from, but not be limited to, legislative changes to benefits, changes in actuarial methods or assumptions, or actuarial gains or losses;***
  2. ***Paid as a percentage of payroll on the creditable compensation reported for each employee participating in the system and accruing benefits; and***
  3. ***The same percentage of pay for all employees who are participating in the system, except that separate percentage rates shall be developed in each system for those employers whose employees are participating in hazardous duty retirement coverage as provided by Section 6 of this Act.***
- (d) ***The employer contributions computed under this section shall be determined using:***
1. ***The entry age normal cost funding method;***

2. *An asset smoothing method that smooths investment gains and losses over a five (5) year period; and*
  3. *Other funding methods and assumptions established by the board in accordance with KRS 78.784.*
- (2)(3) Normal contribution and the actuarially accrued liability contribution rates shall be determined by the board on the basis of the annual actuarial valuation last preceding the July 1 of a new fiscal year.
- (3)(4) Employer contribution rates as provided by this section shall ~~be~~
- (a) ~~Be developed separately for employers providing benefits to employees in nonhazardous positions and for employers providing benefits to employees in hazardous positions; and~~
  - (b) ~~include an employer contribution rate to fund pension benefits and an employer contribution rate to fund retiree health benefits.~~
- (4)(5) The employer contribution rate established by the board for the County Employees Retirement System that is payable on or after July 1, 2018, and until June 30, 2028, for the pension and retiree health insurance funds, including the normal cost contribution and the actuarially accrued liability contribution for each fund, shall not increase by more than a factor of one and twelve one hundredths (1.12) over the prior fiscal year's employer contribution rate as determined by the system's consulting actuary.
- (5)(6) The system shall advise each employer prior to the beginning of each fiscal year of any change in the employer contribution rate. Based on the employer contribution rate, each employer shall include in the budget sufficient funds to pay the employer contributions as determined by the board under this section.

→Section 27. KRS 78.640 is amended to read as follows:

- (1) The members' account shall be the account to which:
  - (a) All members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances ~~or investment returns~~ as provided in KRS 78.510 to 78.852 shall be credited, except as provided by *paragraph (3)(b) of Section 14 of this Act* ~~[KRS 61.702(2)(b)]~~; *and*
  - (b) For members who begin participating in the system on or after January 1, 2014, ~~who are participating in the hybrid cash balance plan,~~ the employer pay credit and interest credited on such amounts as provided by *Sections 2 and 4 of this Act* ~~[KRS 16.583 and 61.597]~~ shall be credited; *and*
  - (c) ~~For members who elect to participate in the 401(a) money purchase plan provided by KRS 21.374, 61.5955, or 61.5956, the employer contribution and investment return on such amounts as provided by KRS 61.5956.~~

Only funds from this account shall be used to return the accumulated contributions or accumulated account balances of a member when required to be returned to him by reason of any provision of KRS 78.510 to 78.852. Prior to the member's retirement, death, or refund in accordance with KRS 61.625, no funds shall be made available from the member account.

- (2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member, except as provided by *paragraph (3)(b) of Section 14 of this Act* ~~[KRS 61.702(2)(b)]~~.
- (3) ~~(a) Except for the portion of the member's account balance in the 401(a) money purchase plan as provided by KRS 61.5956:~~
  - (a) Each member shall have his individual account credited with interest on June 30 of each year.
  - (b) For a member who begins participating before September 1, 2008, interest shall be credited to his individual account at a rate determined by the board but not less than two percent (2%) per annum on the accumulated account balance of the member on June 30 of the preceding fiscal year.
  - (c) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, interest shall be credited to his or her individual account at a rate of two and one-half percent (2.5%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year.
  - (d) For a member who begins participating on or after January 1, 2014, in the hybrid cash balance plan, interest shall be credited in accordance with KRS 16.583 and 61.597.

- (e) The amounts of interest credited to a member's account under this subsection shall be transferred from the retirement allowance account.
- (4) (a) Upon the retirement of a member who began participating in the system prior to January 1, 2014, his accumulated account balance shall be transferred from the members' account to the retirement allowance account.
- (b) Upon the retirement of a member who began participating in the system on or after January 1, 2014, ~~or who elects to participate in the 401(a) money purchase plan~~, who elects to annuitize his or her accumulated account balance ~~in the hybrid cash balance plan or 401(a) money purchase plan~~ as prescribed by **subsection (7)(a) or (b) of Section 2 of this Act or subsection (7)(a) or (b) of Section 4 of this Act** ~~[KRS 16.583(7)(a) or (b), 61.5956(6)(a) or (b), or 61.597(7)(a) or (b)]~~, the member's accumulated account balance shall be transferred to the retirement allowance account.

➔Section 28. KRS 78.650 is amended to read as follows:

The retirement allowance account shall be the account in which shall be accumulated all employer contributions and amounts transferred from the members' account, and to which all income from the invested assets of the system shall be credited. From this account shall be paid the expenses of the system and the board in administration of the system, retirement allowances, and any other benefits payable after a member's retirement and from this account shall be transferred to the members' account:

- (1) The employer pay credit added monthly to each member's individual accounts as provided by **Sections 2 and 4 of this Act** ~~[KRS 16.583 and 61.597;~~
- ~~(2) The employer contribution for the 401(a) money purchase plan as provided by KRS 61.5956]; and~~
- ~~(2)(3)~~ The interest credited annually to ~~each~~ a member's individual account as provided by KRS 78.510 to 78.852.

➔Section 29. KRS 78.782 (Effective April 1, 2021) is amended to read as follows:

- (1) The County Employees Retirement System shall be administered by the board of trustees composed of nine (9) members, who shall be selected as follows:
  - (a) Three (3) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System, of which:
    - 1. Two (2) shall have a majority of his or her service credit earned in the County Employees Retirement System in a nonhazardous position; and
    - 2. One (1) shall have a majority of his or her service credit earned in the County Employees Retirement System in a hazardous position;
  - (b) Six (6) trustees appointed by the Governor, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. Of the six (6) trustees appointed by the Governor:
    - 1. One (1) trustee with retirement experience shall be appointed from a list of three (3) applicants submitted by the Kentucky League of Cities;
    - 2. One (1) trustee with investment experience shall be appointed from a list of three (3) applicants submitted by the Kentucky League of Cities;
    - 3. One (1) trustee with retirement experience shall be appointed from a list of three (3) applicants submitted by the Kentucky Association of Counties;
    - 4. One (1) trustee with investment experience shall be appointed from a list of three (3) applicants submitted by the Kentucky Association of Counties;
    - 5. One (1) trustee with retirement experience shall be appointed from a list of three (3) applicants submitted by the Kentucky School Boards Association; and
    - 6. One (1) trustee with investment experience shall be appointed from a list of three (3) applicants submitted by the Kentucky School Boards Association.

Notwithstanding the provisions of KRS 12.070(3), the Governor shall appoint each individual trustee described by subparagraphs 1. to 6. of this paragraph solely from each corresponding individual list required to be submitted by the Kentucky League of Cities, the Kentucky Association of Counties, or the Kentucky School Boards Association as provided by subparagraphs 1. to 6. of this paragraph, and

the Governor shall not be able to reject the list of applicants submitted, request that another list be provided, or use a list different from the one (1) individual list required to be submitted for each specific appointment *or reappointment*;

- (c) For purposes of paragraph (b) of this subsection, a trustee with "investment experience" means an individual who does not have a conflict of interest, as provided by KRS 61.655, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:
  - 1. A portfolio manager acting in a fiduciary capacity;
  - 2. A professional securities analyst or investment consultant;
  - 3. A current or retired employee or principal of a trust institution, investment or finance organization, or endowment fund acting in an investment-related capacity;
  - 4. A chartered financial analyst in good standing as determined by the CFA Institute; or
  - 5. A university professor, teaching investment-related studies; and
- (d) For purposes of paragraph (b) of this subsection, a trustee with "retirement experience" means an individual who does not have a conflict of interest, as provided by KRS 61.655, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:
  - 1. Experience in retirement or pension plan management;
  - 2. A certified public accountant with relevant experience in retirement or pension plan accounting;
  - 3. An actuary with relevant experience in retirement or pension plan consulting;
  - 4. An attorney licensed to practice law in the Commonwealth of Kentucky with relevant experience in retirement or pension plans; or
  - 5. A current or former university professor whose primary area of emphasis is economics or finance.
- (2) The board is hereby granted the powers and privileges of a corporation, including but not limited to the following powers:
  - (a) To sue and be sued in its corporate name;
  - (b) To make bylaws not inconsistent with the law;
  - (c) To conduct the business and promote the purposes for which it was formed;
  - (d) Except as provided in KRS 78.790(6), to contract for investment counseling, auditing, medical, and other professional or technical services as required to carry out the obligations of the board subject to the provisions of KRS Chapters 45, 45A, 56, and 57. Actuarial consulting services shall be provided by a firm hired by the Kentucky Public Pensions Authority;
  - (e) To purchase fiduciary liability insurance;
  - (f) Except as provided in KRS 78.790(6), to acquire, hold, sell, dispose of, pledge, lease, or mortgage, the goods or property necessary to exercise the board's powers and perform the board's duties subject to KRS Chapters 45, 45A, and 56; and
  - (g) The board shall reimburse any trustee, officer, or employee for any legal expense resulting from a civil action arising out of the performance of his or her official duties. The hourly rate of reimbursement for any contract for legal services under this paragraph shall not exceed the maximum hourly rate provided in the Legal Services Duties and Maximum Rate Schedule promulgated by the Government Contract Review Committee established pursuant to KRS 45A.705, unless a higher rate is specifically approved by the secretary of the Finance and Administration Cabinet or his or her designee.
- (3) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his or her successor is duly qualified except as otherwise provided in this section. An elected or appointed trustee shall not serve more than three (3) consecutive four (4) year terms. An elected or appointed trustee who has served three (3) consecutive terms may be elected or appointed again after an absence of four (4) years from the board.

- (4) (a) The trustees selected by the membership of the system shall be elected by ballot. For each trustee to be elected, the board may nominate, not less than six (6) months before a term of office of a trustee is due to expire, three (3) constitutionally eligible individuals.
- (b) Individuals may be nominated by the system members by presenting to the executive director, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, last four (4) digits of the Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the system members.
- (c) Within four (4) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the executive director shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provision shall also be made for write-in votes.
- (d) Except as provided by paragraph (j) of this subsection, the ballots shall be distributed to the eligible voters by mail to their last known residence address.
- (e) The ballots shall be addressed to the County Employees Retirement System in care of a predetermined box number at a United States Post Office or submitted electronically as provided by paragraph (j) of this subsection. Access to this post office box shall be limited to the board's contracted firm. The individual receiving a plurality of votes shall be declared elected.
- (f) The eligible voter shall cast his or her ballot by selecting the candidate of his or her choice. He or she shall sign and mail the ballot or submit the electronic ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date, or date of submission in the case of electronic ballots, shall be provided on the ballot.
- (g) The board's contracted firm shall report in writing the outcome to the chair of the board of trustees. Costs of an election shall be payable from the funds of the system.
- (h) For purposes of this subsection, an eligible voter shall be a person who was a member of the system on December 31 of the year preceding the election year.
- (i) Each individual who submits a request to be nominated by the board under paragraph (a) of this subsection and each individual who is nominated by the membership under paragraph (b) of this subsection shall:
1. Complete an application developed by the system which shall include but not be limited to a disclosure of any prior felonies and any conflicts of interest that would hinder the individual's ability to serve on the board;
  2. Submit a resume detailing the individual's education and employment history and a cover letter detailing the member's qualifications for serving as trustee to the board; and
  3. Authorize the system to have a criminal background check performed. The criminal background check shall be performed by the Department of Kentucky State Police.
- (j) In lieu of the ballots mailed to members and retired members as provided by this subsection, the systems may by promulgation of administrative regulation pursuant to KRS Chapter 13A conduct trustee elections using electronic ballots, except that the systems shall mail a paper ballot upon request of any eligible voter.
- (5) (a) Any vacancy which may occur in an appointed position *during a term of office* shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position *during a term of office* shall be filled by appointment by a majority vote of the remaining elected trustees; however, any vacancy shall be filled only for the duration of the unexpired term. In the event of a vacancy of an elected trustee *during a term of office*, the system shall notify members of the vacancy and the opportunity to be considered for the vacant position. Any vacancy shall be filled within ninety (90) days of the position becoming vacant.
- (b) *Any appointments or reappointments to an appointed position on the board shall be made at least thirty (30) days prior to an appointed member's term of office ending. The Governor's Office shall, with each appointment or reappointment, request lists to be submitted and base selections on those lists solely under the procedures and requirements provided by subsection (1)(b) of this section.*

- (6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on the board and, if a trustee holds more than one (1) position as trustee on the board, he or she shall resign a position.
- (b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
- (c) A current or former employee of the County Employees Retirement System, Kentucky Retirement Systems, or the Kentucky Public Pensions Authority shall not be eligible to serve as a member of the board.
- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of eighty dollars (\$80) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.
- (8) (a) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chair or the **chief executive officer** ~~executive director~~.
- (b) The board shall elect a chair and a vice chair. The chair shall not serve more than four (4) consecutive years as chair or vice chair of the board. The vice chair shall not serve more than four (4) consecutive years as chair or vice chair of the board. A trustee who has served four (4) consecutive years as chair or vice chair of the board may be elected chair or vice chair of the board after an absence of two (2) years from the positions.
- (c) A majority of the trustees shall constitute a quorum, and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9) (a) The board of trustees shall appoint or contract for the services of a chief executive officer **and general counsel** and fix the compensation and other terms of employment for **these positions** ~~this position~~ without limitation of the provisions of KRS Chapters 18A and 45A and KRS 64.640. The chief executive officer shall serve as the legislative ~~legal~~ and executive adviser to the board. **The general counsel shall serve as legal adviser to the board. The chief executive officer and general counsel** ~~and~~ shall work with the executive director of the Kentucky Public Pensions Authority to carry out the provisions of KRS 78.510 to 78.852. The executive director of the Kentucky Public Pensions Authority shall be the chief administrative officer of the board.
- (b) The board shall require the chief executive officer **and may require the general counsel** to execute bonds for the faithful performance of his or her duties notwithstanding the limitations of KRS Chapter 62.
- (c) The board shall have a system of accounting established by the Kentucky Public Pensions Authority.
- (d) The board shall do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 78.510 to 78.852, necessary or proper in order to carry out the provisions of KRS 78.510 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 78.510 to 78.852 conform with federal statute or regulation and meet the qualification requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance. Provisions of KRS 78.510 to 78.852 which conflict with federal statute or regulation or qualification under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance shall not be available. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation and to meet the qualification requirements under 26 U.S.C. sec. 401(a), including an administrative regulation to comply with 26 U.S.C. sec. 401(a)(9).
- (e) Notwithstanding any other provision of statute to the contrary, including but not limited to any provision of KRS Chapter 12, the Governor shall have no authority to change any provision of KRS 78.510 to 78.852 by executive order or action, including but not limited to reorganizing, replacing, amending, or abolishing the membership of the County Employees Retirement System board of trustees.
- (10) The chief executive officer **and general counsel** of the board shall serve during its will and pleasure. Notwithstanding any statute to the contrary, the chief executive officer shall not be considered a legislative agent under KRS 6.611.

- (11) The Attorney General, or an assistant designated by him or her, may attend each meeting of the board and may receive the agenda, board minutes, and other information distributed to trustees of the board upon request. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.
- (12) (a) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. Except as provided by paragraph (b) of this subsection, the board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his or her discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the offices of the County Employees Retirement System and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent electronically to the Legislative Research Commission no later than ten (10) days after receipt by the board.
- (b) At least once every five (5) years, the Auditor of Public Accounts shall perform the audit described by this subsection, and the system shall reimburse the Auditor of Public Accounts for all costs of the audit. The Auditor of Public Accounts shall determine which fiscal year during the five (5) year period the audit prescribed by this paragraph will be completed.
- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account, ***including any administrative expenses for the Kentucky Public Pensions Authority that are assigned to the County Employees Retirement System by KRS 61.505. The board shall submit any administrative expenses that are specific to the County Employees Retirement System that are not otherwise covered by subsection (11)(a) of Section 76 of this Act.***
- (14) Except as provided under subsection (16) of this section or KRS 61.665, any person adversely affected by a decision of the board involving KRS 78.510 to 78.852 may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.
- (15) (a) A trustee shall discharge his or her duties as a trustee, including his or her duties as a member of a committee:
1. In good faith;
  2. On an informed basis; and
  3. In a manner he or she honestly believes to be in the best interest of the County Employees Retirement System.
- (b) A trustee discharges his or her duties on an informed basis if, when he or she makes an inquiry into the business and affairs of the system or into a particular action to be taken or decision to be made, he or she exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
- (c) In discharging his or her duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
1. One (1) or more officers or employees of the system or authority whom the trustee honestly believes to be reliable and competent in the matters presented;
  2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
  3. A committee of the board of trustees of which he or she is not a member if the trustee honestly believes the committee merits confidence.
- (d) A trustee shall not be considered as acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
- (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:

1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
  2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
- (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraph (e)1. and 2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the system.
- (g) In discharging his or her administrative duties under this section, a trustee shall strive to administer the system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky and shall take all actions available under the law to contain costs for the trusts, including costs for participating employers, members, and retirees.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, the affected member, retired member, or recipient may request a hearing to be held in accordance with KRS Chapter 13B. The board may establish an appeals committee whose members shall be appointed by the chair and who shall have authority to act upon the recommendations and reports of the hearing officer on behalf of the board. The member, retired member, recipient, or employer aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B. The board may establish a joint administrative appeals committee with the Kentucky Retirement Systems and may also establish a joint disability appeals committee with the Kentucky Retirement Systems.
- (17) The board shall establish a formal trustee education program for all trustees of the board. The program shall include but not be limited to the following:
- (a) A required orientation program for all new trustees elected or appointed to the board. The orientation program shall include training on:
    1. Benefits and benefits administration;
    2. Investment concepts, policies, and current composition and administration of system investments;
    3. Laws, bylaws, and administrative regulations pertaining to the system and to fiduciaries; and
    4. Actuarial and financial concepts pertaining to the system.

If a trustee fails to complete the orientation program within one (1) year from the beginning of his or her first term on the board, the system shall withhold payment of the per diem and travel expenses due to the board member under this section until the trustee has completed the orientation program;
  - (b) Annual required training for board members on the administration, benefits, financing, and investing of the system. If a trustee fails to complete the annual required training during the calendar or fiscal year, the retirement system shall withhold payment of the per diem and travel expenses due to the board member under this section until the board member has met the annual training requirements; and
  - (c) The system shall incorporate by reference in an administrative regulation, pursuant to KRS 13A.2251, the trustee education program.
- (18) In order to improve public transparency regarding the administration of the system, the board of trustees shall adopt a best practices model by posting the following information to the Kentucky Public Pensions Authority's Web site and shall make available to the public:
- (a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the Kentucky Public Pensions Authority's Web site at least seventy-two (72) hours in advance of the board or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;
  - (b) The Comprehensive Annual Financial Report with the information as follows:
    1. A general overview and update on the system by the executive director;
    2. A listing of the board of trustees;



3. A listing of key staff;
  4. An organizational chart;
  5. Financial information, including a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;
  6. Investment information, including a general overview, a list of the system's professional consultants, a total net of fees return on system investments over a historical period, an investment summary, contracted investment management expenses, transaction commissions, and a schedule of investments;
  7. The annual actuarial valuation report on the pension benefit and the medical insurance benefit; and
  8. A general statistical section, including information on contributions, benefit payouts, and retirement system demographic data;
- (c) All external audits;
- (d) All board minutes or other materials that require adoption or ratification by the board of trustees. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification of the board;
- (e) All bylaws, policies, or procedures adopted or ratified by the board of trustees;
- (f) The system's summary plan description;
- (g) A document containing an unofficial copy of the statutes governing the system;
- (h) A listing of the members of the board of trustees and membership on each committee established by the board, including any investment committees;
- (i) All investment holdings in aggregate, fees, and commissions for each fund administered by the board, which shall be updated on a quarterly basis for fiscal years beginning on or after July 1, 2021. The system shall request from all managers, partnerships, and any other available sources all information regarding fees and commissions and shall, based on the requested information received:
1. Disclose the dollar value of fees and commissions paid to each individual manager or partnership;
  2. Disclose the dollar value of any profit sharing, carried interest, or any other partnership incentive arrangements, partnership agreements, or any other partnership expenses received by or paid to each manager or partnership; and
  3. As applicable, report each fee or commission by manager or partnership consistent with standards established by the Institutional Limited Partners Association (ILPA).
- In addition to the requirements of this paragraph, the system shall also disclose the name and address of all individual underlying managers or partners in any fund of funds in which system assets are invested;
- (j) An update of net of fees investment returns, asset allocations, and the performance of the funds against benchmarks adopted by the board for each fund, for each asset class administered by the board, and for each manager. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2021;
- (k) A searchable database of the system's expenditures and a listing of each individual employed by the system along with the employee's salary or wages. In lieu of posting the information required by this paragraph to the Kentucky Public Pensions Authority's Web site, the system may provide the information through a Web site established by the executive branch to inform the public about public employee salaries and wages;
- (l) All contracts or offering documents for services, goods, or property purchased or utilized by the system for contracts or offering documents entered into on or after July 1, 2021; and
- (m) Information regarding the system's financial and actuarial condition that is easily understood by the members, retired members, and the public.

(19) Notwithstanding the requirements of subsection (18) of this section, the system shall not be required to furnish information that is protected under KRS 61.661, exempt under KRS 61.878, or that, if disclosed, would compromise the system's ability to competitively invest in real estate or other asset classes, except that no provision of this section or KRS 61.878 shall exclude disclosure and review of all contracts, including investment contracts, by the board, the Auditor of Public Accounts, and the Government Contract Review Committee established pursuant to KRS 45A.705 or the disclosure of investment fees and commissions as provided by this section. If any public record contains material which is not excepted under this section, the system shall separate the excepted material by removal, segregation, or redaction, and make the nonexcepted material available for examination.

(20) Notwithstanding any other provision of KRS 78.510 to 78.852 to the contrary, no funds of the County Employees Retirement System, including fees and commissions paid to an investment manager, private fund, or company issuing securities, who manages systems assets, shall be used to pay fees and commissions to placement agents. For purposes of this subsection, "placement agent" means a third-party individual, who is not an employee, or firm, wholly or partially owned by the entity being hired, who solicits investments on behalf of an investment manager, private fund, or company issuing securities.

➔Section 30. KRS 78.790 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) The board shall be the trustee of ~~the several~~ funds **pertaining to the County Employees Retirement System** created by KRS 78.510 to 78.852, and ~~the County Employees Retirement System insurance trust fund as provided by~~ KRS 61.701, and shall have full and exclusive power to invest and reinvest such ~~assets~~~~funds~~ in accordance with federal law.
- (b) 1. The board shall establish an investment committee that shall include members of the board with investment experience, elected members, or other members as determined by the board chair, and may also include nonvoting members who have investment expertise.
2. The investment committee shall have authority to implement the investment policies adopted by the board and act on behalf of the board on all investment-related matters ~~and to acquire, sell, safeguard, monitor, and manage the assets and securities of the several funds~~.
- (c) A trustee, officer, employee, employee of the Kentucky Public Pensions Authority, or other fiduciary shall discharge duties with respect to the system:
1. Solely in the interest of the members and beneficiaries;
  2. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the system;
  3. With the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;
  4. Impartially, taking into account any differing interests of members and beneficiaries;
  5. Incurring any costs that are appropriate and reasonable; and
  6. In accordance with a good-faith interpretation of the law governing the system.
- (d) In addition to the standards of conduct prescribed by paragraph (c) of this subsection:
1. All internal investment staff ~~, including investment staff~~ of the Kentucky Public Pensions Authority, and investment consultants shall adhere to the Code of Ethics and Standards of Professional Conduct, and all board trustees shall adhere to the Code of Conduct for Members of a Pension Scheme Governing Body. All codes cited in this subparagraph are promulgated by the CFA Institute; and
  2. Investment managers shall comply with all applicable provisions of the federal Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder, and shall comply with all other applicable federal securities statutes and related rules and regulations that apply to investment managers.
- (2) **The board, through adopted written policies, shall maintain ownership and control over its assets held in its unitized managed custodial account** ~~All securities acquired under the authority of KRS 78.510 to 78.852 shall be registered in the name County Employees Retirement System or nominee name as provided by KRS 286.3~~

~~225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished pursuant to written policies adopted by the board].~~

- (3) The board, in keeping with its responsibility as the trustee and wherever feasible, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
- (4) The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for the system relative to the acquisition or disposition of property, until such time as all of the property has been acquired or sold, shall be excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction.
- (5) Based upon market value at the time of purchase, the board shall limit the amount of assets managed by any one (1) active or passive investment manager to fifteen percent (15%) of the assets in the pension and insurance funds.
- (6) All contracts for the investment or management of assets of the system shall not be subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the following process to develop and adopt an investment procurement policy with which all prospective contracts for the investment or management of assets of the system shall comply:
  - (a) The board shall consult with the secretary of the Finance and Administration Cabinet or his or her designee to develop an investment procurement policy, which shall be written to meet best practices in investment management procurement;
  - (b) Thirty (30) days prior to adoption, the board shall tender the preliminary investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee for review and comment;
  - (c) Upon receipt of comments from the secretary of the Finance and Administration Cabinet or his or her designee, the board shall choose to adopt or not adopt any recommended changes;
  - (d) Upon adoption, the board shall tender the final investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee;
  - (e) No later than thirty (30) days after receipt of the investment procurement policy, the secretary or his or her designee shall certify whether the board's investment procurement policy meets or does not meet best practices for investment management procurement; and
  - (f) Any amendments to the investment procurement policy shall adhere to the requirements set forth by paragraphs (b) to (e) of this subsection.

➔Section 31. KRS 16.505 is amended to read as follows:

As used in KRS 16.505 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.505 to 16.652;
- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of Kentucky State Police, or its successor;
- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "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 member's account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.505 to 16.652, and any other amounts the member shall have contributed, including interest credited. 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 ~~and~~ ~~[,]~~ 61.515, ~~and~~ ~~78.520~~, as prescribed by **subsection (3)(b) of Section 73 of this Act** ~~[KRS 61.702(2)(b)]~~;

(8) "Creditable compensation":

(a) ~~[Except as provided by paragraph (b) or (c) of this subsection,]~~ Means all salary and wages, 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 16.545(4);

(b) Includes:

1. Lump-sum bonuses, severance pay, or employer-provided payments for purchase of service credit, which 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);
2. Lump-sum payments for creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, or for any creditable compensation paid in anticipation of settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes, which shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer. This subparagraph shall also include lump-sum payments for reinstated wages pursuant to KRS 61.569, which shall be credited to the period during which the wages were earned or should have been paid by the employer;
3. 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; and
4. 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); and

(c) Excludes:

1. ~~[Uniform equipment, or any other expense allowances paid on or after January 1, 2019,]~~ Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board;
2. For employees who begin participating on or after September 1, 2008, lump-sum payments for compensatory time; and
3. Any salary or wages paid to an employee for services as a Kentucky State Police school resource officer as defined by KRS 158.441;

(9) "Final compensation" means:

- (a) For a member who begins participating **before** ~~[prior to]~~ September 1, 2008, ~~[who retires prior to January 1, 2019,]~~ the creditable compensation of a 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 the 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; or
- (b) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, ~~for a member who begins participating prior to September 1, 2008, who retires on or after January 1, 2019,]~~ the creditable compensation of the member during the three (3) complete fiscal years he or she 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. If the member does not have three (3) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least thirty-six (36) months;

- (10) "Final rate of pay" means the actual rate upon which earnings of a member 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 16.545(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 (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;
- (11) "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;
- (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;
- (13) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of 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. For members who began participating in the system prior to January 1, 2014, no disability retirement option shall be less than the same option computed under early retirement;
- (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of Kentucky State Police;
- (15) "Normal retirement date" means:
  - (a) For a member who begins participating before September 1, 2008, the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959; or
  - (b) For a member who begins participating on or after September 1, 2008, the first day of the month following a member's sixtieth birthday;
- (16) "Disability retirement date" means the first day of the month following the last day of paid employment;
- (17) "Dependent child" means a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22). Solely in the case of a member who dies as a direct result of an act in line of duty as defined in this section or who dies as a result of a duty-related injury as defined in KRS 61.621, "dependent child" also means a naturally or legally adopted disabled child of the member, regardless of the child's age, if the child has been determined to be eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability;
- (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.505 to 16.652;
- (19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;
- (20) "Early retirement date" means:
  - (a) For a member who begins participating before September 1, 2008, the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service; or
  - (b) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service credited under KRS 16.543(1) ~~or 61.543(1) or 78.615(1)~~ or another state-administered retirement system;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;

- (23) "Hazardous disability" as used in KRS 16.505 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (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" does 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) "Retirement office" means the Kentucky *Public Pensions Authority* ~~Retirement Systems~~ office building in Frankfort, *unless otherwise designated by the Kentucky Public Pensions Authority*;
- (29) *"Vested" for purposes of determining eligibility for purchasing service credit under Section 52 of this Act means the employee has at least forty-eight (48) months of service if age sixty-five (65) or older or at least sixty (60) months of service if under the age of sixty-five (65). For purposes of this subsection, service shall mean service in the systems administered by the Kentucky Retirement Systems and County Employees Retirement System.* ~~"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 account and considered as accumulated contributions of the individual member;~~
- (30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543 ~~or~~ ~~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;
- (31) "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;
- (32) "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 established by 26 U.S.C. sec. 415;
- (33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543;
- (34) "Month" means a calendar month;
- (35) "Membership date" means the date upon which the member began participating in the system as provided by KRS 16.543;
- (36) "Participant" means a member, as defined by subsection (21) of this section, or a retired member, as defined by subsection (11) of this section;
- (37) "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;

- (38) "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;
- (39) "Accumulated employer credit" means the employer pay credit deposited to the member's account and interest credited on such amounts as provided by KRS 16.583;
- (40) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583, the combined sum of the member's accumulated contributions and the member's accumulated employer pay credit; and
- (41) "Monthly average pay" means the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the deceased member during his or her last twelve (12) months of employment.

➔Section 32. KRS 16.543 is amended to read as follows:

- (1) Employee contributions shall be deducted from the creditable compensation of each member of the retirement system in the active employment of the Department of Kentucky State Police of the Justice and Public Safety Cabinet as an officer as defined in KRS 16.520. After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 16.545(4). Service credit shall be allowed for each month such member receives creditable compensation for an average of one hundred (100) hours or more of work per month. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he or she receives creditable compensation for one hundred (100) hours of work.
- (2) Contributions shall not be made and no service will be earned while on authorized leave except:
  - (a) A member shall be entitled to service credit in accordance with *Section 52 of this Act* ~~[KRS 61.555]~~; and
  - (b) A member on educational leave, approved by the Personnel Cabinet, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions or such contributions shall be picked up in accordance with KRS 16.545 and his or her employer shall pay employer contributions in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.
- (3) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 16.560.

➔Section 33. KRS 16.555 is amended to read as follows:

All the assets of the system shall be held and invested in the State Police Retirement Fund and credited, according to the purpose for which they are held, to one (1) of three (3) accounts: the "members' account," the "retirement allowance account," and accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 ~~and [ ] 61.515 [ ] and 78.520 [ ]~~, as prescribed by *subsection (3)(b) of Section 73 of this Act* ~~[KRS 61.702(2)(b)]~~.

➔Section 34. KRS 16.645 is amended to read as follows:

The following subjects shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, as provided for by KRS 61.535;
- (2) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (3) Actuarial bases, as provided for by KRS 61.670;
- (4) Duties of the employer, as provided for by KRS 61.675;
- (5) Exemption of benefits of the system for taxation and qualified domestic relations orders, as provided for by KRS 61.690;
- (6) Retirement allowance increase, as provided for by KRS 61.691;
- (7) Calculation of retirement allowance, as provided for by KRS 61.599;

- (8) Beneficiaries to be designated by member, change, rights, as provided for by KRS 61.542;
- (9) Year of service credit, as provided for by KRS 61.545;
- (10) Refund of contributions, death after retirement, as provided by KRS 61.630;
- (11) Custodian of fund, payments made, when, as provided for by KRS 61.660;
- (12) Credit for service prior to membership date, as provided for by KRS 61.526;
- (13) Member's account, confidential, as provided for by KRS 61.661;
- (14) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (15) Correction of errors in records, as provided for by KRS 61.685;
- (16) Maximum disability benefit, as provided for by KRS 61.607;
- (17) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (18) Employer contributions, as provided for by KRS 61.565;
- (19) Reinstatement of lost service credit, purchase of service credit, *service for Armed Forces*, interest paid, and delayed contribution and installment payments, as provided for by KRS 61.552;
- (20) Reciprocal arrangement between systems, as provided by KRS 61.680;
- (21) Refund of contributions, conditions, as provided by KRS 61.625;
- (22) Hospital and medical insurance plan, as provided by KRS 61.702;
- (23) Death benefit, as provided by KRS 61.705;
- (24) Disability retirement allowance, reduction, and discontinuance, as provided by KRS 61.615;
- (25) ~~Service credit, Armed Forces, as provided by KRS 61.555;~~
- ~~(26)~~ Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- ~~(26)~~~~(27)~~ Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;
- ~~(27)~~~~(28)~~ Retirement of persons in hazardous positions, as provided for by KRS 61.592;
- ~~(28)~~~~(29)~~ Direct deposit of recipient's retirement allowance as provided in KRS 61.623;
- ~~(30)~~ ~~Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;~~
- ~~(29)~~~~(31)~~ Payment of small amounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703;
- ~~(30)~~~~(32)~~ Suspension of retirement payments on reemployment, reinstatement, recomputation of allowance, waiver of provisions in certain instances, reemployment in a different position, as provided for by KRS 61.637;
- ~~(31)~~~~(33)~~ Medical examination and financial review after disability retirement, staff review, as provided in KRS 61.610; and
- ~~(32)~~~~(34)~~ Employer payment of increases in creditable compensation and adjustments to creditable compensation during the last five (5) years of employment as provided by KRS 61.598.

➔Section 35. KRS 16.576 is amended to read as follows:

- (1) (a) Any member who begins participating before September 1, 2008, who has at least five (5) years of service credit may retire at his normal retirement date, or subsequent thereto, upon written notification to the system, setting forth at what date the retirement is to become effective, if the effective date shall be after his last day of service and subsequent to the filing of the notice at the retirement office.
- (b) Any member who begins participating on or after September 1, 2008, who has at least five (5) years of service credited under KRS 16.543(1), 61.543(1), ~~for 78.615(1)~~ or another state-administered retirement system may retire at his or her normal retirement date, or subsequent thereto, upon written notification to the system, setting forth what date the retirement is to become effective, if the effective date shall be after his or her last day of service and subsequent to the filing of the notice at the retirement office.



- (2) The member shall have the right to elect to have his retirement allowance payable under subsection (3), (4), or (6) of this section or any one (1) of the plans set forth in KRS 61.635.
- (3) (a) Effective August 1, 1990, a member of the Kentucky State Police Retirement System may elect to receive an annual retirement allowance, payable monthly during his lifetime, equal to two and five-tenths percent (2.5%) of final compensation for each year of service credit. ~~Effective August 1, 1988, a member of the County Employees Retirement System covered by this section may elect to receive an annual retirement allowance, payable monthly during his lifetime, equal to two and five-tenths percent (2.5%) of final compensation for each year of service credit.~~ Effective August 1, 1988, a member of the Kentucky Employees Retirement System covered by this section may elect to receive an annual retirement allowance, payable monthly during his lifetime, equal to two and forty-nine hundredths percent (2.49%) of final compensation for each year of service credit. The annual retirement allowance for a member covered by this section shall not exceed the maximum benefit as set forth in the Internal Revenue Code.
- (b) A member of the State Police Retirement System ~~or~~ a member of the Kentucky Employees Retirement System covered by this section, ~~for a member of the County Employees Retirement System covered by this section,~~ whose participation begins on or after September 1, 2008, but prior to January 1, 2014, shall receive an annual retirement allowance, payable monthly during his or her lifetime, equal to:
1. One and three-tenths percent (1.3%) of final compensation for each year of service credit if the employee has earned ten (10) or less years of service at retirement;
  2. One and one-half percent (1.5%) of final compensation for each year of service credit if the employee has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
  3. Two and one-quarter percent (2.25%) of final compensation for each year of service credit if the employee has earned greater than twenty (20) but less than twenty-five (25) years of service at retirement; or
  4. Two and one-half percent (2.5%) of final compensation for each year of service credit if the employee has earned twenty-five (25) or more years of service at retirement.
- (4) The member may elect to receive a monthly retirement allowance payable for ten (10) years certain, actuarially equivalent to the retirement allowance payable under subsection (3) of this section. If the member should become deceased prior to the expiration of ten (10) years, his beneficiary, unless the beneficiary is the member's estate, shall receive the remaining payments monthly for the duration of the ten (10) years. If the member's estate is the beneficiary, the member's estate shall receive a lump-sum payment which shall be the actuarial equivalent to the remaining payments. The provisions of KRS 61.702 notwithstanding, the member who retired on June 17, 1978, or thereafter, and his spouse and eligible dependents shall continue to receive the insurance benefits to which they are entitled pursuant to KRS 61.702 after the expiration of ten (10) years. Effective with any insurance contract procured, or self-insurance plan instituted, after July 15, 1990, a member who retired prior to June 17, 1978, and his spouse and eligible dependents shall receive insurance benefits pursuant to KRS 61.702 upon payment by the member or beneficiary of the entire cost of the required insurance premium.
- (5) Notwithstanding any other provisions of this section, upon written notification to the system, a member shall have the option to defer his election to receive his retirement allowance. The retirement allowance payable under a deferred option shall be increased to reflect the deferred receipt of benefits.
- (6) In lieu of any other benefits due under KRS 16.505 to 16.652, a member who begins participating before September 1, 2008, who has attained age fifty-five (55) and who has attained at least one (1) month of service credit but no more than fifty-nine (59) months of service credit may elect to receive an annual retirement allowance, payable monthly or less frequently as determined by the board, which shall be determined by multiplying his accumulated contributions by two (2) and converting this amount to an annual retirement allowance based on an annuity rate adopted by the board which would pay the actuarial equivalent of twice his accumulated contributions over the lifetime of the retired member.
- (7) Subsections (1) to (6) of this section shall not apply to members who begin participating in the system on or after January 1, 2014. Members who begin participating in the system on or after January 1, 2014, shall receive the retirement benefit calculation prescribed by KRS 16.583.

➔Section 36. KRS 16.577 is amended to read as follows:

- (1) Upon retirement at early retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date, with years of service and final compensation being determined as of the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced at an amount determined by the board's actuary to reflect the earlier commencement of benefits.
- (2) For a member who begins participating before September 1, 2008, there shall be no reduction in the retirement allowance if the member has twenty (20) or more years of service credit, at least fifteen (15) of which are current service.
- (3) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, there shall be no reduction in the retirement allowance if the member has twenty-five (25) or more years of service credited under KRS 16.543(1), 61.543(1), ~~for 78.615(1)~~ or another state-administered retirement system.
- (4) Subsections (1) to (3) of this section shall not apply to members who begin participating in the system on or after January 1, 2014. Members who begin participating in the system on or after January 1, 2014, shall receive the retirement benefit calculation prescribed by KRS 16.583.

➔Section 37. KRS 16.582 is amended to read as follows:

- (1)
  - (a) Total and permanent disability means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent.
  - (b) Hazardous disability means a disability which results in the member's total incapacity to continue as a regular full-time officer or as an employee in a hazardous position, as defined in KRS 61.592, but which does not result in the member's total and permanent incapacity to engage in other occupations for remuneration or profit.
  - (c) In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered.
  - (d) If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability.
- (2) Any person may qualify to retire on disability, subject to the following:
  - (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;
  - (b) For a person whose membership date is prior to August 1, 2004, the person shall not be eligible for an unreduced retirement allowance;
  - (c) The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment, as defined in KRS 16.505, as a regular full-time officer or in a regular full-time hazardous position under KRS 61.592;
  - (d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and
  - (e) A person's disability application based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment as a regular full-time officer or in a regular full-time hazardous position.
- (3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
  - (a) The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;

- (b) The incapacity is deemed to be permanent; and
- (c) The incapacity does not result directly or indirectly from:
  1. Injury intentionally self-inflicted while sane or insane; or
  2. Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:
    - a. The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or
    - b. The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems *or the County Employees Retirement System*.

For purposes of this subparagraph, "reemployment" shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems *or the County Employees Retirement System* with no loss of service credit.

- (4) (a)
  1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a position as regular full-time officer or a hazardous position.
  2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
- (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.
- (c) The person's physical exertion requirements shall be determined based on the following standards:
  1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.
  2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.
  3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.
  4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.

5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.
- (5) (a) The disability retirement allowance shall be determined as provided in KRS 16.576, except if the member's total service credit on his last day of paid employment in a regular full-time position is less than twenty (20) years, service shall be added beginning with his last date of paid employment and continuing to his fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his last day of paid employment, and the maximum service credit for calculating his retirement allowance, including his total service and service added under this section, shall not exceed twenty (20) years.
- (b) For a member whose participation begins on or after August 1, 2004, but prior to January 1, 2014, the disability retirement allowance shall be the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability.
- (c) For a member who begins participating on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583, the disability retirement allowance shall be the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his or her normal retirement date under KRS 16.583.
- (6) If the member receives a satisfactory determination of total and permanent disability or hazardous disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty, the member's retirement allowance shall be calculated as follows:
- (a) For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and
- (b) For each dependent child of the member on his disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system.
- (7) No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is age fifty-five (55) or older.
- (8) If a regular full-time officer or hazardous position member has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the system's medical examiner.
- (9) For a member of the State Police Retirement System, in lieu of the allowance provided in subsection (5) or (6) of this section, the member may be retained on the regular payroll and receive the compensation authorized by KRS 16.165, if he is qualified.
- ➔Section 38. KRS 16.583 is repealed, reenacted, and amended to read as follows:
- (1) A member of the State Police Retirement System, a member of the Kentucky Employees Retirement System in a hazardous duty position covered by this section ~~or a member of the County Employees Retirement System in a hazardous duty position covered by this section~~, whose participation begins on or after January 1, 2014, **or a member making an election pursuant to KRS 61.5955**, shall receive the retirement benefits provided by this section in lieu of the retirement benefits provided under KRS 16.576 and 16.577. The retirement benefit provided by this section shall be known as the hybrid cash balance plan and shall operate as another benefit tier within the State Police Retirement System **and** ~~the Kentucky Employees Retirement System and the County Employees Retirement System~~.
- (2) The hybrid cash balance plan shall provide a retirement benefit based upon the member's accumulated account balance, which shall include:

- (a) Contributions made by the member as provided by KRS 16.505 to 16.652 ~~and~~ 61.510 to 61.705, ~~and 78.510 to 78.852~~, except for employee contributions prescribed by *subsection (3)(b) of Section 73 of this Act* ~~[KRS 61.702(2)(b)]~~;
  - (b) An employer pay credit of seven and one-half percent (7.5%) of the creditable compensation earned by the employee for each month the employee is contributing to the hybrid cash balance plan provided by this section; and
  - (c) Interest credits added annually to the member's accumulated account balance as provided by this section.
- (3)
- (a) Member contributions and employer pay credits as provided by subsection (2)(a) and (b) of this section shall be credited to the member's account monthly as contributions are reported and posted to the system in accordance with KRS 61.675 ~~and 78.625~~.
  - (b) Interest credits, as provided by subsection (2)(c) of this section, shall be credited to the member's account annually on June 30 of each fiscal year, as determined by subsection (4) of this section.
- (4)
- (a) On June 30 of each fiscal year, the system shall determine if the member contributed to the hybrid cash balance plan during the fiscal year.
  - (b) If the member contributed to the hybrid cash balance plan during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to:
    - 1. Four percent (4%); plus
    - 2. Seventy-five percent (75%) of the system's geometric average net investment return in excess of a four percent (4%) rate of return.
  - (c) If the member did not contribute to the hybrid cash balance plan during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by four percent (4%).
  - (d) For purposes of this subsection, "system's geometric average net investment return":
    - 1. Means the annual average geometric investment return, net of administrative and investment fees and expenses, over the last five (5) fiscal years as of the date the interest is credited to the member's account; and
    - 2. Shall be expressed as a percentage and based upon the system in which the member has an account.
  - (e) No employer pay credits or interest credits shall be provided to a member who has taken a refund of contributions as provided by KRS 61.625 or who has retired and annuitized his or her accumulated account balance as prescribed by this section.
- (5)
- (a) Upon termination of employment, a member who has less than five (5) years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall forfeit the accumulated employer credit, and shall only receive a refund of his or her accumulated contributions.
  - (b) Upon termination of employment, a member who has five (5) or more years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall receive a full refund of his or her accumulated account balance.
- (6) A member participating in the hybrid cash balance plan provided by this section may retire:
- (a) At his or her normal retirement date, provided he or she has earned five (5) or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system; or
  - (b) At any age, provided he or she has earned twenty-five (25) or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system.
- (7) A member eligible to retire under subsection (6) of this section may elect to:

- (a) Receive a monthly retirement allowance payable for life by having his or her accumulated account balance annuitized by the retirement systems in accordance with the actuarial assumptions and actuarial methods adopted by the board and in effect on the member's retirement date;
  - (b) Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options set forth in KRS 61.635, except for the option provided by KRS 61.635(11); or
  - (c) Take a refund of his or her account balance as provided by KRS 61.625.
- (8) The provisions of this section shall not apply to members who began participating in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System prior to January 1, 2014, *except for those members who make an election pursuant to KRS 61.5955*.

➔Section 39. KRS 18A.205 (Effective April 1, 2021) 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 public 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 public employees, except that the procuring is permissive.
- (2) (a) As used in KRS 18A.205 to 18A.215, "public employee" shall mean a person who:
- 1. Is regularly employed by a public employer; and
  - 2. Is also:
    - a. A contributing member of any one (1) of the state-administered retirement systems;
    - 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 or County Employees Retirement System pursuant to *subsection (4) of Section 16 of this Act or subsection (17) of Section 65 of this Act* ~~[KRS 61.637(17)]~~;
    - c. An individual participating in an optional retirement plan authorized by KRS 161.567; or
    - d. An individual eligible to participate in a retirement plan established by an employer who ceases participating in the Kentucky Employees Retirement System pursuant to KRS 61.522 whose employees participated in the life insurance plans administered by the Personnel Cabinet prior to the employer's effective cessation date in the Kentucky Employees Retirement System.
  - (b) Notwithstanding the definition of "public employee" in this subsection, any federally funded time-limited employee may receive insurance coverage.
- (3) As used in this section and KRS 18A.210, "public employer" shall mean the following employers, if the employer has opted to participate in the state-sponsored group life insurance program:
- (a) Any department, office, board, agency, commission, authority, or branch of state government;
  - (b) A public postsecondary educational institution;
  - (c) Any department, office, board, agency, commission, authority, or branch of a city, urban-county, charter county, county, unified local government, or consolidated local government; or
  - (d) Any certified or classified employee or elected member of a local board of education.
- (4) As used in KRS 18A.205 to 18A.225, "premiums" shall mean premiums to be paid on any type of insurance authorized under KRS 18A.205 to 18A.225.

➔Section 40. KRS 18A.245 is amended to read as follows:

- (1) The authority shall be administered by a board of trustees composed of seven (7) members, who shall be as follows:
- (a) Secretary, Finance and Administration Cabinet, ex officio;

- (b) Secretary of personnel, ex officio;
  - (c) The state controller, ex officio;
  - (d) The State Treasurer, ex officio; and
  - (e) Three (3) at-large members appointed by the Governor, who do not have a conflict of interest as provided by KRS 18A.262, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall be a representative of a nonstate government employer.
- (2) The members of the board appointed by the Governor shall serve for a period of four (4) years and the ex officio members of the board shall serve only for the period of their term of office. Each ex officio member may designate a proxy by written notice to the authority prior to call of order of each meeting, and the proxy shall be entitled to participate as a full voting member.
- (3) Any vacancy which may occur shall be filled in the same manner provided for the selection of the particular member for a full term. Vacancies shall be filled for the unexpired term only.
- (4) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists, and no member shall be subject to removal from office, except upon conviction of a felony, or of a misdemeanor involving moral turpitude.
- (5) Board members who do not otherwise receive a salary or compensation from the State Treasury shall receive a per diem of one hundred dollars (\$100) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards applicable to state employees.
- (6) The board shall meet at least once in each quarter of the year, and may meet in special session upon the call of the chairman. It shall elect a chairman and a vice chairman. A majority of the members shall constitute a quorum, and all actions taken by the board shall be by affirmative vote of a majority of the members present.
- (7) The authority shall be attached to the Personnel Cabinet for administrative purposes only. The board may take but is not limited to the following actions:
- (a) Appoint such employees as it deems necessary and fix the compensation for all employees of the board, subject to the approval of the secretary. The authority shall be headed by an executive director who shall be appointed by the board of directors of the authority without the limitations imposed by KRS 12.040 and KRS Chapter 18A. The executive director of the authority and employees appointed by the board shall serve at its will and pleasure. All other staff of the authority shall be employed under KRS 18A.005 to 18A.200;
  - (b) Require such employees as it thinks proper to execute bonds for the faithful performance of their duties;
  - (c) Establish a system of accounting;
  - (d) Contract for such services as may be necessary for the operation or administration of deferred compensation plans authorized in KRS 18A.230 to 18A.275, including annual audits;
  - (e) Do all things, take all actions, and adopt plans for participation consistent with federal law and with the provisions of KRS 18A.230 to 18A.275, including but not limited to:
    - 1. Amending the board's plan for the Kentucky Public Employees 401(k) Deferred Compensation Plan or the Kentucky Employees 457 Deferred Compensation Plan, or both such plans, to adopt, maintain, and terminate a deemed IRA program under Internal Revenue Code Section 408;
    - 2. Amending the board's plan for the Kentucky Public Employees 401(k) Deferred Compensation Plan to adopt, maintain, and terminate a qualified Roth contribution program under Internal Revenue Code Section 402A; *and*
    - 3. Adopting, maintaining, and terminating an Internal Revenue Code Section 403(b) plan for qualified employees; ~~and~~
    - 4. ~~Upon the request of the Kentucky Retirement Systems board of trustees, establishing an investment program for the 401(a) defined contribution plan as provided by KRS 61.5956; and~~
  - (f) Contract with persons or companies duly licensed by the state of Kentucky and applicable federal regulatory agencies, at the cost of the trust fund, to provide investment advice to participants in the plans, with respect to their selection of permitted investments in the plans.

- (8) The Attorney General, or an assistant designated by him, may act as legal adviser and attorney for the board. The board may also appoint legal counsel in accordance with KRS Chapter 12.
- (9) The board shall prepare an annual financial report showing all receipts, disbursements, assets, and liabilities and shall submit a copy to the Governor and the Legislative Research Commission. All board meetings and records shall be open for inspection by the public.

➔Section 41. KRS 21.372 is amended to read as follows:

- (1) For purposes of this section:
- (a) "Bona fide promotion or career advancement":
1. Means a professional advancement in substantially the same line of work held by the member in the four (4) years immediately prior to the final sixty (60) months preceding retirement or a change in employment position based on the training, skills, education, or expertise of the member that imposes a significant change in job duties and responsibilities to clearly justify the increased compensation to the member, including any circumstance when a member is elected or appointed to another court within the Court of Justice; and
  2. Does not include any circumstance where a judge or justice participating in the Judicial Retirement Plan takes a position of employment with an employer participating in any of the other state-administered retirement systems; and
- (b) "Year" has the same meaning as in KRS 21.345(3).
- (2) (a) For members retiring on or after January 1, 2018, the plan shall identify any consecutive year utilized in determining the member's final compensation in which the member's compensation increased at a rate of ten percent (10%) or more over the member's compensation in the immediately preceding year.
- (b) Except as limited or excluded by subsections (3) and (4) of this section, any amount of increase in compensation for a year identified under paragraph (a) of this subsection that exceeds ten percent (10%) more than the member's compensation from the immediately preceding year shall not be used in the calculation of the member's final compensation for the purposes of determining the member's monthly pension benefit under KRS 21.400.
- (c) If the member's final compensation is reduced for the purposes of determining the member's pension benefit under KRS 21.400 as provided by paragraph (b) of this subsection, the retirement system shall, notwithstanding KRS 21.460 and as applicable, refund the member contributions attributable to the reduction in creditable compensation.
- (3) In order to ensure the prospective application of the potential reduction in pension benefits as provided in subsection (2) of this section, only the compensation earned by the retiring member on or after July 1, 2017, shall be subject to reduction under subsection (2) of this section. Compensation earned by the retiring member prior to July 1, 2017, shall not be subject to reduction under subsection (2) of this section.
- (4) Subsections (2) and (3) of this section shall not apply to increases that are the direct result of a bona fide promotion or career advancement or to compensation used in accordance with KRS 61.680(7) in which the member does not have sixty (60) months of service in the Judicial Retirement Plan.
- (5) The board of trustees shall determine whether increases in compensation during the final sixty (60) months preceding retirement constitute a bona fide promotion or career advancement and may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section. All state-administered retirement systems shall cooperate to implement this section.
- (6) This section shall not apply to:
- (a) ~~employees participating in the hybrid cash balance plan~~ as provided by KRS 21.402 ~~or 61.597;~~
- ~~or~~
- (b) ~~Service earned in the 401(a) money purchase plan as provided by KRS 61.5956].~~

➔SECTION 42. KRS 21.374 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

***Notwithstanding KRS 6.500 to 6.577 and 21.345 to 21.580:***

- (1) ***Subject to the provisions of this section, any member who began participating in the Legislators' Retirement Plan or the Judicial Retirement Plan on or after September 1, 2008, but prior to January 1, 2014, may in***



*lieu of the benefits he or she is currently eligible to receive under the plans, elect to receive the benefits and rights provided to members who began participating in the Legislators' Retirement Plan or the Judicial Retirement Plan on or after January 1, 2014, including participating in the hybrid cash balance plan created pursuant to KRS 21.402;*

- (2) *The election provided by this section shall be made in writing and on a form prescribed by the Judicial Form Retirement System board;*
- (3) *For each member who makes an election provided by this section:*
  - (a) *Any service credit the member has accrued prior to January 1, 2014, shall be considered as service credit earned on or after January 1, 2014, for purposes of determining benefits under KRS 6.500 to 6.577 and 21.345 to 21.580;*
  - (b) *On the member's effective election date, the value of the member's accumulated contributions, less any interest, shall be deposited into the member's hybrid cash balance account as provided by KRS 21.402 and considered part of the member's accumulated account balance;*
  - (c) *On the member's effective election date, an employer pay credit as provided by KRS 21.402 shall be added to the member's accumulated account balance for each month the member contributed to the Legislators' Retirement Plan or the Judicial Retirement Plan prior to his or her effective election date; and*
  - (d) *Interest credits as provided by KRS 21.402 shall only be applied for periods occurring on or after the member's effective election date;*
- (4) *Before accepting an election provided by this section, the Judicial Form Retirement System board shall provide the member with information detailing the potential results of the member's election;*
- (5) *An election made pursuant to this section shall be irrevocable; and*
- (6)
  - (a) *A member of the Legislators' Retirement Plan or the Judicial Retirement Plan shall not be eligible to make an election prescribed by this section until the Judicial Form Retirement System receives a favorable private letter ruling from the Internal Revenue Service regarding this section.*
  - (b) *If the Internal Revenue Service denies the request for a private letter ruling as provided by paragraph (a) of this subsection, this section shall be void.*
  - (c) *The Judicial Form Retirement System may promulgate administrative regulations under KRS Chapter 13A in order to carry out this section.*

➔Section 43. KRS 21.460 is amended to read as follows:

- (1)
  - (a) For members who began participating in the Judicial Retirement Plan prior to January 1, 2014: If any member of the plan ceases, other than by death or by disability retirement under KRS 21.410, to hold an office qualifying him for membership in the plan established by KRS 21.350 to 21.480, without having met the requirements for vesting, he shall be refunded on demand the amount of his accumulated contributions and any service credit he had in the plan shall be nullified.
  - (b) A member who begins participating in the Judicial Retirement Plan on or after January 1, 2014, may, if the member ceases to hold an office qualifying him or her for membership in the plan established by KRS 21.345 to 21.580, elect to take a refund of his or her accumulated account balance subject to the limitations provided by KRS 21.402.
- (2) The member may elect to leave his contributions in the plan, in which event the service credit he had in the plan shall be considered to be service credit for vesting purposes as provided in KRS 21.375 and for service retirement eligibility as provided in KRS 61.680(7), and, in the event he again becomes a member of the Judicial Retirement Plan, shall be counted toward his total service credit in that plan.
- (3) ~~(a)~~ If a person who has been refunded his accumulated contributions or accumulated account balance in accordance with subsection (1) of this section subsequently becomes a member of the Legislators' Retirement Plan, the Kentucky Employees Retirement System, County Employees Retirement System, State Police Retirement System, or Teachers' Retirement System, he may while holding such membership repurchase the service credit he previously had in the Judicial Retirement Plan by repaying to that plan the amount that was refunded to him with interest at six percent (6%) per annum, in which event such service credit shall have operative effect to the same limited extent as provided in subsection

(2) of this section. Service purchased under this subsection on or after January 1, 2014, shall not be used to determine the member's participation date in the Judicial Retirement Plan.

~~[(b) Members or persons participating in the 401(a) money purchase plan as provided by KRS 61.5956 shall not be eligible to purchase service under the provisions of this section.]~~

- (4) If a person who has been refunded his accumulated contribution or accumulated account balance in accordance with subsection (1) of this section thereafter becomes again the holder of an office qualifying him for membership in the Judicial Retirement Plan, he shall not be entitled to credit for his prior period of service unless he has previously repaid his refunded contributions in accordance with subsection (3) of this section or unless within thirty (30) days after again assuming office he repays to the plan the amount that was refunded to him with interest at six percent (6%) per annum. Service purchased under this subsection on or after January 1, 2014, shall not be used to determine the member's participation date in the Judicial Retirement Plan. ~~[Members or persons participating in the 401(a) money purchase plan as provided by KRS 61.5956 shall not be eligible to purchase service under the provisions of this section.]~~
- (5) If the taking of a refund of contributions by a member of the Kentucky Judicial Retirement Plan, when first entitled thereto, would subject the member to a federal excise tax, by reason of the refund's being made before the member has reached an age designated by the federal taxing act, and the member has elected, pursuant to subsection (2) of this section, to defer taking a refund, so much of the contributions as would have been subject to the excise tax shall accrue interest at the rate of six percent (6%) per annum, from the date the member first could have taken a refund until the date the refund is taken or the date as of which the federal excise tax no longer would apply to a refund, whichever is sooner, the interest to be paid by the plan at the time of the refund. The provisions of this subsection shall not apply to members who begin participating in the Judicial Retirement Plan on or after January 1, 2014.

➔SECTION 44. KRS 61.5955 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*Notwithstanding any provision of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 to the contrary:*

- (1) *Subject to the provisions of this section, any member who began participating in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System on or after September 1, 2008, but prior to January 1, 2014, may in lieu of the benefits he or she is currently eligible to receive from the systems, elect to receive the benefits and rights provided to members who began participating in the systems on or after January 1, 2014, including participating in the hybrid cash balance plan created pursuant to Section 2 of this Act or KRS 61.597 for members in nonhazardous duty positions or pursuant to Section 4 of this Act or KRS 16.583 for members in hazardous duty positions, as applicable;*
- (2) *The election provided by this section shall be made in writing and on a form prescribed by the Kentucky Public Pensions Authority and shall apply to all service or accounts in the Kentucky Retirement Systems or the County Employees Retirement System;*
- (3) *For each member who makes an election provided by this section:*
- (a) *Any service credit the member has accrued prior to January 1, 2014, shall be considered as service credit earned on or after January 1, 2014, for purposes of determining benefits under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852;*
- (b) *On the member's effective election date, the value of the member's accumulated contributions, less any interest, shall be deposited into the member's hybrid cash balance account as provided by Section 2 of this Act, KRS 61.597, Section 4 of this Act, or KRS 16.583, as applicable, and considered part of the member's accumulated account balance;*
- (c) *On the member's effective election date, an employer pay credit as provided by Section 2 of this Act, KRS 61.597, Section 4 of this Act, or KRS 16.583, as applicable, shall be added to the member's accumulated account balance for each month the member contributed to the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System prior to his or her effective election date; and*
- (d) *Interest credits as provided by Section 2 of this Act, KRS 61.597, Section 4 of this Act, or KRS 16.583, as applicable, shall only be applied for periods occurring on or after the member's effective election date;*
- (4) *Before accepting an election provided by this section, the Kentucky Public Pensions Authority shall provide the member with information detailing the potential results of the member's election;*

- (5) *An election made pursuant to this section shall be irrevocable;*
- (6) (a) *A member of the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System shall not be eligible to make an election prescribed by this section until the Kentucky Retirement Systems receives a favorable private letter ruling from the Internal Revenue Service regarding this section.*
- (b) *If the Internal Revenue Service denies the request for a private letter ruling as provided by paragraph (a) of this subsection, this section shall be void.*
- (c) *The Kentucky Public Pensions Authority may promulgate administrative regulations under KRS Chapter 13A in order to carry out this section; and*
- (7) *This section shall not apply to retirees who were reemployed on or after September 1, 2008, and who are not eligible to participate in the systems during reemployment.*

➔Section 45. KRS 61.510 (Effective April 1, 2021) 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' 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 and ~~61.515~~<sup>178.520</sup>, as prescribed by *subsection (3)(b) of Section 73 of this Act* ~~[KRS 61.702(2)(b)]~~;

(13) "Creditable compensation":

(a) 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);

(b) Includes:

1. Lump-sum bonuses, severance pay, or employer-provided payments for purchase of service credit, which 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);
2. Cases where compensation includes maintenance and other perquisites, but the board shall fix the value of that part of the compensation not paid in money;
3. Lump-sum payments for creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, or for any creditable compensation paid in anticipation of settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes, which shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer. This subparagraph shall also include lump-sum payments for reinstated wages pursuant to KRS 61.569, which shall be credited to the period during which the wages were earned or should have been paid by the employer;
4. 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; and
5. 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); and

(c) Excludes:

1. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board;
2. For employees who begin participating on or after September 1, 2008, lump-sum payments for compensatory time;
3. For employees who begin participating on or after August 1, 2016, nominal fees paid for services as a volunteer; and
4. Any salary or wages paid to an employee for services as a Kentucky State Police school resource officer as defined by KRS 158.441;

(14) "Final compensation" of a member means:

(a) For a member who begins participating before September 1, 2008, who is employed in a nonhazardous position, the creditable compensation of the member during the five (5) fiscal years he or she 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 employed in a nonhazardous position, 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 or she 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, but prior to January 1, 2014, who is employed in a nonhazardous position, 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, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least sixty (60) months; or
  - (e) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, 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 or she 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. If the member does not have three (3) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least thirty-six (36) months;
- (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. For members who began participating in the system prior to January 1, 2014, 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 and are nonrenewable;
  - (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) *"Vested" for purposes of determining eligibility for purchasing service credit under Section 52 of this Act means the employee has at least forty-eight (48) months of service if age sixty-five (65) or older or at least sixty (60) months of service if under the age of sixty-five (65). For purposes of this subsection, "service" means service in the systems administered by the Kentucky Retirement Systems and County Employees Retirement System*~~["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 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. The term "parted employer" shall not include a department, board, or agency that ceased participation in the system pursuant to KRS 61.522;
- (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 of time and the unfunded actuarially accrued liability shall be projected to be fully amortized at the conclusion of the set period of years;
- (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 Public Pensions Authority's office building in Frankfort, *unless otherwise designated by the Kentucky Public Pensions Authority*;
- (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;
- (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;
- (40) "Accumulated employer credit" mean the employer pay credit deposited to the member's account and interest credited on such amounts as provided by KRS 16.583 and 61.597;
- (41) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583 and 61.597, the combined sum of the member's accumulated contributions and the member's accumulated employer credit;
- (42) "Volunteer" means an individual who:
- (a) Freely and without pressure or coercion performs hours of service for an employer participating in one (1) of the systems administered by Kentucky Retirement Systems without receipt of compensation for services rendered, except for reimbursement of actual expenses, payment of a nominal fee to offset the costs of performing the voluntary services, or both; and
  - (b) If a retired member, does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twelve (12) months following the retired member's most recent retirement date;
- (43) "Nominal fee" means compensation earned for services as a volunteer that does not exceed five hundred dollars (\$500) per month. Compensation earned for services as a volunteer from more than one (1)

participating employer during a month shall be aggregated to determine whether the compensation exceeds the five hundred dollars (\$500) per month maximum provided by this subsection;

- (44) "Nonhazardous position" means a position that does not meet the requirements of KRS 61.592 or has not been approved by the board as a hazardous position;
- (45) "Monthly average pay" means the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the deceased member during his or her last twelve (12) months of employment;
- (46) "Authority" means the Kentucky Public Pensions Authority as provided by KRS 61.505; and
- (47) "Executive director" means the executive director of the Kentucky Public Pensions Authority.

➔Section 46. KRS 61.526 is amended to read as follows:

- (1) *Upon becoming a member of the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, the* ~~[each] employee and employer~~ ~~[on becoming a member of the Kentucky Employees Retirement System]~~ may file in the retirement office, in the form *and detail* as the *authority* ~~[board]~~ may prescribe, a statement of facts pertaining to the *employee and other information the authority may require, including but not limited to* ~~[member. The statement shall include]~~ a record of military service *and* ~~[,]~~ previous employment with the employer ~~[, and such other information as the system may require]~~.
- (2) If the records of the *employer* ~~[Personnel Cabinet or the department]~~ employing the member during the time the service was rendered do not substantiate the statement of *facts filed by the member* ~~[service]~~, the member shall be notified of any discrepancy. The member shall be advised that he has the responsibility of supplying verification of any unsubstantiated service.
- (3) At the request of the member, or the beneficiary if the member is deceased, the *Authority's* executive director shall arrange a time and place *or process* to receive additional information in regard to the *unsubstantiated* ~~[unverified]~~ service. After filing the request, the member or the beneficiary if the member is deceased, shall have a reasonable time but no more than six (6) months to present the additional information to substantiate the *unsubstantiated* ~~[unverified]~~ service.
- (4) ~~[The system may at any time conduct an audit of the employing department pursuant to KRS 61.675.]~~
- ~~(5)~~ The system may allow a member to retire or obtain a refund without the member submitting a statement of facts pertaining to the member as described by this section.

➔Section 47. KRS 61.540 is amended to read as follows:

- (1) ~~[Under administrative regulations promulgated by the board, each member and each employer shall have on file at the retirement office, in the form the board prescribes, a statement of the facts pertaining to the member and other information the system requires. Until the statement is filed, no member shall be eligible to receive any benefits under KRS 61.510 to 61.705 and 78.510 to 78.852.]~~
- ~~(2)~~ ~~[The~~ *Authority* ~~[system]~~ shall prepare and make available upon request to all members, *retired members, or beneficiaries*, a summary plan description, written in a manner that can be understood by the average member, *retired member*, or beneficiary, and sufficiently accurate and comprehensive to reasonably apprise them of their rights and obligations under the provisions of KRS 16.505 to 16.652, 61.510 to 61.705 and 78.510 to 78.852.
- ~~(2)~~ ~~(3)~~ The summary plan description shall include:
- (a) The name of the retirement system, the name and *business* address of the executive director *of the Kentucky Public Pensions Authority and* ~~[,]~~ *the chief executive officer*, and the name, *business* address, and title of each member of the board of trustees;
  - (b) The name and *business* address of the person designated for the service of legal process;
  - (c) The system's requirements for participation and benefits;
  - (d) A description of retirement formulas for normal, early and disability retirement, and survivor benefits;
  - (e) A description of the requirements for vesting of pension benefits;
  - (f) A reasonable list of circumstances which would result in disqualification, ineligibility, or denial or loss of benefits;



- (g) The sources of financing retirement benefits, and statutory requirements for funding;
- (h) A statement after each actuarial valuation as to whether funding requirements are being met; and
- (i) The procedures to be followed in presenting claims for benefits under the plan, and the remedies available under the plan for the redress of claims which are denied in whole or in part.

~~(3)(4)~~ The system may publish the summary plan description in the form of a *paper or electronic* comprehensive pamphlet or booklet, or in the form of *paper or electronic* periodic newsletters which shall incorporate all the information required in the summary plan description within a period of two (2) years. Any changes in statutory requirements or administrative practices which alter the provisions of the plan as described in the summary plan description shall be summarized as required in subsection ~~(1)(2)~~ of this section and shall be made available upon request to members in the form of a supplement to a comprehensive booklet, or reported in the periodic newsletter.

~~{(5) The system shall make available upon request to retirees and beneficiaries the summary plan description.}~~

→Section 48. KRS 61.542 is amended to read as follows:

- (1) Prior to the first day of the month in which the member receives his or her first retirement allowance and prior to the member filing a notification of retirement or a request for refund:
  - (a) Each member may designate on the form prescribed by the ~~Authority~~~~board~~ a principal beneficiary and contingent beneficiary for his or her account *or accounts*. The principal beneficiary or contingent beneficiary designated by the member shall be:
    - 1. One (1) or more persons; or
    - 2. The member's estate; or
    - 3. A trust;
  - (b) If multiple persons are designated as provided by paragraph (a)1. of this subsection, the member shall indicate the percentage of total benefits each person is to receive.
    - 1. If percentages are not indicated, payments will be disbursed equally to the named beneficiaries.
    - 2. If the percentages indicated do not total one hundred percent (100%), each beneficiary shall receive an increased or decreased percentage which is proportional to the percentage allotted him or her by the member.
    - 3. If any of the multiple beneficiaries die prior to the member's death, the remaining beneficiaries shall be entitled to the deceased beneficiary's percentage of the total benefits, and each shall receive a percentage of the deceased's share which is equal to the percentage allotted them by the member;
  - (c) The principal and contingent beneficiary designation established by the member pursuant to paragraph (a) of this subsection shall remain in full force and effect until changed by the member, except:
    - 1. A final divorce decree terminates an ex-spouse's status as beneficiary, unless the member has on file in the retirement office a beneficiary designation that redesignates the ex-spouse as beneficiary subsequent to the issuance of the divorce decree;
    - 2. If a beneficiary or beneficiaries are convicted of any crime which prohibits that person or persons from receiving the benefits under KRS 381.280, the beneficiary or beneficiaries shall not be eligible for any of the benefits and the remaining beneficiary or beneficiaries or, if none, the member's estate, shall become the beneficiary; and
    - 3. When a notification of retirement has been filed at the retirement office, the designation of beneficiary on the notification of retirement, which shall be one (1) person, his estate, or a trust, shall supersede the designation of all previous beneficiaries, unless the notification of retirement is withdrawn, invalid, or voided. If the notification of retirement is withdrawn, invalid, or voided, the prior beneficiary designation on file with the system shall remain in full force and effect until changed by the member; and
  - (d) Except as provided by paragraph (c)3. of this subsection, if the member fails to designate a beneficiary for his or her account or if the beneficiary designation is determined to be void by the system, the member's estate shall become the beneficiary.

- (e) *If the member has more than one (1) account in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System, the member shall not be eligible to name differing beneficiaries for each system but shall instead complete one (1) beneficiary designation form which shall be applicable to all systems in which the member has an account.*
- (2) If the member dies prior to the first day of the month in which the member would have received his or her first retirement allowance and prior to filing a notification of retirement or a request for refund, any retirement benefits shall be payable to the principal beneficiary, except that:
- If the death of the principal beneficiary or beneficiaries precedes the death of the member, or if the principal beneficiary is terminated by a divorce decree, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries;
  - If the principal beneficiary is one (1) person and is the member's spouse and they are divorced on the date of the member's death, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries;
  - If the member is survived by his principal beneficiary or beneficiaries who subsequently die prior to having on file at the retirement office the necessary forms prescribed under authority of KRS 61.590, the contingent beneficiary shall become the principal beneficiary or beneficiaries;
  - If the deaths of all the principal beneficiaries and all of the contingent beneficiaries precede the death of the member, the estate of the member becomes the beneficiary; and
  - If the member dies as a direct result of an act in line of duty as defined in KRS 16.505, *Section 18 of this Act*, or dies as a result of a duty-related injury as defined in KRS 61.621, the surviving spouse shall supersede all previously designated principal or contingent beneficiaries, unless the deceased member files a valid beneficiary designation form with the retirement office after the date of marriage to the surviving spouse.
- (3) Prior to the first day of the month in which the member would have received his or her first retirement allowance, a monthly benefit payable for life shall not be offered if the beneficiary designated under subsection (1) of this section is more than one (1) person, the member's estate, or a trust.
- (4) When a notification of retirement has been filed at the retirement office:
- The designation of beneficiary on the notification of retirement shall supersede the designation of all previous beneficiaries;
  - The beneficiary designated by the member on the member's notification of retirement shall be one (1) person, the member's estate, or a trust; and
  - If the death of the beneficiary named on the notification of retirement precedes the first day of the month in which the member receives his or her first retirement allowance, the member may designate another beneficiary on the member's notification of retirement.
- (5) On or after the first day of the month in which the member receives his or her first retirement allowance, the member shall not have the right to change his beneficiary, except that:
- The estate of the retired member becomes the beneficiary if the date of death of the beneficiary precedes or coincides with the date of death of the retired member;
  - The estate of the retired member becomes the beneficiary if the retired member had designated a person as beneficiary who was the spouse or who later married the member and they were divorced on the date of the retired member's death. An ex-spouse who was the named beneficiary on the member's notification of retirement shall be reinstated as the member's beneficiary for the payment options provided by KRS 61.635(2), (3), (4), and (8)(b) if they are remarried to each other as of the date of the retired member's death; and
  - The estate of the member shall not receive monthly payments if the member selected one (1) of the payment options provided by KRS 61.635(2), (3), (4), and (8)(b).
- (6) Following cessation of membership as provided by KRS 61.535 *or 78.540*, no beneficiary designation in one (1) account shall be effective for any new retirement account established ~~[pursuant to KRS 61.637 or 61.680]~~. If the member fails to designate a beneficiary for his or her new retirement account or if the beneficiary designation is determined to be void by the system, the member's estate shall become the beneficiary.

➔Section 49. KRS 61.543 is amended to read as follows:

- (1) (a) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the retirement system while he is classified as regular full-time as defined in KRS 61.510 unless the employee ~~is~~
  1. ~~did not elect to become a member as provided by subsection (2) of KRS 61.525 or~~
  2. ~~Did not elect membership pursuant to KRS 61.545(3); or~~
  3. ~~is not eligible to participate in the system as provided by KRS 61.522.~~
- (b) After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 61.560(4). Service credit will be allowed for each month the contributions are deducted or picked up during a fiscal or calendar year, if the member receives creditable compensation for an average of one hundred (100) hours or more of work per month. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.
- (2) Employee contributions shall not be deducted from the creditable compensation of an employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit will be earned.
- (3) Contributions shall not be made or picked up by the employer and no service credit will be earned by a member while on leave except:
  - (a) A member on military leave shall be entitled to service credit in accordance with *Section 52 of this Act* ~~[KRS 61.555]~~;
  - (b) A member on educational leave, approved by the Personnel Cabinet, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay employee contributions, or the contributions shall be picked up in accordance with KRS 61.560 and his employer shall pay employer contributions in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded; and
  - (c) An employee on educational leave, approved by the appointing authority, not to exceed one (1) year, or with additional approval of one (1) additional year, and not to exceed two (2) years within a five (5) year period, who is receiving a salary of less than seventy-five percent (75%) of full salary, may elect to retain membership in the system during the period of leave. If the employee elects to retain membership in the system, he shall receive service credit by having employee contributions picked up in accordance with KRS 61.560. His employer shall pay employer contributions in accordance with KRS 61.565. If a tuition agreement is broken by the member, the employee and employer contributions paid or picked up during the period of educational leave shall be refunded to the contributor and no service credit shall be earned for the period of leave.
- (4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 61.575.
- (5) Notwithstanding the provisions of this section and KRS 61.560, employees engaged pursuant to KRS 148.026 and 56.491 in a regular full-time position as defined in KRS 61.510(21) prior to January 1, 1993, shall be allowed service credit for each month the employee received creditable compensation for an average of one hundred (100) or more hours of work, if the employee pays to the retirement system the contributions that would have been deducted for the period of employment. The contributions shall be credited to the member's account and shall not be picked up pursuant to KRS 61.560(4). The employer contributions for the period, plus interest calculated at the actuarial rate, shall be due within thirty (30) days of notice of receipt of payment from the employee.

➔Section 50. KRS 61.545 is amended to read as follows:

- (1) The ~~Authority~~ ~~board~~ shall determine by appropriate administrative regulations how much service in any year is the equivalent of a year of service credit and how much service in any calendar month is the equivalent of a month of service credit. It shall not allow credit for more than one (1) year of service for all service rendered in any period of twelve (12) consecutive months except as provided in KRS 61.546 *in the case of the Kentucky Retirement Systems or KRS 78.616 in the case of the County Employees Retirement System* ~~and in subsection (2) of this section~~.

- (2) (a) ~~Employees participating in one (1) of the state administered retirement systems who are or have been employed by a school board participating in the County Employees Retirement System, a state operated school under KRS Chapter 167, a participating community action agency, or a Kentucky institution of higher education which participates in the Kentucky Employees Retirement System, and who receive service credit for less than twelve (12) months each year, may purchase the additional months of service credit needed to total one (1) year of service credit except the amount purchased shall not exceed three (3) months. The employee may purchase the service credit by paying the retirement system a delayed contribution payment in accordance with the payment options and restrictions established by KRS 61.552(14). Employees who have service credit prior to July 1, 1992, or their employers, the state-operated school under KRS Chapter 167, the Kentucky institution of higher education, or the school board may purchase service credit on behalf of the employee for previous years by paying the retirement system the delayed contribution payment in accordance with the payment options and restrictions established by KRS 61.552(14).~~
- (b) ~~The cost of service under this subsection may be paid by both the employer and employee. The employer shall pay fifty percent (50%) of the cost and the employee shall pay fifty percent (50%) of the cost. The payment by the employer shall not be deposited to the member's account. Service credit shall not be credited to the member's account until both the employer's and employee's payment are received by the retirement system.~~
- (c) ~~If the employee has purchased service credit under this subsection based on months reported by the employer for the fiscal year, and an audit of the employee's account reduces the number of months of service credit for which the employee is eligible to no fewer than nine (9) months, the employee shall retain credit for the months purchased unless the employee is ineligible for any service in the fiscal year. The employee shall be eligible to purchase the additional months under this subsection to total one (1) year.~~
- (d) ~~This subsection shall not apply to members who begin participating in the systems administered by Kentucky Retirement Systems on or after January 1, 2014.~~
- (3) (a) If an employee participates in more than one (1) of the retirement systems administered by the Kentucky Retirement Systems *and County Employees Retirement System*, the employee's service credit shall be divided between each system determined by dividing the employee's creditable compensation in each system by the employee's total creditable compensation in all systems.
- (b) If an employee earns creditable compensation in both a hazardous position, as defined by KRS 61.592 *or Section 6 of this Act*, and a nonhazardous position, the employee's service credit shall be divided between the employee's hazardous and nonhazardous positions determined by dividing the employee's creditable compensation in the hazardous and nonhazardous positions by the employee's combined hazardous and nonhazardous creditable compensation.

➔Section 51. KRS 61.550 is amended to read as follows:

When membership ceases, except in the case of retirement, the member shall thereafter lose all right to any retirement allowance or benefits under KRS 61.510 to 61.705 *and* [ ] 16.505 to 16.652 [*and* 78.510 to 78.852] arising from service prior to the date of such cessation of membership.

➔SECTION 52. KRS 61.552 (Effective April 1, 2021) IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *Called to Active Duty Military Service. An employee of an employer participating in the system who is called to active military duty in the Armed Forces of the United States shall be credited in accordance with 38 U.S.C. sec. 4318 with service credit, creditable compensation, and in the case of employees participating in the hybrid cash balance plan, employee contributions, employer credits, and interest credits, for a period of active military duty of up to six (6) years, provided:*
- (a) *The employee was called to active military duty in the Armed Forces of the United States:*
1. *After he or she began participating in the system and provided the employee was on leave of absence from the employer and did not withdraw his or her accumulated account balance; or*
  2. *Prior to the date he or she began participating in the system and terminated employment with his or her employer;*

- (b) *The employee entered active military service within three (3) months of his or her last day of paid employment;*
- (c) *His or her discharge military service was terminated in a manner other than as described in 38 U.S.C. sec. 4304; and*
- (d) *He or she returns to work with an employer participating in the system within two (2) years after completion of the period of active military duty, or upon the subsequent termination of any total disability which existed at the expiration of the two (2) years after discharge.*

*For periods of active military duty that meet the requirements of this subsection, the employer shall pay the employer contributions payable under KRS 61.565, 61702, and 78.635, and Section 14 of this Act.*

- (2) (a) *Omitted Service. Any person who is entitled to service credit for employment which was not reported by the employer in accordance with KRS 16.543, 61.543, or 78.615 may obtain credit for the service subject to the provisions of this subsection.*
- (b) *Provided the person pays for the omitted service with within six (6) months of notification by the system, the cost of the service shall be equal to the employee contributions that would have been paid if the person had been correctly reported in accordance with KRS 16.543, 61.543, or 78.615.*
- (c) *Any employee participating in one (1) of the state-administered retirement systems entitled to service credit under paragraph (a) of this subsection who has not repaid the employee contributions due within six (6) months of notification by the system may purchase the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (b) of this subsection.*
- (d) *Omitted service purchased under this subsection shall:*
  - 1. *Be considered service credited under KRS 16.543(1), 61.543(1), or 78.615(1) for purposes of determining eligibility for retirement benefits under KRS 78.510 to 78.852; and*
  - 2. *Not be credited to the member's account until the employer contributions due and any interest or penalties on the delinquent employer contributions for the period of omitted service are received by the system.*
- (e) *Employees who begin participating on or after January 1, 2014, in the hybrid cash balance plan provided by KRS 16.583 or 16.597 or Sections 2 and 4 of this Act shall, upon payment of the employee and employer contributions due under this subsection, have their accumulated account balance increased by the employee contributions, employer pay credits, and interest credits that would have been credited to their member's account if the contributions had been paid on time.*
- (f) *Contributions payable by the employer under this subsection for omitted service shall be considered delinquent from the date the employee should have been reported and received service credit in accordance with KRS 16.543, 61.543, and 78.615.*
- (3) (a) *Recontribution of a Refund. Any employee participating in one (1) of the state-administered retirement systems who has been refunded his accumulated account balance under the provisions of KRS 61.625, thereby losing service credit in the system, may regain the credit by paying to the system the amount or amounts refunded by the system with interest at a rate determined by the board. Service purchased under this subsection on or after January 1, 2014, shall not be used to determine the member's participation date in the systems.*
- (b) *Recontribution of a refund purchased under this subsection shall not be used in determining a retirement allowance until the member has accrued at least six (6) months of service credit in a state-administered retirement system, excluding the service purchased under this subsection. If the member does not accrue at least six (6) months of service credit in a state-administered retirement system, excluding service purchased under this subsection, then the payment plus interest as provided in KRS 16.560, 61.575, or 78.640 shall be refunded upon retirement, death, or written request following termination of employment. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 16.582, 61.600, 61.621, or Sections Section 7 or 8 of this Act.*
- (4) (a) *Summer Months. Any employee participating in one (1) of the state-administered retirement systems who is or has been employed by a school board or community action agency participating in the County Employees Retirement System or a state-operated school under KRS Chapter 167 or an*

*institution of higher learning participating in the Kentucky Employees Retirement System, who receives service credit for less than twelve (12) months each year, may purchase the additional months of service credit needed to total one (1) year of service credit, except the amount purchased for any specific year shall not exceed three (3) months.*

- (b) *The cost of the summer months service credit shall be determined by the formula established by subsection (10) of this section and may be purchased by the employee, or the employer on behalf of the employee, or the cost may be paid by both the employer and employee in which case the employer and employee shall each pay fifty percent (50%) of the cost. Service credit shall not be credited to the member's account until both the employer's and employee's payment are received by the system.*
  - (c) *If the employee has purchased service credit under this subsection based on months reported by the employer for the fiscal year, and an audit of the employee's account reduces the number of months of service credit for which the employee is eligible to no fewer than nine (9) months, the employee shall retain credit for the months purchased unless the employee is ineligible for any service in the fiscal year. The employee shall be eligible to purchase the additional months under this subsection to total one (1) year.*
  - (d) *This subsection shall not apply to members who began participating in the County Employees Retirement System on or after January 1, 2014.*
- (5) *Vested Service Purchases. Any employee who began participating in the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System prior to January 1, 2014, who is vested may purchase service credit for:*
- (a) *Past service. "Past service" means periods of employment:*
    - 1. *Between July 1, 1956, in the case of the Kentucky Employees Retirement System, or July 1, 1958, in the case of the County Employees Retirement System, and the effective date of participation by the employer;*
    - 2. *Where the employee did not participate in the system due to the employee not electing to participate as provided in KRS 61.525(2) or 78.540(1); and*
    - 3. *With a public agency that did not participate in the Kentucky Employees Retirement System but would have been eligible to participate under KRS 61.520 or a political subdivision that did not participate in the County Employees Retirement System but would have been eligible to participate under KRS 78.530, provided the public agency or political subdivision has merged with or been taken over by a participating employer;*
  - (b) *State university service, provided the university does not participate in a state-administered retirement system and the university service being purchased was in a nonteaching position that did not participate in a defined benefit retirement program;*
  - (c)
    - 1. *Up to ten (10) years of out-of-state service. "Out-of-state" means service credited to a state or local government-administered public defined benefit plan in another state that is not a defined benefit plan for teachers.*
    - 2. *Up to ten (10) years of out-of-state hazardous service. "Out-of-state hazardous service" means service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592 or Section 6 of this Act, as applicable. The employee may purchase out-of-state hazardous service under this subparagraph provided the employee is vested to receive benefits from the State Police Retirement System or hazardous duty benefits from the Kentucky Employees Retirement System or the County Employees Retirement System.*

*The employee must purchase out-of-state service or out-of-state hazardous service in the system in which he or she is vested based solely upon the service in that system;*
  - (d) *Active military duty, which means periods of active military duty in the Armed Forces of the United States, provided:*
    - 1. *The employee's military service was terminated in a manner other than as described in 38 U.S.C. sec. 4304; and*

2. *The service has not been credited as free military service under subsection (1) of this section;*
  - (e) *National Guard service. An employee may purchase one (1) month of service for each six (6) months of service in the National Guard or the military reserves of the United States. The service shall be treated as service earned prior to participation in the system;*
  - (f) *Federal service. "Federal service" means service with the United States government, that is not service in the Armed Forces;*
  - (g) *Seasonal, emergency, interim, probationary, or temporary employment or part-time employment as provided by subsection (21) of Section 18 of this Act or subsection (21) of Section 45 of this Act averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member may purchase credit for only those months he receives creditable compensation for one hundred (100) hours of work;*
  - (h) *Part-time employment in a noncertified position at a school board prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed to purchase credit only for those months he receives creditable compensation for eighty (80) hours of work;*
  - (i) *Any period of:*
    1. *Authorized maternity leave without pay or sick leave without pay;*
    2. *Unpaid leave authorized under the federal Family and Medical Leave Act;*
    3. *Approved educational leave; and*
    4. *Agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the board receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor;*
  - (j) *Non-participating employer service, which means periods of employment with the following types of agencies provided the agency does not participate in a state-administered retirement system:*
    1. *A regional community services program for mental health organized and operated under the provisions of KRS 210.370 to 210.480;*
    2. *A community action agency created under KRS 273.405 to 273.453. The service provided by this subparagraph shall be purchased in the County Employees Retirement System;*
    3. *An area development district created pursuant to KRS 147A.050; or*
    4. *A business development corporation created pursuant to KRS 155.001 to 155.230, provided the system receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor;*
  - (k) *Urban-county government service, which means employment in an urban-county government position that would qualify for hazardous duty coverage under KRS 61.592 or Section 6 of this Act. The provisions of this paragraph shall only be applicable to vested members participating in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement System or the County Employees Retirement System;*
  - (l) *Periods of service as assistants to officers and employees of the General Assembly for persons who were unable to acquire service under KRS 61.510(20) for service performed after January 1, 1960;*
  - (m) *Service as a volunteer in the Kentucky Peace Corps, created by KRS 154.1-720; and*
  - (n) *Employment with a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year. The service provided by this paragraph shall be purchased in the Kentucky Employees Retirement System.*
- (6) *Non-qualified service. Provided the employee's participation date in the system is prior to July 15, 2002, and provided the employee has total service in all state-administered retirement systems of at least one hundred*

*eighty (180) months of service credit, the employee may purchase a combined maximum total of five (5) years of service credit, known as non-qualified service, which is not otherwise purchasable under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852. The service purchased under this paragraph shall not be used in determining a retirement allowance until the member has accrued at least two hundred forty (240) months of service, excluding service purchased under this subsection. If the member does not accrue at least two hundred forty (240) months of service, excluding service purchased under this subsection, upon retirement, death, or written request following termination, the payment, plus interest as provided in KRS 16.560, Section 27 of this Act, or Section 55 of this Act, as applicable, shall be refunded.*

- (7) *For purposes of service purchased under subsections (2) to (6) of this section:*
- (a) *Except for subsection (6) of this section, the service must qualify as regular full-time as provided by KRS 61.510 and 78.510;*
  - (b) *No service credit may be purchased for periods already credited to the system or another public defined benefit retirement fund, including non-qualified service purchased in another state-administered retirement system;*
  - (c) *Except as provided by paragraph (a)2.a. of subsection (9) of this section, the employee payment for service purchases shall not be picked up, as described in KRS 16.545(4), 61.560(4), or 78.610(4), by the employer;*
  - (d) *Except for service purchased under subsection (2) or (3) of this section, service purchases made pursuant to this section may be purchased by the entire amount of service available or by increments. Service purchases made pursuant to subsections (2) and (3) of this section shall only be purchased by the entire amount of service available; and*
  - (e) *Service purchases as provided by subsections (5)(b), (5)(d) to (f), (5)(j)1., and (6) of this section may be purchased in any system in which the member has service credit.*
- (8) (a) *Employer purchase of past service. Any employer participating in the system may purchase service credit, between July 1, 1956, in the case of the Kentucky Employees Retirement System, or July 1, 1958, in the case of the County Employees Retirement System, and the participation date of the employer, for present employees of the county or department who have elected coverage under KRS 61.525(2) or 78.540(1), provided the employee began participating in the system prior to January 1, 2014.*
- (b) *A Kentucky Employees Retirement System employer shall pay the cost of the service credit within the fiscal year the election is made to purchase the service credit. A County Employees Retirement System employer may purchase the service, with interest at the rate actuarially assumed by the board, over a period not to exceed ten (10) years.*
  - (c) *If an employer elects to purchase service under the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (5)(a) of this section shall have his or her payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640; and*
  - (d) *Any payments made by an employer under this subsection shall be deposited to the retirement allowance account of the system and these funds shall not be considered accumulated contributions of the individual members.*
- (9) (a) *An employee participating in the system may 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 for which he or she is eligible to purchase, or as otherwise required by 38 U.S.C. ch. 43, by:*
- 1. *Making a lump-sum payment on a before-tax basis as provided in subparagraph 3. of this paragraph, or on an after-tax basis if the employee is purchasing service credit under subsection (1) or (3) of this section, service available pursuant to 38 U.S.C. ch. 43 not otherwise provided for in this section, or grandfathered service as defined in paragraph (b) of this subsection;*
  - 2. *Entering into an agreement to purchase service credit through an installment purchase of service agreement with the systems as provided by paragraph (c) of this subsection:*



- a. *On a before-tax basis in which the service is purchased pursuant to the employer pick-up provisions in 26 U.S.C. sec. 414(h)(2); or*
  - b. *On an after-tax basis if the employee is purchasing service credit under subsection (1) or (3) of this section, service available pursuant to 38 U.S.C. ch. 43 not otherwise provided for in this section, or grandfathered service as defined in paragraph (b) of this subsection; or*
3. *Transferring funds to the system through a direct trustee-to-trustee transfer as permitted under the applicable sections of the Internal Revenue Code and any regulations or rulings issued thereunder, through a direct rollover as contemplated by and permitted under 26 U.S.C. sec. 401(a)(31) and any regulations or rulings issued thereunder, or through a rollover of funds pursuant to and permitted under the rules specified in 26 U.S.C. secs. 402(c) and 408(d)(3). The system shall accept the transfer or rollover to the extent permitted under the rules specified in the applicable provisions of the Internal Revenue Code and any regulations and rulings issued thereunder.*
- (b) *For purposes of this subsection, "grandfathered service" means service purchases for which a member, whose membership date in the system is prior to July 1, 1999, is eligible to purchase under KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, that were available for all members of the system to purchase on August 5, 1997.*
  - (c)
    1. *For service purchased under a before-tax or after-tax installment purchase of service agreement as provided by paragraph (a)2. of this subsection, the cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal, except that interest compounded annually at the actuarial rate in effect at the time the member elects to make the purchase shall be added for the period that the installments are to be made.*
    2. *Multiple service purchases may be combined under a single installment agreement, except that no employee may make more than one (1) installment purchase at the same time.*
    3. *For after-tax installment purchase of service agreements, the employee may elect to stop the installment payments by notifying the system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal or a portion of the remaining principal.*
    4. *Before-tax installment purchase of service agreements shall be irrevocable, and the employee shall not be able to stop installment payments or to pay off the remaining balance of the purchase of service agreement, except upon termination of employment or death.*
    5. *One (1) year of installment payments shall be made for each one thousand dollars (\$1,000) or any part thereof of the total cost, except that the total period allowed for installments shall not be less than one (1) year and shall not exceed five (5) years.*
    6. *The employee shall pay the installments by payroll deduction for after-tax purchase of service agreements, and the employer shall pick up installments for before-tax purchase of service agreements. Upon notification by the system, the employer shall report the installment payments monthly continuously over each twelve (12) month period at the same time as, but separate from, regular employee contributions on the forms or by the computer format specified by the board.*
    7. *The system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.*
    8. *If the employee utilizing an installment purchase of service agreement dies, retires, does not continue employment in a position required to participate in the system, or elects to stop an after-tax installment purchase of service agreement, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal or a portion of the remaining principal of the installment purchase of service agreement by lump sum, subject to the restrictions of paragraph (a)1. of this subsection, or by transfer of funds under paragraph (a)3. of this subsection, except that payment by the member shall be filed with the system prior*

*to the member's effective retirement date. If the member or beneficiary does not pay the remaining cost, the system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased, except as provided by subsection (6) of this section.*

9. *If the employer does not report installment payments on an employee for sixty (60) days for an after-tax installment purchase of service agreement, except in the case of employees on military leave or sick leave without pay, the installment purchase shall cease and the system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased.*
  10. *Installment payments of employees on military leave or sick leave without pay shall be suspended during the period of leave and shall resume without recalculation upon the employee's return from leave.*
  11. *If payments have ceased under subparagraph 8. or 9. of this paragraph and the member later becomes a participating employee in the County Employees Retirement System, Kentucky Employees Retirement System, or State Police Retirement System, the employee may complete the adjusted original installment purchase by lump sum or installment payments, subject to the restrictions of this subsection. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with subsection (10) of this section.*
- (d) *Member payments, including interest, properly received pursuant to this subsection, shall be deposited to the member's account and considered as accumulated contributions of the individual member.*
- (10) (a) *The cost of purchasing service credit under any provision of this section, except as provided by subsections (1) to (3) of this section, shall be determined by multiplying the higher of the employee's current rate of pay, final rate of pay, or final compensation as of the end of the month in which the purchase is made times the actuarial factor times the number of years of service being purchased. The actuarial factor used to determine the cost of purchasing service credit shall assume the earliest date the member may retire without a reduction in benefits and the cost-of-living adjustments provided to members upon retirement.*
- (b) *Service purchased on or after August 1, 2004, under the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, except for service purchased under subsections (1) to (3) of this section, shall not be used to determine eligibility for or the amount of the monthly insurance contribution under Section 14 or 73 of this Act.*
- (c) *For a member whose participation begins on or after August 1, 2004, service purchased under the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, except for service purchased under subsections (1) to (3) of this section:*
1. *Shall not be used to determine eligibility for a retirement allowance under disability retirement, early retirement, normal retirement, or upon death of the member under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852; and*
  2. *Shall only be used to determine the amount of the retirement allowance of a member who is eligible for a retirement allowance under disability, early retirement, normal retirement, or upon death of the member under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, based on service earned as a participating employee.*

➔Section 53. KRS 61.559 is amended to read as follows:

- (1) In lieu of any other benefits due under KRS 61.510 to 61.705 ~~and 78.510 to 78.852~~, a member who begins participating before September 1, 2008, who has attained the age of sixty-five (65) and who has obtained at least one (1) month of service credit but no more than forty-seven (47) months of service may elect to receive an annual retirement allowance payable monthly or less frequently, as determined by the board, which shall be determined by multiplying his accumulated contributions by two (2) and converting this amount to an annual retirement allowance based on an annuity rate adopted by the board which would pay the actuarial equivalent of twice his accumulated contributions over the lifetime of the retired member.
- (2) A member who begins participating before September 1, 2008, who is sixty-five (65) years of age or older is eligible for a retirement allowance determined under KRS 61.595 provided such member has forty-eight (48)

months of service, at least twelve (12) of which are current service, or a retirement allowance determined under KRS 61.595 prior to age sixty-five (65) provided:

- (a) The member has attained age fifty-five (55) and has service of sixty (60) months at least twelve (12) of which are current service; or
  - (b) The member is a retired member of the State Police Retirement System, has attained age fifty-five (55), and has service of forty-eight (48) months at least twelve (12) of which are current service; or
  - (c) The member is less than age fifty-five (55) and has twenty-five (25) or more years of service, at least fifteen (15) of which are current service; or
  - (d) The member has thirty (30) or more years of service at least fifteen (15) of which are current service, or the member of the Kentucky Employees Retirement System~~[or the County Employees Retirement System]~~ has twenty-seven (27) or more years of service, at least fifteen (15) of which are current service; or
  - (e) The member of the Kentucky Employees Retirement System has, at least, twenty-six (26) years of service credit, at least sixteen (16) of which are current consecutive years of service as a cabinet secretary or administrative head of one (1) of the three (3) branches of government; or
  - (f) The member has attained age fifty-five (55) and was an employee of a parted employer at the time his employer became ineligible to continue participation in the system, and his service in the system when added to his service with the parted employer subsequent to his separation from state government equals the early retirement service eligibility requirement of the system on the date his employer became ineligible to continue participation in the system.
- (3) A member who begins participating on or after September 1, 2008, but prior to January 1, 2014, is eligible for a retirement allowance determined under KRS 61.595 if:
- (a) The member is sixty-five (65) years of age or older and has at least five (5) years of service credited under KRS 16.543(1), 61.543(1), or ~~78.615(1) or~~ another state-administered retirement system;
  - (b) The member is fifty-seven (57) years of age or older and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for a retirement allowance under this paragraph shall only include years of service credited under KRS 16.543(1), 61.543(1), or ~~78.615(1) or~~ another state-administered retirement system; or
  - (c) The member is sixty (60) years of age or older and has at least ten (10) years of service credited under KRS 16.543(1), 61.543(1), ~~or 78.615(1)~~ or another state-administered retirement system.
- (4) Subsections (1) to (3) of this section shall not apply to members who begin participating in the system on or after January 1, 2014. Members who begin participating in the system on or after January 1, 2014, shall receive the retirement benefits prescribed by KRS 61.597~~[or the 401(a) money purchase plan prescribed by KRS 61.5956, as applicable].~~

➔Section 54. KRS 61.565 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) Each employer participating in the State Police Retirement System as provided for in KRS 16.505 to 16.652 and the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute annually to the respective retirement system an amount determined by the actuarial valuation completed in accordance with KRS 61.670 and as specified by this section. Employer contributions for each respective retirement system shall be equal to the sum of the "normal cost contribution" and the "actuarially accrued liability contribution."
- (b) For purposes of this section, the normal cost contribution shall be computed as a percentage of pay and shall be an annual amount that is sufficient when combined with employee contributions to fund benefits earned during the year in the respective system. The amount shall be:
  - 1. Paid as a percentage of creditable compensation reported for each employee participating in the system and accruing benefits; and
  - 2. The same percentage of pay for all employees who are participating in the same retirement system, except that separate percentage rates shall be developed in each system for those employers whose employees are participating in hazardous duty retirement coverage as provided by KRS 61.592.

- (c) For purposes of this section, the actuarially accrued liability contribution shall be:
1. Computed by amortizing the total unfunded actuarially accrued liability of each system over a closed period of thirty (30) years beginning with the 2019 actuarial valuation using the level percentage of payroll amortization method, except that any increase or decrease in the unfunded actuarially accrued liability occurring after the completion of the 2019 actuarial valuation shall be amortized over a closed period of twenty (20) years beginning with the actuarial valuation in which the increase or decrease in the unfunded actuarially accrued liability is recognized. An increase or decrease in the unfunded actuarially accrued liability may result from, but not be limited to, legislative changes to benefits, changes in actuarial methods or assumptions, or actuarial gains or losses;
  2. Paid as a percentage of payroll on the creditable compensation reported for each employee participating in the system and accruing benefits; and
  3. The same percentage of pay for all employees who are participating in the same retirement system, except that separate percentage rates shall be developed in each system for those employers whose employees are participating in hazardous duty retirement coverage as provided by KRS 61.592.
- (d) The employer contributions computed under this section shall be determined using:
1. The entry age normal cost funding method;
  2. An asset smoothing method that smooths investment gains and losses over a five (5) year period; and
  3. Other funding methods and assumptions established by the board in accordance with KRS 61.670.
- (2) (a) Normal cost contribution rates and the actuarially accrued liability contribution shall be determined by the board on the basis of the annual actuarial valuation last preceding the July 1 of a new biennium.
- (b) ~~The board may amend contribution rates as of July 1 of the second year of a biennium for the County Employees Retirement System, if it is determined on the basis of a subsequent actuarial valuation that amended contribution rates are necessary to satisfy the requirements of this section.~~
- (c) ~~The board shall not have the authority to amend contribution rates as of July 1 of the second year of the biennium for the Kentucky Employees Retirement System and the State Police Retirement System.~~
- (3) The system shall advise each employer prior to July 1 of any change in the employer contribution rate. Based on the employer contribution rate, each employer shall include in the budget sufficient funds to pay the employer contributions as determined by the board under this section.
- (4) All employers, including the General Assembly, shall pay the full actuarially required contributions, as prescribed by this section, to the Kentucky Employees Retirement System and the State Police Retirement System in fiscal years occurring on or after July 1, 2020.

➔Section 55. KRS 61.575 is amended to read as follows:

- (1) The members' account shall be the account to which:
- (a) All members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances ~~[or investment returns]~~ as provided in KRS 61.510 to 61.692 shall be credited, except as provided by **subsection (3)(b) of Section 73 of this Act** ~~[KRS 61.702(2)(b)]~~; **and**
  - (b) For members who begin participating in the system on or after January 1, 2014 ~~[who are participating in the hybrid cash balance plan]~~, the employer pay credit and interest credited on such amounts as provided by KRS 16.583 and 61.597 shall be credited; ~~and~~
  - (c) ~~For members who elect to participate in the 401(a) money purchase plan as provided by KRS 21.374, 61.5955, or 61.5956, the employer contribution and investment return on such amounts as provided by KRS 61.5956.~~

Only funds from this account shall be used to return the accumulated contributions or accumulated account balances of a member when required by reason of any provision of KRS 61.510 to 61.705. Prior to the member's retirement, death, or refund in accordance with KRS 61.625, no funds shall be made available from the member account.

- (2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member, except as provided by *subsection (3)(b) of Section 73 of this Act* ~~[KRS 61.702(2)(b)]~~.
- (3) ~~[Except for the portion of the member's account balance in the 401(a) money purchase plan as provided by KRS 61.5956:]~~
- (a) Each member shall have his individual account credited with interest on June 30 of each fiscal year.
  - (b) For a member who begins participating before September 1, 2008, interest shall be credited to his individual account at a rate determined by the board but not less than two percent (2%) per annum on the accumulated account balance of the member on June 30 of the preceding fiscal year.
  - (c) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, interest shall be credited to his individual account at a rate of two and one-half percent (2.5%) per annum on the accumulated account balance of the member on June 30 of the preceding fiscal year.
  - (d) For a member who begins participating on or after January 1, 2014, in the hybrid cash balance plan, interest shall be credited in accordance with KRS 16.583 and 61.597.
  - (e) The amounts of interest credited to a member's account under this subsection shall be transferred from the retirement allowance account.
- (4) (a) Upon the retirement of a member who began participating in the system prior to January 1, 2014, his or her accumulated account balance shall be transferred from the members' account to the retirement allowance account.
- (b) Upon the retirement of a member who began participating in the system on or after January 1, 2014 ~~[or who elects to participate in the 401(a) money purchase plan]~~, who elects to annuitize his or her accumulated account balance ~~[in the hybrid cash balance plan or 401(a) money purchase plan]~~ as prescribed by KRS 16.583(7)(a) ~~[or (b), 61.5956(6)(a) or (b)]~~, or 61.597(7)(a) or (b), the member's accumulated account balance shall be transferred to the retirement allowance account.

➔Section 56. KRS 61.580 is amended to read as follows:

The retirement allowance account shall be the account in which shall be accumulated all employer contributions and amounts transferred from the members' account, and to which all income from the invested assets of the system shall be credited. From this account shall be paid the expenses of the system and the board incurred in administration of the system, retirement allowances, and any other benefits payable after a member's retirement and from this account shall be transferred to the members' account:

- (1) The employer pay credit added monthly to each member's individual accounts as provided by KRS 16.583 and 61.597; *and*
- ~~(2) [The employer contribution for the 401(a) money purchase plan as provided by KRS 61.5956; and~~
- ~~(3) [The interest credited annually to *each* member's individual account as provided by KRS 61.510 to 61.705.~~

➔Section 57. KRS 61.592 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) "Hazardous position" for employees participating in the Kentucky Employees Retirement System ~~[and for employees who begin participating in the County Employees Retirement System before September 1, 2008.]~~ means:
  1. Any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including but not limited to pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning;
  2. Positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates; and
  3. Positions of employees who elect coverage under KRS 196.167(3)(b)2. and who continue to provide educational services and support to inmates as a Department of Corrections employee.

- (b) ~~["Hazardous position" for employees who begin participating in the County Employees Retirement System on or after September 1, 2008, means police officers and firefighters as defined in KRS 61.315(1), paramedics, correctional officers with duties that routinely and regularly require face-to-face contact with inmates, and emergency medical technicians if:~~
- ~~1. The employee's duties require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning; and~~
  - ~~2. The employee's duties are not primarily clerical or administrative.~~
- (c) ~~]~~The effective date of participation under hazardous duty coverage for positions in the Department of Alcoholic Beverage Control shall be April 1, 1998. The employer and employee contributions shall be paid by the employer and forwarded to the retirement system for the period not previously reported.
- (2) ~~[(a)]~~ Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section. This process shall not be required for employees who elect coverage under KRS 196.167(3)(b)2.
- ~~[(b) Each employer desiring to provide hazardous duty coverage to employees who begin participating in the County Employees Retirement System on or after September 1, 2008, may request that the board approve hazardous duty coverage for those positions that meet the criteria set forth in subsection (1)(b) of this section. Each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1)(b) of this section for which coverage is requested and a job description for each position or employee. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. Each employer shall also certify, under penalty of perjury in accordance with KRS Chapter 523, that each employee's actual job duties are accurately reflected in the job description provided to the system. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as defined in subsection (1)(b) of this section. The board shall have the authority to remove any employee from hazardous duty coverage if the board determines the employee is not working in a hazardous duty position or if the employee is classified in a hazardous duty position but has individual job duties that do not meet the definition of a hazardous duty position or are not accurately reflected in the job descriptions filed by the employer with the system.]~~
- (3) (a) An employee who elects coverage under KRS 196.167(3)(b)2., and an employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section, shall contribute, for each pay period for which he or she receives compensation, eight percent (8%) of his or her creditable compensation. ~~[An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he or she receives compensation, eight percent (8%) of his or her creditable compensation.]~~
- (b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565 ~~or 78.635, as applicable.~~
- (c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost of converting the nonhazardous service to hazardous service from the date of participation to the date the payment is made, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated

contributions of the individual members. If the employer elects not to make the additional payment, the employee may pay the cost of converting the service and provide payment for the cost as provided by *subsection (9) of Section 52 of this Act* ~~(KRS 61.552(14))~~. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous. The provisions of this paragraph shall not apply to members who begin participating in the systems administered by Kentucky Retirement Systems ~~or County Employees Retirement System~~ on or after January 1, 2014.

- (4) The normal retirement age, retirement allowance, hybrid cash balance plans, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his or her employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.505 to 16.652.
- (5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.
- (6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.510 to 61.705 ~~or 78.510 to 78.852~~ or 16.505 to 16.652.

→Section 58. KRS 61.595 is amended to read as follows:

~~Except as limited by KRS 61.5955 or 61.5956:~~

- (1) Effective July 1, 1990, upon retirement at normal retirement date or subsequent thereto, a *Kentucky Employees Retirement System* member may receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to ~~two and two-tenths percent (2.2%) for the County Employees Retirement System and~~ one and ninety-seven hundredths percent (1.97%) ~~for the Kentucky Employees Retirement System~~ of final compensation multiplied by the number of years of service credit, except that:
  - (a) Effective February 1, 1999, a member of the Kentucky Employees Retirement System who was participating in one (1) of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two percent (2%) of final compensation multiplied by the number of years of service credit. Any Kentucky Employees Retirement System member whose effective date of retirement is between February 1, 1999, and January 31, 2009, and who has at least twenty (20) years of service credit in one (1) of the state-administered retirement systems and who was participating in one (1) of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) of final compensation multiplied by the number of years of service credit. Notwithstanding the provisions of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance account;
  - (b) ~~For a member of the County Employees Retirement System whose participation begins on or after August 1, 2004, the annual retirement allowance upon retirement at normal retirement date or later shall be equal to two percent (2%) of final compensation multiplied by the number of years of service credit and shall be payable monthly during his lifetime;~~
  - (c) ~~The annual normal retirement allowance for members of the General Assembly, who serve during the 1974 or 1976 General Assembly, and will have eight (8) years or more of total legislative service as of January 6, 1978, shall not be less than two hundred forty dollars (\$240) multiplied by the number of years of service as a member of the General Assembly;~~
  - (c)~~(d)~~ For a member of the Kentucky Employees Retirement System ~~or the County Employees Retirement System~~ who begins participating on or after September 1, 2008, the annual retirement allowance upon retirement shall be equal to:
    1. a. One and one-tenth percent (1.1%) of final compensation for each year of service if the member has earned ten (10) or less years of service at retirement;

- b. One and three-tenths percent (1.3%) of final compensation for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
  - c. One and one-half percent (1.5%) of final compensation for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or
  - d. One and three-quarters percent (1.75%) of final compensation for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and
2. Two percent (2.0%) of final compensation for each year of service earned in excess of thirty (30) years of service at retirement;
- ~~(d)(e)~~ The annual normal retirement allowance for members of the General Assembly who will have fewer than eight (8) years of service as of December 31, 1975, shall be as prescribed in Chapter 116, section 36(1), Acts of the 1972 General Assembly for legislative service prior to January 1, 1974;
- ~~(e)(f)~~ Former members of the General Assembly who have eight (8) or more years of legislative service prior to the 1976 Regular Session are eligible for an increased retirement allowance of two hundred forty dollars (\$240) times the years of legislative service, if the member pays to the Kentucky Employees Retirement System thirty-five percent (35%) of the actuarial cost of the higher benefit, as determined by the system, except that a former member with sixteen (16) or more years of legislative service, or his beneficiary, who is receiving a retirement allowance, also is eligible under this section and may apply for a recomputation of his retirement allowance. The employer's share of sixty-five percent (65%) of the computed actuarial cost shall be paid from the State Treasury to the Kentucky Employees Retirement System upon presentation of a properly documented claim to the Finance and Administration Cabinet. If any member with sixteen (16) or more years of legislative service previously applied for and is receiving a retirement allowance, he may reapply and his retirement allowance shall be recomputed in accordance with this paragraph, and he shall thereafter be paid in accordance with the option selected by him at the time of the reapplication; and
- ~~(f)(g)~~ The annual normal retirement allowance for a member with ten (10) or more years of service, in the Kentucky Employees Retirement System, at least one (1) of which is current service, shall not be less than five hundred twelve dollars (\$512).
- (2) (a) Upon service retirement prior to normal retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced at an amount determined by the board's actuary to reflect the earlier commencement of benefits.
- (b) A member of the Kentucky Employees Retirement System ~~or the County Employees Retirement System~~ who begins participating before September 1, 2008, who has twenty-seven (27) or more years of service credit, at least fifteen (15) of which are current service, may retire with no reduction in the retirement allowance. A member who begins participating before September 1, 2008, who has earned vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority, may count the vested service toward attaining the necessary years of service credit as provided in KRS 61.559(2)(c) and (d) to qualify for a retirement allowance. The credit from a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority shall not be used toward the minimum fifteen (15) years of current service required by KRS 61.559(2)(c) and (d) or to calculate his retirement allowance pursuant to this section. The provisions of this paragraph shall not be construed to limit the use of Teachers' Retirement System credit pursuant to KRS 61.680(2)(a).
- (c) A member of the Kentucky Employees Retirement System ~~or the County Employees Retirement System~~ who begins participating on or after September 1, 2008, may retire with no reduction in benefits if the member is fifty-seven (57) years of age or older and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for an unreduced



retirement allowance under this paragraph shall only include years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system.

- (3) Subsections (1) and (2) of this section shall not apply to members who begin participating in the system on or after January 1, 2014. Members who begin participating in the system on or after January 1, 2014, shall receive the retirement benefits prescribed by KRS ~~61.5956 or~~ 61.597 ~~as applicable~~.

➔Section 59. KRS 61.597 is repealed, reenacted, and amended to read as follows:

- (1) A member of the Kentucky Employees Retirement System ~~or County Employees Retirement System~~ who is participating in a nonhazardous position, whose participation in the systems begins on or after January 1, 2014, ~~and except for~~ those members making an election pursuant to KRS 61.5955 ~~or 61.5956~~, shall receive the retirement benefits provided by this section in lieu of the retirement benefits provided under KRS 61.559 and 61.595. The retirement benefit provided by this section shall be known as the hybrid cash balance plan and shall operate as another benefit tier within the Kentucky Employees Retirement System ~~and the County Employees Retirement System~~.
- (2) The hybrid cash balance plan shall provide a retirement benefit based upon the member's accumulated account balance, which shall include:
- (a) Contributions made by the member as provided by KRS 16.505 to 16.652 ~~and~~ 61.510 to 61.705 ~~and 78.510 to 78.852~~, except for employee contributions prescribed by *subsection (3)(b) of Section 73 of this Act* ~~[KRS 61.702(2)(b)]~~;
  - (b) An employer pay credit of four percent (4%) of the creditable compensation earned by the employee for each month the employee is contributing to the hybrid cash balance plan provided by this section; and
  - (c) Interest credits added annually to the member's accumulated account balance as provided by this section.
- (3) (a) Member contributions and employer pay credits as provided by subsection (2)(a) and (b) of this section shall be credited to the member's account monthly as contributions are reported and posted to the system in accordance with KRS 61.675 ~~and 78.625~~.
- (b) Interest credits, as provided by subsection (2)(c) of this section, shall be credited to the member's account annually on June 30 of each fiscal year, as determined by subsection (4) of this section.
- (4) (a) On June 30 of each fiscal year, the system shall determine if the member contributed to the hybrid cash balance plan or *the County Employees Retirement System* ~~[another state-administered retirement system]~~ during the fiscal year.
- (b) If the member contributed to the hybrid cash balance plan or *the County Employees Retirement System* ~~[another state-administered retirement system]~~ during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to:
1. **Four percent (4%); plus**
  2. **Seventy-five percent (75%) of the system's geometric average investment return in excess of the four percent (4%) rate of return** ~~[eighty-five percent (85%) of the system's geometric average net investment return, but in no case shall be less than zero percent (0%)].~~
- (c) If the member did not contribute to the hybrid cash balance plan or *the County Employees Retirement System* ~~[another state-administered retirement system]~~ during the fiscal year, ~~the~~ ~~[then no]~~ interest credit ~~[shall be]~~ added to the member's account for that fiscal year **shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to four percent (4%)**.
- (d) For purposes of this subsection, "system's geometric average net investment return":
1. Means the annual average geometric investment return, net of administrative and investment fees and expenses, over the last **five (5)** ~~ten (10)~~ fiscal years as of the date the interest is credited to the member's account; and
  2. Shall be expressed as a percentage and based upon the system in which the member has an account.

- (e) No employer pay credits or interest credits shall be provided to a member who has taken a refund of contributions as provided by KRS 61.625 or who has retired and annuitized his or her accumulated account balance as prescribed by this section.
- (5) (a) Upon termination of employment, a member who has less than five (5) years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall forfeit the accumulated employer credit, and shall only receive a refund of his or her accumulated contributions.
- (b) Upon termination of employment, a member who has five (5) or more years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall receive a full refund of his or her accumulated account balance.
- (6) A member participating in the hybrid cash balance plan provided by this section may retire:
  - (a) At his or her normal retirement date, provided he or she has earned five (5) or more years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or another state-administered retirement system; or
  - (b) If the member is at least age fifty-seven (57) and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for retirement under this paragraph shall only include years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or another state-administered retirement system.
- (7) A member eligible to retire under subsection (6) of this section may elect to:
  - (a) Receive a monthly retirement allowance payable for life by having his or her accumulated account balance annuitized by the retirement systems in accordance with the actuarial assumptions and actuarial methods adopted by the board and in effect on the member's retirement date;
  - (b) Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options set forth in KRS 61.635, except for the option provided by KRS 61.635(11); or
  - (c) Take a refund of his or her account balance as provided by KRS 61.625.
- (8) The provisions of this section shall not apply to members who began participating in the Kentucky Employees Retirement System ~~or the County Employees Retirement System~~ prior to January 1, 2014, ***except for the those members who make an election pursuant to KRS 61.5955.***

➔Section 60. KRS 61.598 is amended to read as follows:

- (1) For purposes of this section, "bona fide promotion or career advancement":
  - (a) Means a professional advancement in substantially the same line of work held by the employee in the four (4) years immediately prior to the final five (5) fiscal years preceding retirement or a change in employment position based on the training, skills, education, or expertise of the employee that imposes a significant change in job duties and responsibilities to clearly justify the increased compensation to the member; and
  - (b) Does not include any circumstance where an elected official participating in the Kentucky Employees Retirement System or the County Employees Retirement System takes a position of employment with a different employer participating in any of the state-administered retirement systems.
- (2) (a) For employees retiring from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System on or after January 1, 2018, the systems shall, for each of the retiring employee's last five (5) fiscal years of employment, identify any fiscal year in which the creditable compensation increased at a rate of ten percent (10%) or more annually over the immediately preceding fiscal year's creditable compensation. The employee's creditable compensation in the fiscal year immediately prior to the employee's last five (5) fiscal years of employment shall be utilized to compare the initial fiscal year in the five (5) fiscal year period.
- (b) Except as limited or excluded by subsections (3) and (4) of this section, any amount of increase in creditable compensation for a fiscal year identified under paragraph (a) of this subsection that exceeds ten percent (10%) more than the employee's creditable compensation from the immediately preceding fiscal year shall not be included in the creditable compensation used to calculate the retiring employee's

monthly retirement allowance. If the creditable compensation for a specific fiscal year identified under paragraph (a) of this subsection as exceeding the ten percent (10%) increase limitation is not used to calculate the retiring employee's monthly retirement allowance, then no reduction in creditable compensation shall occur for that fiscal year.

- (c) If the creditable compensation of the retiring employee is reduced as provided by paragraph (b) of this subsection, the retirement systems:
  - 1. Shall refund the employee contributions and interest attributable to the reduction in creditable compensation; and
  - 2. Shall not refund the employer contributions paid but shall utilize those funds to pay down the unfunded liability of the pension fund in which the retiring employee participated.
- (3) In order to ensure the prospective application of the limitations on increases in creditable compensation contained in subsection (2) of this section, only the creditable compensation earned by the retiring employee on or after July 1, 2017, shall be subject to reduction under subsection (2) of this section. Creditable compensation earned by the retiring employee prior to July 1, 2017, shall not be subject to reduction under subsection (2) of this section.
- (4) Subsection (2) of this section shall not apply to:
  - (a) A bona fide promotion or career advancement as defined by subsection (1) of this section;
  - (b) A lump-sum payment for compensatory time paid to an employee upon termination of employment;
  - (c) A lump-sum payment made pursuant to an alternate sick leave program under KRS 78.616(5) that is paid to an employee upon termination of employment;
  - (d) Increases in creditable compensation in a fiscal year over the immediately preceding fiscal year, where in the immediately preceding fiscal year the employer reported the employee as being on leave without pay for any reason, including but not limited to sick leave without pay, maternity leave, leave authorized under the Family Medical Leave Act, and any period of time where the employee received workers' compensation benefit payments that were not reported to the plan as creditable compensation;
  - (e) Increases in creditable compensation directly attributable to an employee's receipt of compensation for overtime hours worked while serving as a participating employee under any state or federal grant, grant pass-through, or similar program that requires overtime as a condition or necessity of the employer's receipt of the grant; and
  - (f) Increases in creditable compensation directly attributable to an employee's receipt of compensation for overtime performed during a state of emergency declared by the President of the United States or the Governor of the Commonwealth of Kentucky.
- (5)
  - (a) For employees retiring on or after January 1, 2014, but prior to July 1, 2017, the last participating employer shall be required to pay for any additional actuarial costs resulting from annual increases in an employee's creditable compensation greater than ten percent (10%) over the employee's last five (5) fiscal years of employment that are not the direct result of a bona fide promotion or career advancement. The cost shall be determined by the retirement systems.
  - (b) Lump-sum payments for compensatory time paid to an employee upon termination of employment shall be exempt from this subsection.
  - (c) ~~The Authority [Kentucky Retirement Systems]~~ shall be required to answer inquiries from participating employers regarding this subsection. Upon request of the employer prior to the employee's change of position or hiring, the systems shall make a determination that is binding to the systems as to whether or not a change of position or hiring constitutes a bona fide promotion or career advancement.
  - (d) For any additional actuarial costs charged to the employer under this subsection, the systems shall allow the employer to pay the costs without interest over a period of one (1) year from the date of receipt of the employer's final invoice.
- (6) ~~The Authority [Kentucky Retirement Systems]~~ shall determine whether increases in creditable compensation during the last five (5) fiscal years of employment prior to retirement constitute a bona fide promotion or career advancement and may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section. All state-administered retirement systems shall cooperate to implement this section.

- (7) Any employer who disagrees with a determination made by the system in accordance with this section regarding whether an increase in compensation constitutes a bona fide promotion or career advancement for purposes of subsection (5) of this section may request a hearing and appeal the decision in accordance with KRS 61.645(16) *or* 78.782(16).
- (8) For the fiscal year beginning July 1, 2017, and subsequent years, the Kentucky Retirement Systems *and the County Employees Retirement System* shall provide a means for employers to separately report the specific exceptions provided in subsection (4) of this section within the reporting system utilized by the employers for making employer reports under KRS 16.645, 61.675, and 78.545. The Kentucky Retirement Systems *and the County Employees Retirement System* shall continually provide communication, instructions, training, and educational opportunities for employers regarding how to appropriately report exemptions established by subsection (4) of this section.
- (9) This section shall not apply to employees participating in the hybrid cash balance plan as provided by KRS 16.583, ~~and 61.597, Section 2 of this Act, and Section 4 of this Act~~ ~~or to service in the 401(a) money purchase plan as provided by KRS 61.5956~~.

➔Section 61. KRS 61.600 is amended to read as follows:

- (1) Any person may qualify to retire on disability, subject to the following conditions:
- (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1);
  - (b) For a person whose membership date is prior to August 1, 2004, the person shall not be eligible for an unreduced retirement allowance;
  - (c) The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment, as defined in KRS 61.510, in a regular full-time position, as defined in KRS 61.510 ~~or 78.510~~; and
  - (d) The person shall receive a satisfactory determination pursuant to KRS 61.665.
- (2) A person's disability reapplication based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The reapplication shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time position.
- (3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
- (a) The person, since his last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he received his last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered;
  - (b) The incapacity is a result of bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;
  - (c) The incapacity is deemed to be permanent; and
  - (d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system *or the County Employees Retirement System* or reemployment, whichever is most recent. For purposes of this subsection, reemployment shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems *or the County Employees Retirement System* with no loss of service credit.
- (4) Paragraph (d) of subsection (3) of this section shall not apply if:
- (a) The incapacity is a result of bodily injury, mental illness, disease, or condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or
  - (b) The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems *or the County Employees Retirement System*.

- (5) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a regular full-time position.
2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
- (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.
- (c) The person's physical exertion requirements shall be determined based on the following standards:
1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.
  2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.
  3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.
  4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.
  5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.

➔Section 62. KRS 61.605 is repealed, reenacted, and amended to read as follows:

- (1) Upon disability retirement, except as provided by subsection (2) of this section, an employee may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability except that service credit shall be added to the person's total service beginning with his last date of paid employment and continuing to his sixty-fifth birthday; however, the maximum service credit added shall not exceed the total service the person had upon his last day of paid employment, and the maximum combined service credit for calculating his disability retirement allowance, including total service and added service shall not exceed twenty-five (25) years. If, however, a person has accumulated twenty-five (25) or more years of total service, he shall receive added service necessary to bring his combined service credit, including total and added service, to twenty-seven (27) years.
- (2) (a) For a member whose participation begins on or after August 1, 2004, but prior to January 1, 2014, the disability retirement allowance shall be the higher of twenty percent (20%) of the member's monthly

final rate of pay or the retirement allowance determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability.

- (b) For a member who begins participating on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 61.597~~[or who elects to participate in the 401(a) money purchase plan as provided by KRS 21.374, 61.595, or 61.596]~~, the disability retirement allowance shall be the higher of twenty percent (20%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his or her normal retirement date under KRS~~[61.596 or]~~ 61.597~~[, as applicable]~~.

➔Section 63. KRS 61.607 is amended to read as follows:

Notwithstanding any other provisions of KRS 16.505 to 16.652 ~~or~~<sup>or</sup> 61.510 to 61.705~~[, or 78.510 to 78.852]~~, a maximum disability benefit is hereby established which shall apply, upon disability retirement, to any disabled employee's account to which service credit is added to determine disability benefits or in any case where disability benefits are determined by computing a percentage of the disabled employee's final monthly rate of pay. The maximum disability benefit shall be determined by the following formula:

- (1) Add the monthly benefit payable to the disabled employee from the ***Kentucky Retirement Systems and the County Employees Retirement System***~~[retirement system]~~, using the monthly disability retirement allowance ***without any reduction due to the selection of an optional payment plan under KRS 61.635***~~[(not optional plan)]~~ but excluding dependent children's allowances, if any, to his monthly benefit, if any, from Social Security, even though these payments may not begin for a period of time as required for qualification under the federal Social Security law, excluding spouse or dependent benefits, and his monthly benefit, if any, from workers' compensation, even though these payments may not have begun as of the date the disabled member applies for disability retirement benefits, excluding spouse or dependent children's allowances, from workers' compensation, to arrive at a projected combined monthly benefit.
- (2) If the projected combined monthly benefit exceeds one hundred percent (100%) of the disabled employee's final rate of pay or his final compensation, whichever is greater, his disability retirement allowance from the ***Kentucky Retirement Systems and the County Employees Retirement System***~~[retirement system]~~ shall be reduced to an amount which would cause his projected combined monthly benefit to equal one hundred percent (100%) of his final rate of pay or his final compensation, whichever is greater; however, the disability retirement allowance shall not be reduced below an amount which would result from a computation of his disability retirement allowance from the ***Kentucky Retirement Systems and the County Employees Retirement System***~~[retirement system]~~ using the disabled employee's actual total service.
- (3) The system may pay estimated benefits to a disabled employee, upon qualification for disability retirement, based on an estimate of his Social Security and workers' compensation benefits until the amounts are actually determined, at which time a final calculation of the member's actual benefits shall be determined and his account corrected retroactive to his effective retirement date.
- (4) Any increase in Social Security benefits or workers' compensation benefits which becomes law, regardless of their effective date, subsequent to the disabled employee's effective retirement date, shall not be considered in determination of the maximum benefit payable, as the maximum benefit payable is based on the amount of combined benefits under these programs as of the disabled employee's effective retirement date.
- (5) Any disabled recipient whose potential payments from the system were reduced as provided for in this section shall advise the ***Authority***~~[system]~~ if his payments under the Federal Social Security Act or Workers' Compensation Act cease at any time subsequent to his effective retirement date. Upon investigation, if the system determines that the disabled recipient continues to be eligible for disability benefits, the system may increase his retirement allowance by adding to his payment an amount equal to the reduction applied upon the effective retirement date in accordance with subsection (2) of this section.
- (6) ***The amount of combined disability benefit payments made to an individual on or after April 1, 2021, from the Kentucky Retirement Systems or the County Employees Retirement System shall not be increased as a result of the passage of this Act.***

➔Section 64. KRS 61.621 is amended to read as follows:

- (1) Notwithstanding any provision of any statutes to the contrary, effective June 1, 2000, any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position, as defined in KRS 61.592 ***or Section 6 of this Act***, shall be eligible for minimum benefits equal to the benefits

payable under this section or KRS 61.702 *or Section 14 of this Act, as applicable*, if the employee dies or becomes totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury.

- (2) (a) For purposes of this section, "duty-related injury" means:
1. a. A single traumatic event that occurs while the employee is performing the duties of his position; or
  - b. A single act of violence committed against the employee that is found to be related to his job duties, whether or not it occurs at his job site; and
  2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.
- (b) "Duty-related injury" does not include the effects of the natural aging process, a communicable disease unless the risk of contracting the disease is increased by nature of the employment, or a psychological, psychiatric, or stress-related change in the human organism unless it is the direct result of a physical injury.
- (3) (a) If the employee dies as a result of a duty-related injury and is survived by a spouse, the surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased employee's retirement account, except as provided in KRS 61.542(2)(e).
- (b) The surviving spouse, provided he or she supersedes all previously designated beneficiaries, may elect to receive the benefits payable under KRS 61.640 or other applicable death benefit statutes, or may elect to receive a lump-sum payment of ten thousand dollars (\$10,000) and a monthly payment equal to seventy-five percent (75%) of the member's monthly average pay beginning in the month following the member's death and continuing each month until the death of the surviving spouse.
- (c) In addition, if the member is also survived by dependent children, monthly payments shall be made for each dependent child equal to ten percent (10%) of the deceased member's monthly average pay, except that the combined maximum payment made to the:
1. Surviving spouse and dependent children under this subsection shall not exceed one hundred percent (100%) of the deceased member's monthly average pay; and
  2. Dependent children, while the surviving spouse is living, shall not exceed twenty-five percent (25%) of the deceased member's monthly average pay. Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.
- (4) If the employee dies as a result of a duty-related injury and is not survived by a spouse but is survived by a dependent child or children, the following benefits shall be paid to the dependent child or children:
- (a) Fifty percent (50%) of the deceased member's monthly average pay, if the deceased member has one (1) dependent child;
  - (b) Sixty-five percent (65%) of the deceased member's monthly average pay, if the deceased member has two (2) dependent children; or
  - (c) Seventy-five percent (75%) of the deceased member's monthly average pay, if the deceased member has three (3) or more dependent children.

Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.

- (5) If the employee is determined to be disabled as provided in KRS 61.600, or other applicable disability statutes in any other state-administered retirement system, as the result of a duty-related injury, the employee may elect to receive benefits determined under the provisions of KRS 61.605, or other applicable disability statutes in any other state-administered retirement system, except that the monthly retirement allowance shall not be less than twenty-five percent (25%) of the employee's monthly final rate of pay. For purposes of determining disability, the service requirement in KRS 61.600(1)(a), or other applicable statutes in any other state-administered retirement system, shall be waived.
- (6) In the period of time following a member's disability during which dependent children survive, a monthly payment shall be made for each dependent child who is alive which shall be equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefits shall not

exceed forty percent (40%) of the disabled member's monthly final rate of pay at the time any particular payment is due. The payment shall commence in the month following the date of disability of the member and shall be payable to the beneficiaries, or to a legally appointed guardian, or as directed by the system.

- (7) Benefits for death as a result of a duty-related injury to a dependent child shall be payable under this section notwithstanding an election by a surviving spouse or beneficiary to withdraw the deceased member's accumulated account balance as provided in KRS 61.625 or benefits under any other provisions of KRS 61.515 to 61.705 or other applicable death benefit statutes in any other state-administered retirement system.
- (8)
  - (a) A spouse applying for benefits under this section who is also eligible for benefits under KRS 61.640 *or Section 12 of this Act* may elect to receive benefits under KRS 61.640(2)(a) or (b) *or subsection (2)(a) or (b) of Section 12 of this Act* while the application for benefits under this section is pending.
  - (b) If a final determination results in a finding of eligibility for benefits under this section, the system shall recalculate the benefits due the spouse in accordance with this subsection.
  - (c) If the spouse has been paid less than the amount of benefits to which the spouse was entitled to receive under this section, the system shall pay the additional funds due to the spouse.
  - (d) If the spouse has been paid more than the benefit the spouse was eligible to receive under this section, then the system shall deduct the amount owed by the spouse from the ten thousand dollars (\$10,000) lump-sum payment and from the monthly retirement allowance payments until the amount owed to the systems has been recovered.
- (9) For purposes of this section, "dependent child" has the same meaning as in KRS 16.505.
- (10) This section shall be known as "The Fred Capps Memorial Act."

➔Section 65. KRS 61.637 (Effective April 1, 2021) 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 or her retirement payments suspended for the duration of reemployment. Monthly payments shall not be suspended for a retired member who is reemployed if he or she anticipates that he or she 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 or her estate, if he or she 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 or her 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 or her period of reemployment as an employee, his or her 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 or her period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his or her retirement allowance was last determined;
    2. If the retired member initially retired on or subsequent to his or her normal retirement date, his or her retirement allowance shall be recomputed by using the formula in KRS 61.595(1);



3. If the retired member initially retired prior to his or her normal retirement date, his or her 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 or her age at the time of his or her 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. of this paragraph. The member shall not receive less in benefits as a result of the recomputation than he or she 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 or her 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 or her 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 or her retirement by reimbursing the system in the full amount of his or her 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 or County Employees Retirement System 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) If a retired member accepts employment or begins serving as a volunteer with an employer participating in the systems administered by Kentucky Retirement Systems or County Employees Retirement System within twelve (12) months of his or her retirement date, the retired member shall notify the ~~Authority[retirement system]~~ and the participating employer shall submit the information required or requested by the ~~Authority[systems]~~ to confirm the individual's employment or volunteer status. The retired member shall not be required to notify the ~~Authority[retirement systems]~~ regarding any employment or volunteer service with a participating agency that is accepted after twelve (12) months following his or her retirement date.
  - (9) If the retired member is under a contract to provide services as an independent contractor or leased employee to an employer participating in the systems administered by Kentucky Retirement Systems or County Employees Retirement System within twelve (12) months of his or her retirement date, the member shall submit a copy of that contract to the ~~Authority[retirement system]~~, and the ~~Authority[retirement system]~~ shall determine if the member is an independent contractor or leased employee for purposes of retirement benefits.

The retired member and the participating employer shall submit the information required or requested by the ~~Authority~~~~systems~~ to confirm the individual's status as an independent contractor or leased employee. The retired member shall not be required to notify the ~~Authority~~~~retirement systems~~ regarding any services entered into as an independent contractor or leased employee with a participating agency that the employee enters into after twelve (12) months following his or her retirement date.

- (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 or her prior to his or her 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 or her 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 or her 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 or her 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 or she retired and for the position in which he or she 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 or County Employees Retirement System 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 or her initial retirement account shall no longer be suspended, and the member shall receive the amount to which he or she 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 or her 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 or her 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 or she retired, the retired member shall continue to receive his or her 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 or she was eligible to purchase prior to his or her 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 or County Employees Retirement System 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 County Employees Retirement System, or has filed the forms required to receive a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems or County Employees Retirement System, and is employed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems or County Employees Retirement System 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 or County Employees Retirement System 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 or County Employees Retirement System, 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 or County Employees Retirement System and is employed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems or County Employees Retirement System 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. If a member is reemployed by a participating agency within twelve (12) months of the member's retirement date, the participating agency shall certify in writing on a form prescribed by the ~~Authority 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 an elected official is reelected to a new term of office in the same position and has retired from the elected office within twelve (12) months prior to taking the new term of office, he or she shall be deemed by the system as having a prearranged agreement under the provisions of this subparagraph and shall have his or her retirement voided. If the participating agency fails 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. Employment that is accepted by the retired member after twelve (12) months following the member's retirement date shall not constitute a prearranged agreement under this paragraph;
    - 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. Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall pay

employer contributions as specified by KRS 61.565, 61.702, and 78.635, as applicable, 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. Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, 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. Effective July 1, 2015, local school boards shall not be required to pay the reimbursement required by this subparagraph for retirees employed by the board for eighty (80) days or less during the fiscal year;
- (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 or County Employees Retirement System:
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 or County Employees Retirement System, 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;
- (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. If a member is reemployed by a participating agency within twelve (12) months of the member's retirement date, the participating agency shall certify in writing on a form prescribed by the ~~Authority~~~~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 an elected official is reelected to a new term of office in the same position and has retired from the elected office within twelve (12) months prior to taking the new term of office, he or she shall be deemed by the ~~Authority~~~~system~~ as having a prearranged agreement under the provisions of this subparagraph and shall have his or her retirement voided. If the participating agency fails 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. Employment that is accepted by the retired member after twelve (12) months following the member's retirement date shall not constitute a prearranged agreement under this paragraph;
  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. Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall pay employer contributions as specified by KRS 61.565, 61.702, and 78.635, as applicable, 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;

4. Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, 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;
- (e) Notwithstanding paragraphs (a) to (d) of this subsection, a retired member who qualifies as a volunteer for an employer participating in one (1) of the systems administered by Kentucky Retirement Systems or County Employees Retirement System and who is receiving reimbursement of actual expenses, a nominal fee for his or her volunteer services, or both, shall not be considered an employee of the participating employer and shall not be subject to paragraphs (a) to (d) of this subsection if:
1. Prior to the retired member's most recent retirement date, he or she did not receive creditable compensation from the participating employer in which the retired member is performing volunteer services;
  2. Any reimbursement or nominal fee received prior to the retired member's most recent retirement date has not been credited as creditable compensation to the member's account or utilized in the calculation of the retired member's benefits;
  3. The retired member has not purchased or received service credit under any of the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852 for service with the participating employer for which the retired member is performing volunteer services; and
  4. Other than the status of volunteer, the retired member does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twelve (12) months following the retired member's most recent retirement date.

If a retired member, who provided volunteer services with a participating employer under this paragraph violates any provision of this paragraph, then he or she shall be deemed an employee of the participating employer as of the date he or she began providing volunteer services and both the retired member and the participating employer shall be subject to paragraphs (a) to (d) of this subsection for the period of volunteer service;

- (f) Notwithstanding any provision of this section, any mayor or member of a city legislative body shall not be required to resign from his or her position as mayor or as a member of the city legislative body in order to begin drawing benefits from the systems administered by Kentucky Retirement Systems or subject to any provision of this section as it relates solely to his or her service as a mayor or member of the city legislative body if the mayor or member of a city legislative body:
1. Has not participated in the County Employees Retirement System prior to retirement, but is otherwise eligible to retire from the Kentucky Employees Retirement System or the State Police Retirement System; or
  2. Has been or is participating in the County Employees Retirement System and is at least sixty-two (62) years of age. If a mayor or member of a city legislative body who is at least sixty-two (62) years of age retires from the systems administered by Kentucky Retirement Systems but remains in office after his or her effective retirement date, the mayor or member of the city legislative body shall not accrue any further service credit or benefits in the systems administered by Kentucky Retirement Systems for any employment occurring on or after the effective retirement date;
- (g) If a member is receiving a retirement allowance from any of the retirement systems administered by the Kentucky Retirement Systems or County Employees Retirement System and enters into a contract or becomes a leased employee of an employer under contract with an employer participating in one (1) of the systems administered by the Kentucky Retirement Systems or County Employees Retirement System:
1. At any time following retirement, if the ~~Authority~~~~system~~ determines the employment arrangement does qualify as an independent contractor or leased employee, the member may continue to receive his or her retirement allowance during the period of the contract;

2. Within three (3) months following the member's initial retirement date, if the ~~Authority~~~~system~~ determines the employment arrangement does not qualify as an independent contractor or leased employee, the member's retirement shall be voided in accordance with paragraph (a) of this subsection;
3. After three (3) months but within twelve (12) months following the member's initial retirement, if the ~~Authority~~~~system~~ determines the employment arrangement does not qualify as an independent contractor or leased employee and that a prearranged agreement existed between the member and the agency for the member to return to work with the agency, the member's retirement shall be voided in accordance with paragraph (a) of this subsection; and
4. After a twelve (12) month period following the member's initial retirement, the member may continue to receive his or her retirement allowance during the period of the contract and the member shall not be required to notify the system or submit any documentation for purposes of this section to the system.

The initiation of a contract or the initial date of the leased employment of a retired member by a participating agency that occurs after twelve (12) months or more following the retired member's retirement date shall not constitute a prearranged agreement under this subsection; and

- (h) The ~~Authority~~~~Kentucky Retirement Systems or County Employees Retirement System~~ shall issue a final determination regarding a certification of the absence of a prearranged agreement or the retired member's qualification as an independent contractor or leased employee as required under this section no later than thirty (30) days after the retired member and participating employer provide all required forms and additional information required by the ~~Authority~~~~Kentucky Retirement Systems or County Employees Retirement System~~.
- (18) The ~~Authority~~~~Kentucky Retirement Systems and the County Employees Retirement System~~ shall promulgate administrative regulations to implement the requirements of this section, including incorporating by reference board-prescribed forms that a retired member and participating agency shall provide the systems under subsections (8), (9), and (17) of this section.

➔Section 66. KRS 61.645 (Effective April 1, 2021) is amended to read as follows:

- (1) The Kentucky Employees Retirement System and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of nine (9) members, who shall be selected as follows:
  - (a) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;
  - (b) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System;
  - (c) Six (6) trustees, appointed by the Governor of the Commonwealth, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. Of the six (6) trustees appointed by the Governor, three (3) trustees shall have investment experience and three (3) trustees shall have retirement experience;
  - (d) For purposes of paragraph (c) of this subsection, a trustee with "investment experience" means an individual who does not have a conflict of interest, as provided by KRS 61.655, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:
    1. A portfolio manager acting in a fiduciary capacity;
    2. A professional securities analyst or investment consultant;
    3. A current or retired employee or principal of a trust institution, investment or finance organization, or endowment fund acting in an investment-related capacity;
    4. A chartered financial analyst in good standing as determined by the CFA Institute; or
    5. A university professor, teaching investment-related studies; and
  - (e) For purposes of paragraph (c) of this subsection, a trustee with "retirement experience" means an individual who does not have a conflict of interest, as provided by KRS 61.655, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:

1. Experience in retirement or pension plan management;
  2. A certified public accountant with relevant experience in retirement or pension plan accounting;
  3. An actuary with relevant experience in retirement or pension plan consulting;
  4. An attorney licensed to practice law in the Commonwealth of Kentucky with relevant experience in retirement or pension plans; or
  5. A current or former university professor whose primary area of emphasis is economics or finance.
- (2) The board is hereby granted the powers and privileges of a corporation, including but not limited to the following powers:
- (a) To sue and be sued in its corporate name;
  - (b) To make bylaws not inconsistent with the law;
  - (c) To conduct the business and promote the purposes for which it was formed;
  - (d) Except as provided in KRS 61.650(6), to contract for investment counseling, auditing, medical, and other professional or technical services as required to carry out the obligations of the board subject to KRS Chapters 45, 45A, 56, and 57. Actuarial consulting services shall be provided by a firm hired by the Kentucky Public Pensions Authority;
  - (e) To purchase fiduciary liability insurance;
  - (f) Except as provided in KRS 61.650(6), to acquire, hold, sell, dispose of, pledge, lease, or mortgage, the goods or property necessary to exercise the board's powers and perform the board's duties subject to KRS Chapters 45, 45A, and 56; and
  - (g) The board shall reimburse any trustee, officer, or employee for any legal expense resulting from a civil action arising out of the performance of his or her official duties. The hourly rate of reimbursement for any contract for legal services under this paragraph shall not exceed the maximum hourly rate provided in the Legal Services Duties and Maximum Rate Schedule promulgated by the Government Contract Review Committee established pursuant to KRS 45A.705, unless a higher rate is specifically approved by the secretary of the Finance and Administration Cabinet or his or her designee.
- (3) (a) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his or her successor is duly qualified except as otherwise provided in this section. An elected trustee or a trustee appointed by the Governor under subsection (1)(c) of this section, shall not serve more than three (3) consecutive four (4) year terms. An elected trustee or a trustee appointed by the Governor under subsection (1)(c) of this section, who has served three (3) consecutive terms may be elected or appointed again after an absence of four (4) years from the board.
- (b) The term limits established by paragraph (a) of this subsection shall apply to trustees serving on or after July 1, 2012, and all terms of office served prior to July 1, 2012, shall be used to determine if the trustee has exceeded the term limits provided by paragraph (a) of this subsection.
- (4) (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board may nominate, not less than six (6) months before a term of office of a trustee is due to expire, three (3) constitutionally eligible individuals.
- (b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the executive director, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, last four (4) digits of the Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the retirement system members.
- (c) Within four (4) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the executive director shall cause to be prepared an official ballot. The ballot shall include the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes.
- (d) Except as provided by paragraph (j) of this subsection, the ballots shall be distributed to the eligible voters by mail to their last known residence address.

- (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office or submitted electronically as provided by paragraph (j) of this subsection. Access to this post office box shall be limited to the board's contracted firm. The individual receiving a plurality of votes shall be declared elected.
- (f) The eligible voter shall cast his or her ballot by selecting the candidate of his or her choice. He or she shall sign and mail the ballot or submit the electronic ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date, or date of submission in the case of electronic ballots, shall be provided on the ballot.
- (g) The board's contracted firm shall report in writing the outcome to the chair of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.
- (h) For purposes of this subsection, an eligible voter shall be a person who was a member of the retirement system on December 31 of the year preceding the election year.
- (i) Each individual who submits a request to be nominated by the board under paragraph (a) of this subsection and each individual who is nominated by the membership under paragraph (b) of this subsection shall:
  1. Complete an application developed by the retirement systems which shall include but not be limited to a disclosure of any prior felonies and any conflicts of interest that would hinder the individual's ability to serve on the board;
  2. Submit a resume detailing the individual's education and employment history and a cover letter detailing the member's qualifications for serving as trustee to the board; and
  3. Authorize the systems to have a criminal background check performed. The criminal background check shall be performed by the Department of Kentucky State Police.
- (j) In lieu of the ballots mailed to members and retired members as provided by this subsection, the systems may by promulgation of administrative regulation pursuant to KRS Chapter 13A conduct trustee elections using electronic ballots, except that the systems shall mail a paper ballot upon request of any eligible voter.
- (5) (a) Any vacancy which may occur in an appointed position *during a term of office* shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position *during a term of office* shall be filled by appointment by a majority vote of the remaining elected trustees with a person selected from the system in which the vacancy occurs ~~and if the secretary of the Personnel Cabinet resigns his or her position as trustee, it shall be filled by appointment made by the Governor~~; however, any vacancy shall be filled only for the duration of the unexpired term. In the event of a vacancy of an elected trustee *during a term of office*, Kentucky Retirement Systems shall notify members of the system in which the vacancy occurs of the vacancy and the opportunity to be considered for the vacant position. Any vacancy *during a term of office* shall be filled within ninety (90) days of the position becoming vacant.
 

(b) *Any appointments or reappointments to an appointed position on the board shall be made no later than thirty (30) days prior to an appointed member's term of office ending.*
- (6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on the board; and if a trustee holds more than one (1) position as trustee on the board, he or she shall resign a position.
 

(b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.

(c) A current or former employee of Kentucky Retirement Systems, County Employees Retirement System, or the Kentucky Public Pensions Authority shall not be eligible to serve as a member of the board.
- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of eighty dollars (\$80) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.



- (8) (a) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chair or the **chief executive officer** ~~[executive director]~~.
- (b) The board shall elect a chair and a vice chair. The chair shall not serve more than four (4) consecutive years as chair or vice-chair of the board. The vice-chair shall not serve more than four (4) consecutive years as chair or vice-chair of the board. A trustee who has served four (4) consecutive years as chair or vice-chair of the board may be elected chair or vice-chair of the board after an absence of two (2) years from the positions.
- (c) A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9) (a) The board of trustees shall appoint or contract for the services of a chief executive officer **and general counsel** and fix the compensation and other terms of employment for **these positions** ~~[this position]~~ without limitation of the provisions of KRS Chapters 18A **and 45A** and KRS 64.640. The chief executive officer shall serve as the legislative ~~[legal]~~ and executive adviser to the board. **The general counsel shall serve as legal adviser to the board. The chief executive officer and general counsel** ~~[and]~~ shall work with the executive director of the Kentucky Public Pensions Authority to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705. The executive director of the Kentucky Public Pensions Authority shall be the chief administrative officer of the board.
- (b) Prior to April 1, 2021, the board of trustees shall authorize the executive director to appoint the employees deemed necessary to transact the business of the system. ~~[Prior to July 1, 2021, all employees of the systems, except for the executive director, shall be subject to the state personnel system established pursuant to KRS 18A.005 to 18A.204 and shall have their salaries determined by the secretary of the Personnel Cabinet.]~~ Effective April 1, 2021, the responsibility of appointing employees and managing personnel needs shall be transferred to the Kentucky Public Pensions Authority established by KRS 61.505.
- (c) The board shall require the chief executive officer **and may require the general counsel** to execute bonds for the faithful performance of his or her duties notwithstanding the limitations of KRS Chapter 62.
- (d) The board shall have a system of accounting established by the Kentucky Public Pensions Authority.
- (e) The board shall do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705 conform with federal statute or regulation and meet the qualification requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance. Provisions of KRS 16.505 to 16.652 and 61.510 to 61.705 which conflict with federal statute or regulation or qualification under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance shall not be available. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation and to meet the qualification requirements under 26 U.S.C. sec. 401(a), including an administrative regulation to comply with 26 U.S.C. sec. 401(a)(9).
- (f) Notwithstanding any other provision of statute to the contrary, including but not limited to any provision of KRS Chapter 12, the Governor shall have no authority to change any provision of KRS 16.505 to 16.652 and 61.510 to 61.705 by executive order or action, including but not limited to reorganizing, replacing, amending, or abolishing the membership of the Kentucky Retirement Systems board of trustees.
- (10) Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.
- (11) The Attorney General, or an assistant designated by him or her, may attend each meeting of the board and may receive the agenda, board minutes, and other information distributed to trustees of the board upon request. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.
- (12) (a) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally

accepted auditing standards. Except as provided by paragraph (b) of this subsection, the board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his or her discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the ~~offices~~<sup>office</sup> of the ~~executive director of the~~ **Kentucky Public Pensions Authority**~~Retirement Systems~~ and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.

- (b) At least once every five (5) years, the Auditor of Public Accounts shall perform the audit described by this subsection, and the system shall reimburse the Auditor of Public Accounts for all costs of the audit. The Auditor of Public Accounts shall determine which fiscal year during the five (5) year period the audit prescribed by this paragraph will be completed.
- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account, ***including any administrative expenses for the Kentucky Public Pensions Authority that are assigned to the Kentucky Retirement Systems by KRS 61.505. The board shall submit any administrative expenses that are specific to the Kentucky Retirement Systems that are not otherwise covered by subsection (11)(a) of Section 76 of this Act.***~~Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.~~
- (14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.505 to 16.652 and 61.510 to 61.705, may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.
- (15) (a) A trustee shall discharge his or her duties as a trustee, including his or her duties as a member of a committee:
1. In good faith;
  2. On an informed basis; and
  3. In a manner he or she honestly believes to be in the best interest of the Kentucky Retirement Systems.
- (b) A trustee discharges his or her duties on an informed basis if, when he or she makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he or she exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
- (c) In discharging his or her duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;
  2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
  3. A committee of the board of trustees of which he or she is not a member if the trustee honestly believes the committee merits confidence.
- (d) A trustee shall not be considered as acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
- (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:
1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and

2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
  - (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraph (e)1. and 2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.
  - (g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.
  - (h) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky and shall take all actions available under the law to contain costs for the trusts, including costs for participating employers, members, and retirees.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, or when an employer disagrees with an order of the system as provided by KRS 61.598, the affected member, retired member, recipient, or employer may request a hearing to be held in accordance with KRS Chapter 13B. The board may establish an appeals committee whose members shall be appointed by the chair and who shall have authority to act upon the recommendations and reports of the hearing officer on behalf of the board. The member, retired member, recipient, or employer aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B. The board may establish a joint administrative appeals committee with the County Employees Retirement System and may also establish a joint disability appeals committee with the County Employees Retirement System.
- (17) The board shall give the Kentucky Education Support Personnel Association twenty-four (24) hours notice of the board meetings, to the extent possible.
- (18) The board shall establish a formal trustee education program for all trustees of the board. The program shall include but not be limited to the following:
- (a) A required orientation program for all new trustees elected or appointed to the board. The orientation program shall include training on:
    1. Benefits and benefits administration;
    2. Investment concepts, policies, and current composition and administration of retirement systems investments;
    3. Laws, bylaws, and administrative regulations pertaining to the retirement systems and to fiduciaries; and
    4. Actuarial and financial concepts pertaining to the retirement systems.

If a trustee fails to complete the orientation program within one (1) year from the beginning of his or her first term on the board, the retirement systems shall withhold payment of the per diem and travel expenses due to the board member under this section and KRS 16.640 until the trustee has completed the orientation program;
  - (b) Annual required training for board members on the administration, benefits, financing, and investing of the retirement systems. If a trustee fails to complete the annual required training during the calendar or fiscal year, the retirement systems shall withhold payment of the per diem and travel expenses due to the board member under this section and KRS 16.640 until the board member has met the annual training requirements; and
  - (c) The retirement systems shall incorporate by reference in an administrative regulation, pursuant to KRS 13A.2251, the trustee education program.
- (19) In order to improve public transparency regarding the administration of the systems, the board of trustees shall adopt a best practices model by posting the following information to the Kentucky Public Pensions Authority's Web site and shall make available to the public:
- (a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the Kentucky Public Pensions Authority's Web site at least seventy-two (72) hours in advance of the board

or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;

- (b) The Comprehensive Annual Financial Report with the information as follows:
1. A general overview and update on the retirement systems by the executive director;
  2. A listing of the board of trustees;
  3. A listing of key staff;
  4. An organizational chart;
  5. Financial information, including a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;
  6. Investment information, including a general overview, a list of the retirement system's professional consultants, a total net of fees return on retirement systems investments over a historical period, an investment summary, contracted investment management expenses, transaction commissions, and a schedule of investments;
  7. The annual actuarial valuation report on the pension benefit and the medical insurance benefit; and
  8. A general statistical section, including information on contributions, benefit payouts, and retirement systems' demographic data;
- (c) All external audits;
- (d) All board minutes or other materials that require adoption or ratification by the board of trustees. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification of the board;
- (e) All bylaws, policies, or procedures adopted or ratified by the board of trustees;
- (f) The retirement systems' summary plan description;
- (g) A document containing an unofficial copy of the statutes governing the systems administered by Kentucky Retirement Systems;
- (h) A listing of the members of the board of trustees and membership on each committee established by the board, including any investment committees;
- (i) All investment holdings in aggregate, fees, and commissions for each fund administered by the board, which shall be updated on a quarterly basis for fiscal years beginning on or after July 1, 2017. The systems shall request from all managers, partnerships, and any other available sources all information regarding fees and commissions and shall, based on the requested information received:
1. Disclose the dollar value of fees and commissions paid to each individual manager or partnership;
  2. Disclose the dollar value of any profit sharing, carried interest, or any other partnership incentive arrangements, partnership agreements, or any other partnership expenses received by or paid to each manager or partnership; and
  3. As applicable, report each fee or commission by manager or partnership consistent with standards established by the Institutional Limited Partners Association (ILPA).
- In addition to the requirements of this paragraph, the systems shall also disclose the name and address of all individual underlying managers or partners in any fund of funds in which system assets are invested;
- (j) An update of net of fees investment returns, asset allocations, and the performance of the funds against benchmarks adopted by the board for each fund, for each asset class administered by the board, and for each manager. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2017;
- (k) A searchable database of the systems' expenditures and a listing of each individual employed by the systems along with the employee's salary or wages. In lieu of posting the information required by this

paragraph to the Kentucky Public Pensions Authority's Web site, the systems may provide the information through a Web site established by the executive branch to inform the public about executive branch agency expenditures and public employee salaries and wages;

- (l) All contracts or offering documents for services, goods, or property purchased or utilized by the systems; and
  - (m) Information regarding the systems' financial and actuarial condition that is easily understood by the members, retired members, and the public.
- (20) Notwithstanding the requirements of subsection (19) of this section, the retirement systems shall not be required to furnish information that is protected under KRS 61.661, exempt under KRS 61.878, or that, if disclosed, would compromise the retirement systems' ability to competitively invest in real estate or other asset classes, except that no provision of this section or KRS 61.878 shall exclude disclosure and review of all contracts, including investment contracts, by the board, the Auditor of Public Accounts, and the Government Contract Review Committee established pursuant to KRS 45A.705 or the disclosure of investment fees and commissions as provided by this section. If any public record contains material which is not excepted under this section, the systems shall separate the excepted material by removal, segregation, or redaction, and make the nonexcepted material available for examination.
- (21) Notwithstanding any other provision of KRS 16.505 to 16.652 and 61.510 to 61.705 to the contrary, no funds of the systems administered by Kentucky Retirement Systems, including fees and commissions paid to an investment manager, private fund, or company issuing securities, who manages systems assets, shall be used to pay fees and commissions to placement agents. For purposes of this subsection, "placement agent" means a third-party individual, who is not an employee, or firm, wholly or partially owned by the entity being hired, who solicits investments on behalf of an investment manager, private fund, or company issuing securities.

➔Section 67. KRS 61.652 is amended to read as follows:

- (1) The Kentucky Employees Excess Benefit Plan established in KRS 61.663~~[- the County Employees Excess Benefit Plan established in KRS 78.652]~~ and the State Police Excess Benefit Plan established in KRS 16.568 shall be administered by the board of trustees of the Kentucky Retirement Systems. ***The County Employees Excess Benefit Plan established in KRS 78.652 shall be administered by the board of trustees of the County Employees Retirement System. Each***~~The~~ board shall have the same authority in its administration as it has in the administration of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System, ***as applicable***.
- (2) The plans shall constitute qualified governmental excess benefit plans as provided in 26 U.S.C. sec. 415(m).
- (3) All retired members and beneficiaries of the ***two (2)***~~three (3)~~ retirement systems administered by the Kentucky Retirement Systems ***and (1) retirement system administered by the County Employees Retirement System***, whose effective retirement dates are July 1, 1998, or after, and whose retirement allowances have been limited by 26 U.S.C. sec. 415 shall be participants in the plans. Each member's participation in the plans shall be determined each fiscal year and will cease for any year in which the retirement allowance is not limited by 26 U.S.C. sec. 415.
- (4) A participant shall receive a benefit equal to the difference between the retirement allowance otherwise payable from the system prior to any reduction or limitation required by 26 U.S.C. sec. 415 and the actual retirement allowance payable as limited by 26 U.S.C. sec. 415. The benefit shall be subject to withholding for applicable state and federal taxes. The benefit shall be paid in accordance with the retirement payment option selected by the member or beneficiary for the retirement allowance.
- (5) (a) ***Each***~~The~~ board, in accordance with the recommendation of the actuary, shall determine the required contribution for each ***plan***~~of the three (3) plans~~ ***the respective board administers in order*** to pay benefits each fiscal year. The required contribution for each of the three (3) plans in each fiscal year shall be the total amount of benefits payable under this section to all participants plus the amount required to pay the administrative expenses of the plan and the employer's share of any employment taxes on the benefits paid from the plan.
  - (b) The required contribution shall be paid by the participating employers.
  - (c) The required contribution for each plan shall be deposited into the separate fund. The plan is intended to be exempt from federal income tax under 26 U.S.C. sec. 115 and 26 U.S.C. sec. 415(m)(1).

- (d) The benefit liability of each plan shall be determined on a fiscal year basis, and contributions shall not be accumulated to pay benefits in future fiscal years. Any assets of the plans not used to pay benefits in the current fiscal year shall be used for payment of the administrative expenses of the plan for the current or future fiscal years or shall be paid to the appropriate retirement system as an additional employer contribution.
- (6) The benefits payable from the plans shall be treated in accordance with KRS 61.690.
- (7) The board shall promulgate administrative regulations to modify the benefits payable under the plans as necessary for the plans to be qualified under 26 U.S.C. sec. 415(m).
- (8) The provisions of this section, and any administrative regulations promulgated as a result of this section, shall be applied retroactively to retired members, and beneficiaries, whose effective retirement dates are between July 1, 1998, and July 14, 2000.

➔Section 68. KRS 61.660 is amended to read as follows:

- (1) The State Treasurer shall be the custodian of the funds received under authority of KRS 61.510 to 61.705, 16.510 to 16.652 and 78.510 to 78.852 and shall be responsible for the safekeeping of all cash and securities in his custody. All payments from the fund shall be made by him on warrants issued by the Finance and Administration Cabinet. Payments may be in the form of checks, which shall clearly show on the envelope or other mailing device the name and address of the Kentucky Retirement Systems, *County Employees Retirement System*, or direct deposit bank transfers.
- (2) The *Kentucky Public Pensions Authority*~~[board]~~ shall appoint a custodian or custodians of the cash and securities acquired under authority of KRS 61.510 to 61.705, 16.510 to 16.652, and 78.510 to 78.852; and the custodian or custodians shall be responsible for the safekeeping of all cash and securities in ~~its~~~~his~~ custody.

➔Section 69. KRS 61.665 is amended to read as follows:

- (1) The *Authority*~~[board]~~ shall employ at least three (3) physicians, licensed in the state and not members of the system, upon terms and conditions it prescribes to serve as medical examiners, whose duty it shall be to pass upon all medical examinations required under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, to investigate all health or medical statements and certificates made by or in behalf of any person in connection with the payment of money to the person under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and who shall report in writing to the system the conclusions and recommendations upon all matters referred to them. The *Authority*~~[board]~~ may employ one (1) or more licensed mental health professionals in making recommendations regarding mental impairments.
- (2) (a) Each person requesting disability retirement shall file at the retirement office an application for disability retirement and supporting medical information to report the person's physical and mental condition. The person shall also file at the retirement office a complete description of the job and duties from which he received his last pay as well as evidence that the person has made a request for reasonable accommodation as provided for in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630. The person shall certify to the retirement office that the application for disability retirement and supporting medical information are ready to be evaluated by the medical examiners in accordance with paragraph (d) of this subsection. If, after good faith efforts, the person informs the *Authority*~~[system]~~ that he has been unable to obtain the employment or medical information, the *Authority*~~[system]~~ shall assist the person in obtaining the records and may use the authority granted pursuant to KRS 61.685(1) to obtain the records. If the person fails to file, at the retirement office within one hundred eighty (180) days of the date the person filed his notification of retirement, any of the forms, certifications, or information required by this subsection, the person's application for disability retirement shall be void. Any subsequent filing of an application for disability retirement or supporting medical information shall not be evaluated, except as provided in paragraph (f) of this subsection or KRS 61.600(2) **or Section 7 or 8 of this Act.**
- (b) The employer shall file at the retirement office a complete description of the job and duties for which the person was last paid and shall submit a detailed description of reasonable accommodations attempted.
- (c) The cost of medical examinations and the filing of the medical information, reports, or data with the retirement office shall be paid by the person applying for disability retirement.
- (d) The *Authority*~~[system]~~ shall select three (3) medical examiners to evaluate the medical evidence submitted by the person. The medical examiners shall recommend that disability retirement be

- approved, or that disability retirement be denied. If there is evidence of a mental impairment, the medical examiners may request the ~~Authority's board's~~ licensed mental health professional to assist in determining the level of the mental impairment.
- (e) If two (2) or more of the three (3) medical examiners recommend that the person be approved for disability retirement, the system shall make retirement payments in accordance with the retirement plan selected by the person.
  - (f) If two (2) or more of the three (3) medical examiners recommend that the person be denied disability retirement, the ~~Authority/system~~ shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office. The person shall have one hundred eighty (180) days from the day that the ~~Authority/system~~ mailed the notice to file at the retirement office additional supporting medical information and certify to the retirement office that the application for disability retirement and supporting medical information are ready to be evaluated by the medical examiners or to appeal his denial of disability retirement by filing at the retirement office a request for a formal hearing. Any subsequent filing of an application for disability retirement or supporting medical information shall not be evaluated, except as provided in KRS 61.600(2) *or Section 7 or 8 of this Act*.
  - (g) If two (2) or more of the three (3) medical examiners recommend that the person be approved for disability retirement based upon the evaluation of additional supporting medical information in accordance with paragraph (f) of this subsection, the system shall make retirement payments in accordance with the retirement plan selected by the person.
  - (h) If two (2) or more of the three (3) medical examiners recommend that the person be denied disability retirement based upon the evaluation of additional supporting medical information in accordance with paragraph (f) of this subsection, the ~~Authority/system~~ shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office. The person shall have one hundred eighty (180) days from the day that the ~~Authority/system~~ mailed the notice to appeal his denial of disability retirement by filing at the retirement office a request for a formal hearing.
  - (i) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
  - (j) Notwithstanding the foregoing provisions of this section, the ~~Authority/system~~ may pay for one (1) or more medical examinations of the person requested by the medical examiners for the purpose of providing medical information deemed necessary by the medical examiners. The system may require the person to submit to one (1) or more medical examinations.
- (3)
    - (a) Any person whose disability benefits have been reduced, discontinued, or denied pursuant to subsection (2)(f) or (2)(h) of this section may file at the retirement office a request for a formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of one hundred eighty (180) days after the person had notice of the system's determination, as described in subsection (2)(f) or (2)(h) of this section. The request for a formal hearing shall be filed with the executive director, at the retirement office in Frankfort. The request for a formal hearing shall include a short and plain statement of the reasons the denial of disability retirement is being contested.
    - (b) Failure of the person to request a formal hearing within the period of time specified shall preclude the person from proceeding any further with the application for disability retirement, except as provided in KRS 61.600(2) *or Section 7 or 8 of this Act*. This paragraph shall not limit the person's right to appeal to a court.
    - (c) The system may require the person requesting the formal hearing to submit to one (1) or more medical or psychological examinations. Notice of the time and place of the examination shall be mailed to the person or his legal representative. The system shall be responsible for the cost of the examination.
    - (d) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.
    - (e) All requests for a hearing pursuant to this section shall be made in writing.
  - (4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board. *The Authority may, upon the joint approval of the board of the Kentucky Retirement Systems and the County Employees Retirement System, establish an appeals committee whose members*

*shall be appointed by the chair of the Authority and who have the authorization to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of both boards.*

- (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.
- (6) The system, pursuant to regulations, may refer an employee determined by it to be disabled to the Kentucky Office of Vocational Rehabilitation for evaluation and, if appropriate, retraining.
  - (a) The cost of the evaluation and retraining shall be paid by the system in accordance with the regulations established by the board.
  - (b) The member shall perform all acts that are necessary to enroll in and satisfy the requirements of Vocational Rehabilitation as prescribed by the board. This shall include the exchange of confidential information between Kentucky Retirement Systems and the Kentucky Office of Vocational Rehabilitation as necessary to conduct the rehabilitation process. Failure of the member to cooperate with the system or Vocational Rehabilitation may result in his disability allowance being discontinued, reduced, or denied until the member complies with the agency requests. If the refusal continues for one (1) year, all his rights to any further disability allowance shall cease.

➔Section 70. KRS 61.680 is amended to read as follows:

~~{Except as limited by KRS 6.525, 21.374, 61.5955, or 61.5956;}~~

- (1) Prior to August 1, 1982, every employee shall be deemed to consent and agree to any deduction from his compensation required by KRS 6.500 to 6.535, 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852, and to all other provisions thereof. Thereafter, employee contributions shall be picked up by the employer pursuant to KRS 61.560(4).
- (2) (a) Notwithstanding any other provisions of KRS 6.500 to 6.535, 16.505 to 16.652, 61.510 to 61.692, 78.510 to 78.852 and 161.220 to 161.714:
  1. Upon death, disability, or service retirement, a member's accounts under the Legislators' Retirement Plan, State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and Teachers' Retirement System, except for service prohibited by KRS 161.623(2), shall be consolidated for the purpose of determining eligibility and amount of benefits, including those members who participate in the hybrid cash balance plan~~{ or 401(a) money purchase plans }~~ within the Kentucky Employees Retirement System, the County Employees Retirement System, **and** the State Police Retirement System, **on or after January 1, 2014, and regardless of the transition of administration of the County Employees Retirement System to the County Employees Retirement System board of trustees for the Teachers' Retirement System;**
  2. Vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education and accepted by the Kentucky Employees Retirement System or the County Employees Retirement System, may be used to determine eligibility for twenty-seven (27) year retirement for an employee who begins participating before September 1, 2008, but not the amount of benefits;
  3. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, but the final compensation, excluding compensation earned under KRS 161.155(10), shall be determined as if all service were in one (1) system;
  4. If the member has prior service in more than one (1) system administered by Kentucky Retirement Systems, he shall obtain at least twelve (12) months' current service in each system in which he has prior service in order to validate the prior service in each system for purposes of determining consolidated benefits under this subsection; and
  5. Upon the determination of benefits, each system shall pay the applicable amount of benefits due the member.
- (b) The provisions of paragraph (a) of this subsection shall be waived if the member:



1. Notifies the system of his desire to maintain separate retirement accounts in the State Police Retirement System, Kentucky Employees Retirement System, or County Employees Retirement System; or
  2. Fails to simultaneously retire from all state-administered retirement systems in which the member has an account or fails to retire from any other systems not administered by Kentucky Retirement Systems within one (1) month of the member's effective retirement date in the systems administered by Kentucky Retirement Systems.
- (c) If the member has not contributed at least one (1) year in a system in which he has prior service, his current service in the system shall be valid for purposes of determining eligibility and in computation of benefits on a consolidated basis.
- (3) (a) A member with service credit in the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System who becomes the holder of an office entitling him to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, but who does not elect within thirty (30) days after taking office in such service to participate in the plan, in accordance with KRS 6.505 or 21.360, shall be deemed to have elected to retain membership in the system in which he is a member, either the Kentucky Employees Retirement System, State Police Retirement System, or the County Employees Retirement System. In that event, the agency employing the member shall withhold employee contributions, or picked-up employee contributions after August 2, 1982, make employer contributions and remit these contributions to the system in which the member retained his membership.
- (b) Any person entitled to membership in the Judicial Retirement Plan or the Legislators' Retirement Plan, who does not elect within thirty (30) days after taking office to participate in the plan, in accordance with KRS 6.505 or 21.360, and who at the time of taking office is not a contributing member of, or does not have service credit in, any of the retirement systems mentioned in this section, or the Teachers' Retirement System, shall participate in the Kentucky Employees Retirement System.
- (c) A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is employed in a nonelected position by an agency participating in the Kentucky Retirement Systems or Kentucky Teachers' Retirement System shall be deemed to have elected membership in the system in which the employer of the nonelected position participates. A member of one (1) of the state-administered retirement plans who ceases to contribute to the plan as provided in KRS 21.360 and who is not employed in a nonelected position by an agency participating in the Kentucky Retirement Systems shall be deemed to have elected membership in the Kentucky Employees Retirement System.
- (4) (a) Prior to July 1, 1976, a person entering the service of an employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System with service credit in the Teachers' Retirement System and who desires to retain membership in the Teachers' Retirement System, and who is permitted by that system to continue, shall be exempt from participating in the Kentucky Employees Retirement System or the County Employees Retirement System.
- (b) Any person who has elected to retain membership in the Teachers' Retirement System as provided in paragraph (a) of this subsection may cancel his election and participate in the system under which his position would normally participate, if he elects to cancel his option prior to January 1, 1977.
- (c) Any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System and who does not elect within thirty (30) days after taking office to participate in the Legislators' Retirement Plan, in accordance with KRS 6.505, shall during his term of office participate in the Kentucky Employees Retirement System unless an election to retain membership in the Teachers' Retirement System is filed in writing within ninety (90) days after his term of office begins. No contributions may be made to the Teachers' Retirement System for the same period of service under the Legislators' Retirement Plan or the Kentucky Employees Retirement System as a member of the General Assembly, but contributions made to the Teachers' Retirement System while a member of the General Assembly shall be transferred to the Legislators' Retirement Plan, as provided for in KRS 6.535, when the member elects to join the Legislators' Retirement Plan, and service credit in the Legislators' Retirement Plan shall be granted as provided for in KRS 6.505(5).
- (5) Any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in a position covered by one (1) of these retirement systems and his employee contributions, service

credit and employer contributions made on his behalf are being transferred to the other retirement system shall contribute to the system in which his employer participates, or after August 1, 1982, the employer shall pick up the employee contributions, and no further contributions or service credit shall be transferred to the system in which he elected to retain membership, as subsection (2) of this section eliminates the necessity of the transfers.

- (6) Any member of the Kentucky Employees Retirement System or County Employees Retirement System who is working in more than one (1) position covered by the same retirement system, shall have his wages and contributions consolidated and his retirement account administered as a single account. If part-time positions are involved, an accumulation of all hours worked within the same retirement system shall be used to determine eligibility under KRS 61.510(21).
- (7) (a) Notwithstanding the provisions of subsection (2) of this section, a person who does not have the amount of service required for service retirement in the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System, but who is a member of one (1) of the systems or is a former member of one (1) or more of the systems with valid service credit therein, shall become eligible for service retirement benefits attributable to the amount of his actual service credit in each system in which he has service credit when his combined service credit in all the systems, plus any service credit he has in the Judicial Retirement Plan, is equal to that required for service retirement in each respective system. The computation of benefits shall be based on the applicable formula in each system and service credit in each system, except that total service in all systems, unless prohibited by KRS 161.623(2), shall be used to determine the reduction for early retirement, if any. Except as provided in KRS 21.360, the final compensation shall be determined by using the creditable compensation reported to the State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, Legislators' Retirement Plan, or Teachers' Retirement System and only as much of the compensation earned in the Judicial Retirement Plan as is needed to satisfy the final compensation requirement applicable in the respective retirement systems.
- (b) Paragraph (a) of this subsection shall be waived if the member fails to simultaneously retire from all state-administered retirement systems in which the member has an account or fails to retire from any other systems not administered by Kentucky Retirement Systems within one (1) month of the member's effective retirement date in the systems administered by the Kentucky Retirement Systems.
- (8) Each retirement system from which the member retires shall pay a retirement allowance upon receipt of required forms and documents, except that no retirement system shall pay a retirement allowance or annuity until all forms and documents are filed at all retirement systems in compliance with each system's requirements.

➔Section 71. KRS 61.690 is amended to read as follows:

- (1) Except as otherwise provided by this section and KRS 61.705(4), 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 account balance 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 retirement allowance, 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 his or her accumulated account balance 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 *or Section 5 of this Act* 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 72. KRS 61.691 is amended to read as follows:

- (1) Effective August 1, 1996, to July 1, 2008, a recipient of a retirement allowance under KRS 16.505 to 16.652 ~~and~~ 61.510 to 61.705, ~~and 78.510 to 78.852~~ shall have his retirement allowance increased on July 1 of each year by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the federal Bureau of Labor Statistics, not to exceed five percent (5%). In determining the annual employer contribution rate, only the cost of increases granted as of the most recent valuation date shall be recognized. The benefits of this subsection as provided on August 1, 1996, to July 1, 2008, shall not be considered as benefits protected by the inviolable contract provisions of KRS 16.652 ~~and~~ 61.692, ~~and 78.852~~. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in their judgment the welfare of the Commonwealth so demands.
- (2) (a) Effective July 1, 2009, and on July 1 of each year thereafter, a recipient of a retirement allowance under KRS 16.505 to 16.652 ~~and~~ 61.510 to 61.705, ~~and 78.510 to 78.852~~ shall have his or her retirement allowance increased by one and one-half percent (1.5%), if:
1. The funding level of the system is greater than one hundred percent (100%) and subsequent legislation authorizes the use of any surplus actuarial assets to provide an increase in retirement allowances described by this subsection for the system which has the surplus actuarial assets; or
  2. The General Assembly appropriates sufficient funds or directs payment of funds to fully prefund the increase described by this subsection in the year the increase is provided.
- (b) The board of trustees of the Kentucky Retirement Systems shall, at least thirty (30) days prior to the beginning of regular sessions of the General Assembly held in even-numbered years, advise the General Assembly of the following:
1. Which systems have a funding level greater than one hundred percent (100%) and can support an increase in recipients' retirement allowances as provided by paragraph (a) of this subsection over the next budget biennium without reducing the funding level of the system below one hundred percent (100%); and
  2. If no surplus actuarial assets are available, the level of funds needed to fully prefund an increase for system recipients over the next budget biennium if a one and one-half percent (1.5%) increase is provided annually over the biennium.

- (c) For purposes of this subsection, "funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the system's actuary in the system's actuarial valuation.
  - (d) The full increase described by this subsection shall only be provided if the recipient has been receiving a benefit for at least twelve (12) months prior to the effective date of the increase. If the recipient has been receiving a benefit for less than twelve (12) months prior to the effective date of the increase provided by this subsection, the increase shall be reduced on a pro rata basis for each month the recipient has not been receiving benefits in the twelve (12) months preceding the effective date of the increase.
  - (e) In determining the annual employer contribution rate, only the cost of increases granted as of the most recent valuation date shall be recognized.
  - (f) The benefits of this subsection as provided on July 1, 2009, and thereafter shall not be considered as benefits protected by the inviolable contract provisions of KRS 16.652 ~~and~~ 61.692 ~~and~~ 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if, in its judgment, the welfare of the Commonwealth so demands.
- (3) A reemployed retired member whose payments are suspended as provided under KRS 61.637 shall be eligible for an increase in his suspended retirement allowance as provided under this section, computed as if he were receiving the retirement allowance at the time the increase under this section is effective.
  - (4) In addition to the increase to a recipient's retirement allowance as provided by subsection (2) of this section, the General Assembly may, by subsequent legislation, provide supplemental increases to a recipient's retirement allowance to help adjust for actual changes in the recipient's cost of living if the General Assembly appropriates sufficient funds to fully prefund the benefit in the year the increase is provided.

➔SECTION 73. KRS 61.702 (Effective April 1, 2021) IS REPEALED AND REENACTED TO READ AS FOLLOWS:

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

- (a) *"Hospital and medical insurance plan" may include, at the board's discretion, any one (1) or more of the following:*
    - 1. *Any hospital and medical expense policy or certificate, provider-sponsored integrated health delivery network, self-insured medical plan, health maintenance organization contract, or other health benefit plan;*
    - 2. *Any health savings account as permitted by 26 U.S.C. sec. 223 or health reimbursement arrangement or a similar account as may be permitted by 26 U.S.C. sec. 105 or 106. Such arrangement or account, at the board's discretion, may reimburse any medical expense permissible under 26 U.S.C. sec. 213; or*
    - 3. *A medical insurance reimbursement program established by the board through the promulgation of administrative regulation under which members purchase individual health insurance coverage through a health insurance exchange established under 42 U.S.C. sec. 18031 or 18041;*
  - (b) *"Monthly contribution rate" is the amount determined by the board based upon the requirements of subsection (4)(a) to (c) of this section, except that for members who began participating in the system on or after July 1, 2003, the term shall mean the amount determined in subsection (4)(d) of this section; and*
  - (c) *"Months of service" means the total months of combined service used to determine benefits under the system, except service added to determine disability benefits or service otherwise prohibited from being used to determine retiree health benefits under KRS 16.505 to 16.652 or 61.510 to 61.705 shall not be counted as "months of service." For current and former employees of the Council on Postsecondary Education who were employed prior to January 1, 1993, and who earn at least fifteen (15) years of service credit in the Kentucky Employees Retirement System, "months of service" shall also include vested service in another retirement system other than the Kentucky Teachers' Retirement System sponsored by the Council on Postsecondary Education.*
- (2) (a) 1. *The board of trustees of the system shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan coverage for:*

- a. *Present and future recipients of a retirement allowance from the Kentucky Employees Retirement System and the State Police Retirement System; and*
  - b. *The spouse and each qualified dependent of a recipient who is a former member or the beneficiary, provided the spouse and dependent meet the requirements to participate in the hospital and medical insurance plans established, contracted, or authorized by the system.*
2. *Any recipient who chooses coverage under a hospital and medical insurance plan shall pay, by payroll deduction from the retirement allowance, electronic funds transfer, or by another method, the difference between the premium cost of the hospital and medical insurance plan coverage selected and the monthly contribution rate to which he or she would be entitled under this section.*
- (b) 1. *For present and future recipients of a retirement allowance from the system who are not eligible for Medicare, the board may authorize these participants to be included in the Kentucky Employees Health Plan as provided by KRS 18A.225 to 18A.2287 and shall provide benefits for recipients in the plan equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status. Notwithstanding the provisions of any other statute, system recipients shall be included in the same class as current state employees for purposes of determining medical insurance policies and premiums in the Kentucky Employees Health Plan as provided by KRS 18A.225 to 18A.2287.*
  - 2. *Regardless of age, if a recipient or the spouse or dependent child of a recipient who elects coverage becomes eligible for Medicare, he or she shall participate in the plans offered by the systems for Medicare eligible recipients. Individuals participating in the Medicare eligible plans may be required to obtain and pay for Medicare Part A and Part B coverage, in order to participate in the Medicare eligible plans offered by the system.*
  - 3. *The system shall continue to provide the same hospital and medical insurance plan coverage for recipients and qualifying dependents after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage.*
- (c) *For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (6) of this section.*
  - (d) *Notwithstanding anything in KRS Chapter 16 or 61 to the contrary, the board of trustees, in its discretion, may take necessary steps to ensure compliance with 42 U.S.C. secs. 300bb-1 et seq.*
- (3) (a) *Each employer participating in the Kentucky Employees Retirement System or the State Police Retirement System as provided in KRS 16.505 to 16.652 or 61.510 to 61.705 shall contribute to the insurance trust fund established under KRS 61.701 the amount necessary to provide the monthly contribution rate as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate determined under KRS 61.565.*
- (b) 1. *Each employer described in paragraph (a) of this subsection shall deduct from the creditable compensation of each member whose membership date begins on or after September 1, 2008, an amount equal to one percent (1%) of the member's creditable compensation. The deducted amounts shall, at the discretion of the board, be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701. Notwithstanding the provisions of this paragraph, a transfer of assets between the accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510 and 61.515, and the insurance trust fund established under KRS 61.701 shall not be allowed.*
  - 2. *The employer shall file the contributions as provided by subparagraph 1. of this paragraph at the retirement office in accordance with KRS 61.675. Any interest or penalties paid on any delinquent contributions shall be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701. Notwithstanding any minimum compensation requirements*

*provided by law, the deductions provided by this paragraph shall be made, and the compensation of the member shall be reduced accordingly.*

3. *Each employer shall submit payroll reports, contributions lists, and other data as may be required by administrative regulation promulgated by the board of trustees pursuant to KRS Chapter 13A.*
  4. *Every member shall be deemed to consent and agree to the deductions made pursuant to this paragraph, and the payment of salary or compensation less the deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by the payment, except as to any benefits provided by KRS 16.505 to 16.652 or 61.510 to 61.705. No member may elect whether to participate in, or choose the contribution amount to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701. The member shall have no option to receive the contribution required by this paragraph directly instead of having the contribution paid to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701. No member may receive a rebate or refund of contributions. If a member establishes a membership date prior to September 1, 2008, pursuant to subsection (2) or (3) of Section 52 of this Act, then this paragraph shall not apply to the member and all contributions previously deducted in accordance with this paragraph shall be refunded to the member without interest. The contribution made pursuant to this paragraph shall not act as a reduction or offset to any other contribution required of a member or recipient under KRS 16.505 to 16.652 or 61.510 to 61.705.*
  5. *The board of trustees, at its discretion, may direct that the contributions required by this paragraph be accounted for within accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515, or the insurance trust fund established under KRS 61.701, through the use of separate accounts.*
- (4) (a) *The premium required to provide hospital and medical insurance plan coverage under this section shall be paid wholly or partly from funds contributed by:*
1. *The recipient of a retirement allowance, by payroll deduction from his or her retirement allowance, or by other method;*
  2. *The insurance trust fund established under KRS 61.701 or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510 and 61.515;*
  3. *Another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the funds specified by subparagraph 2. of this paragraph under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in the systems administered by the Kentucky Retirement Systems; or*
  4. *A combination of the fund sources described by subparagraph 1. to 3. of this paragraph.*

*Group rates under the hospital and medical insurance plan shall be made available to the spouse, each dependent child, and each disabled child, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the hospital and medical insurance for the spouse, each dependent child, and each disabled child, or beneficiary is paid by payroll deduction from the retirement allowance, electronic funds transfer, or by another method. For purposes of this subsection only, a child shall be considered disabled if he or she has been determined to be eligible for federal Social Security disability benefits or meets the dependent disability standard established by the Department of Employee Insurance in the Personnel Cabinet.*

- (b) *For a member who began participating in the system prior to July 1, 2003, the monthly contribution rate shall be paid by the system from the funds specified under paragraph (a)2. of this subsection and shall be equal to a percentage of the single premium to cover the retired member as follows:*
1. *One hundred percent (100%) of the monthly premium for single coverage shall be paid for a retired member who had two hundred forty (240) months of service or more upon retirement or for a retired member who when he or she was an employee became disabled as a direct*

*result of an act in line of duty as defined in KRS 16.505 or as a result of a duty-related injury as defined in KRS 61.621;*

2. *Seventy-five percent (75%) of the monthly premium for single coverage shall be paid for a retired member who had less than two hundred forty (240) months of service but at least one hundred eighty (180) months of service upon retirement, provided such retired member agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method;*
3. *Fifty percent (50%) of the monthly premium for single coverage shall be paid for a retired member who had less than one hundred eighty (180) months of service but had at least one hundred twenty (120) months of service upon retirement, provided such retired member agrees to pay the remaining fifty percent (50%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method; or*
4. *Twenty-five percent (25%) of the monthly premium for single coverage shall be paid for a retired member who had less than one hundred twenty (120) months of service but had at least forty-eight (48) months of service upon retirement, provided such retired member agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his or her retirement allowance, electronic funds transfer, or by another method.*

*Notwithstanding the foregoing provisions of this paragraph, an employee participating in the system prior to July 1, 2003, who is killed as a direct result of an act in line of duty as defined in KRS 16.505 or as a result of a duty-related injury as defined in KRS 61.621, shall have the monthly premium paid for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child as defined by KRS 16.505, so long as they individually remain eligible for a monthly retirement benefit.*

- (c)
  1. *For a member who began participating in the system prior to July 1, 2003, who was determined to be in a hazardous position in the Kentucky Employees Retirement System or in a position in the State Police Retirement System, the funds specified under paragraph (a)2. of this subsection shall also pay a percentage of the monthly contribution rate sufficient to fund the premium costs for hospital and medical insurance coverage for the spouse and for each dependent child of a recipient.*
  2. *The percentage of the monthly contribution rate paid for the spouse and each dependent child of a recipient who was in a hazardous position in accordance with subparagraph 1. of this paragraph shall be based solely on the member's service in a hazardous position using the formula in paragraph (b) of this subsection.*
- (d) *For members who begin participating in the system on or after July 1, 2003:*
  1. *Participation in the insurance benefits provided under this section shall not be allowed until the member has earned at least one hundred twenty (120) months of service in the state-administered retirement systems, except that for members who begin participating in the system on or after September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the member has earned at least one hundred eighty (180) months of service credited under KRS 16.543(1) or 61.543(1) or another state-administered retirement system.*
  2. *A member who meets the minimum service requirements as provided by subparagraph 1. of this paragraph shall upon retirement be eligible for the following monthly contribution rate to be paid on their behalf from the funds specified under paragraph (a)2. of this subsection:*
    - a. *For members with service in a nonhazardous position, a monthly insurance contribution of ten dollars (\$10) for each year of service as a participating employee in a nonhazardous position; and*
    - b. *For members with service in a hazardous position or who participate in the State Police Retirement System, a monthly insurance contribution of fifteen dollars (\$15) for each year of service as a participating employee in a hazardous position or the State Police Retirement System. Upon the death of the retired member, the beneficiary, if the beneficiary is the member's spouse, shall be entitled to a monthly insurance contribution of ten dollars (\$10) for each year of service the member attained as a participating employee in a hazardous position.*



3. *The minimum service requirement to participate in benefits as provided by subparagraph 1. of this paragraph shall be waived for a member who becomes disabled as a direct result of an act in line of duty as defined in KRS 16.505 or who dies as a result of a duty-related injury as defined in KRS 61.621, and the member shall be entitled to the benefits payable under this subsection as though the member had twenty (20) years of service in the position for which the disabling condition occurred.*
  4. *Notwithstanding the provisions of this paragraph, the minimum service requirement to participate in benefits as provided by subparagraph 1. of this paragraph shall be waived for a member who dies as a direct result of an act in line of duty as defined in KRS 16.505 or who dies as a result of a duty-related injury as defined in KRS 61.621, and the premium for the member's spouse and for each dependent child as defined in KRS 16.505 shall be paid in full by the systems so long as they individually remain eligible for a monthly retirement benefit.*
  5. *Except as provided by subparagraph 4. of this paragraph, the monthly insurance contribution amount shall be increased July 1 of each year by one and one-half percent (1.5%). The increase shall be cumulative and shall continue to accrue after the member's retirement for as long as a monthly insurance contribution is payable to the retired member or beneficiary.*
  6. *The benefits of this paragraph provided to a member whose participation begins on or after July 1, 2003, shall not be considered as benefits protected by the inviolable contract provisions of KRS 16.652 or 61.692. The General Assembly reserves the right to suspend or reduce the benefits conferred in this paragraph if in its judgment the welfare of the Commonwealth so demands.*
  7. *An employee whose membership date is on or after September 1, 2008, who retires and is reemployed in a regular full-time position required to participate in the system or the County Employees Retirement System shall not be eligible for health insurance coverage or benefits provided by this section and shall take coverage with his or her employing agency during the period of reemployment in a regular full-time position.*
- (e) *For members with service in another state-administered retirement system who select hospital and medical insurance plan coverage through the system:*
1. *The system shall compute the member's combined service, including service credit in another state-administered retirement system, and calculate the portion of the member's premium monthly contribution rate to be paid by the funds specified under paragraph (a)2. of this subsection according to the criteria established in paragraphs (a) to (d) of this subsection. Each state-administered retirement system shall pay annually to the insurance trust fund established under KRS 61.701 the portion of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance plan which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his or her total combined service and in conjunction with the reciprocal agreement established between the system and the other state-administered retirement systems. The amounts paid by the other state-administered retirement plans and by the Kentucky Retirement Systems from funds specified under paragraph (a)2. of this subsection shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees;*
  2. *A member may not elect coverage for hospital and medical benefits through more than one (1) of the state-administered retirement systems; and*
  3. *A state-administered retirement system shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.*
- (5) *Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the funds described by subsection (4)(a)2. of this section shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.*
- (6) *The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance plan premiums of recipients of a*

*retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance plan coverage with the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly contribution rate determined under subsection (4) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.*

➔Section 74. 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, *or was eligible for a benefit under Section 15 of this Act from the County Employees Retirement System,* the systems~~system~~ shall pay only one (1) five thousand dollar (\$5,000) death benefit. *Each system's cost shall be prorated between the systems based upon the level of service credit in each system.* 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 *provided by this section or Section 15 of this Act.* The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1) *but only one (1) designation shall be available to a retired member who has service in both the County Employees Retirement System and the Kentucky Retirement Systems.* 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.
- ~~(5) Effective January 1, 2019, this section does not apply to members who began participating in the systems administered by Kentucky Retirement Systems on or after January 1, 2014.~~

➔Section 75. KRS 16.642 is amended to read as follows:

- (1) The board shall be the trustee of ~~the several~~ funds created by KRS 16.505 to 16.652 *and KRS 61.701* and shall have full power to invest and reinvest such *assets in accordance with federal law* ~~funds, subject to the limitations that no investments shall be made except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state, except that the board may, at its discretion, purchase common stock in corporations that do not have a record of paying dividends to their stockholders. Subject to such limitations, the board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.~~
- (2) *The board, through adopted written policies, shall maintain ownership and control over its assets held in its unitized managed custodial account* ~~All securities acquired under authority of KRS 16.505 to 16.652 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 286.3-225, and every change in registration, by reason of sale or assignment of such securities shall be accomplished pursuant to written policies adopted by the board.~~

- (3) The board, in keeping with its responsibility as trustee and wherever feasible, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
- (4) The investment committee established pursuant to KRS 61.650 shall serve as the investment committee of the funds established by KRS 16.505 to 16.652.
- (5) Based upon market value at the time of purchase, the board shall limit the amount of assets managed by any one (1) active or passive investment manager to fifteen percent (15%) of the assets in the pension and insurance funds.

➔Section 76. KRS 61.505 (Effective April 1, 2021) is amended to read as follows:

- (1) There is created an eight (8) member Kentucky Public Pensions Authority whose purpose shall be to administer and operate:
  - (a) A single personnel system for the staffing needs of the Kentucky Retirement Systems and the County Employees Retirement System;
  - (b) A system of accounting that is developed by the authority for the Kentucky Retirement Systems and the County Employees Retirement System;
  - (c) Day-to-day administrative needs of the Kentucky Retirement Systems and the County Employees Retirement System, including but not limited to:
    1. Benefit counseling and administration;
    2. Information technology and services, including a centralized Web site for the authority, the Kentucky Retirement Systems, and the County Employees Retirement System;
    3. Legal services;
    4. Employer reporting and compliance;
    5. Processing and distribution of benefit payments, and other financial, investment administration, and accounting duties as directed by the Kentucky Retirement Systems board of trustees or the County Employees Retirement System board of trustees; ~~and~~
    6. *All administrative actions necessary to carry out benefit functions required by the Kentucky Retirement Systems and the County Employment Retirement System statutes, including but not limited to administration of reduced and unreduced retirement benefits, disability retirement, reemployment after retirement, service purchases, computation of sick-leave credit costs, pension spiking determinations, and all other administrative decisions and orders; and*
    7. Completing and compiling financial data and reports;
  - (d) Any jointly held assets used for the administration of the Kentucky Retirement Systems and the County Employees Retirement System, including but not limited to real estate, office space, equipment, and supplies ~~[- Perimeter Park West Incorporated shall be considered a jointly held asset];~~
  - (e) Hiring a single actuarial consulting firm who shall serve both the Kentucky Retirement Systems and the County Employees Retirement System; ~~and~~
  - (f) *The Authority may promulgate administrative regulations as an authority or on behalf of the Kentucky Retirement Systems and the County Employees Retirement System, individually or collectively, provided such regulations are not inconsistent with the provisions of this section and KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, and 61.505, necessary or proper in order to carry out the provisions of this section and duties authorized by KRS 16.505 to 16.652 and 61.510 to 61.705;*
  - (g) *Contracting management for administrative services; and*
  - (h) Other tasks or duties as directed solely or jointly by the boards of the Kentucky Retirement Systems or the County Employees Retirement System.
- (2) The eight (8) member Kentucky Public Pensions Authority shall be composed of the following individuals:
  - (a) The chair of the Kentucky Retirement Systems board of trustees;
  - (b) The chair of the County Employees Retirement System board of trustees;

- (c) The investment committee chair of the Kentucky Retirement Systems board of trustees, unless the investment committee chair is also the chair of the board of trustees in which case the chair of the Kentucky Retirement Systems shall appoint an individual who serves on the investment committee;
  - (d) The investment committee chair of the County Employees Retirement System board of trustees, unless the investment committee chair is also the chair of the County Employees Retirement System board of trustees in which case the chair of the County Employees Retirement System shall appoint an individual who serves on the investment committee;
  - (e) Two additional (2) trustees of the Kentucky Retirement Systems board of trustees selected by the chair of the Kentucky Retirement Systems board of trustees of which one (1) shall be a trustee who was elected by the membership of one (1) of the systems administered by Kentucky Retirement Systems and one (1) shall be a trustee of Kentucky Retirement Systems who was appointed by the Governor; and
  - (f) Two additional (2) trustees of the County Employees Retirement System board of trustees selected by the chair of the County Employees Retirement System board of trustees of which one (1) shall be a trustee who was elected by the membership of the County Employees Retirement System and one (1) shall be a trustee of the County Employees Retirement System who was appointed by the Governor.
- (3) The Kentucky Public Pensions Authority is hereby granted the powers and privileges of a corporation, including but not limited to the following powers:
- (a) To sue and be sued in its corporate name;
  - (b) To make bylaws not inconsistent with the law and in accordance with its duties as provided by this section;
  - (c) To conduct the business and promote the purposes for which it was formed;
  - (d) To carry out the obligations of the authority subject to KRS Chapters 45, 45A, 56, and 57;
  - (e) To purchase fiduciary liability insurance; and
  - (f) The Kentucky Public Pensions Authority shall reimburse any authority member, officer, or employee for any legal expense resulting from a civil action arising out of the performance of his or her official duties. The hourly rate of reimbursement for any contract for legal services under this paragraph shall not exceed the maximum hourly rate provided in the Legal Services Duties and Maximum Rate Schedule promulgated by the Government Contract Review Committee established pursuant to KRS 45A.705, unless a higher rate is specifically approved by the secretary of the Finance and Administration Cabinet or his or her designee.
- (4) Any vacancy which may occur in an appointed position on the Kentucky Public Pensions Authority shall be filled in the same manner which provides for the selection of the particular member of the authority. No person shall serve in more than one (1) position as a member of the authority and if a person holds more than one (1) position as a member of the authority, he or she shall resign a position.
- (5)
- (a) Membership on the authority shall not be incompatible with any other office unless a constitutional incompatibility exists. No authority member shall serve in more than one (1) position as a member of the authority.
  - (b) An authority member shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
  - (c) A current or former employee of the County Employees Retirement System, Kentucky Retirement Systems, or the Kentucky Public Pensions Authority shall not be eligible to serve as a member of the authority.
- (6) Kentucky Public Pensions Authority members who do not otherwise receive a salary from the State Treasury shall receive a per diem of eighty dollars (\$80) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards, except that the members shall not receive a per diem or receive reimbursements on the same day they receive a per diem or reimbursements for service to the Kentucky Retirement Systems board of trustees or County Employees Retirement Systems board of trustees.
- (7)
- (a) The authority shall meet at least once in each quarter of the year and may meet in special session upon the call of the chair or the executive director of the authority.

- (b) The authority shall elect a chair and a vice chair. The chair shall not serve more than four (4) consecutive years as chair or vice chair of the authority. The vice chair shall not serve more than four (4) consecutive years as chair or vice chair of the authority. A member who has served four (4) consecutive years as chair or vice chair of the authority may be elected chair or vice chair of the authority after an absence of two (2) years from the positions.
  - (c) A majority of the authority members shall constitute a quorum and all actions taken by the authority shall be by affirmative vote of a majority of the authority members present.
  - (d) The authority shall post on the authority's Web site and shall make available to the public:
    - 1. All meeting notices and agendas of the authority. Notices and agendas shall be posted to the authority's Web site at least seventy-two (72) hours in advance of the authority's meetings, except in the case of special or emergency meetings as provided by KRS 61.823;
    - 2. All authority minutes or other materials that require adoption or ratification by the authority. The items listed in this subparagraph shall be posted within seventy-two (72) hours of adoption or ratification of the authority;
    - 3. All bylaws, policies, or procedures adopted or ratified by the authority; and
    - 4. A listing of the members of the authority and membership on each committee established by the authority.
- (8)
- (a) The Kentucky Public Pensions Authority shall appoint or contract for the services of an executive director and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapter 18A, **45A**, and KRS 64.640. The executive director shall be the chief administrative officer of the authority, the Kentucky Retirement Systems board of trustees, and the County Employees Retirement System board of trustees. The executive director shall work cooperatively with the chief executive officers of the Kentucky Retirement Systems and the County Employees Retirement System.
  - (b) The Kentucky Public Pensions Authority shall authorize the executive director to appoint the employees deemed necessary to transact the duties of the authority for the purposes outlined in subsection (1) of this section.
  - (c) Effective April 1, 2021, the Kentucky Public Pensions Authority shall assume responsibility of administering the staff of the Kentucky Retirement Systems in order to provide the services established by this section.
  - (d) All employees of the Kentucky Public Pensions Authority, except for the executive director, **chief investment officer, and one (1) deputy chief investment officer**, shall be subject to the state personnel system established pursuant to KRS 18A.005 to 18A.204 and shall have their salaries determined by the secretary of the Personnel Cabinet.
  - (e) The authority shall annually report to the Public Pension Oversight Board the number of employees of the authority, the salary paid to each employee, and the change in the salaries of each individual employed by the authority over the prior year.
  - (f) The authority shall require the executive director and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.
  - (g) Notwithstanding any other provision of statute to the contrary, including but not limited to any provision of KRS Chapter 12, the Governor shall have no authority to change any provision of this section by executive order or action, including but not limited to reorganizing, replacing, amending, or abolishing the membership of the Kentucky Public Pensions Authority.
- (9) All employees of the authority shall serve during its will and pleasure. Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.
- (10) The Attorney General, or an assistant designated by him or her, may attend each meeting of the authority and may receive the agenda, board minutes, and other information distributed to authority members upon request. The Attorney General may act as legal adviser and attorney for the authority, and the authority may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.
- (11) (a) All expenses incurred by or on behalf of the Kentucky Public Pensions Authority shall be paid by the systems administered by the Kentucky Retirement Systems or the County Employees Retirement

System and shall be prorated, assigned, or allocated to each system as determined by Kentucky Public Pensions Authority. Any additional initial costs determined by the authority to be attributable solely to establishing a separate County Employees Retirement System board and the Kentucky Public Pensions Authority as provided by this section and KRS 78.782 shall be paid by the County Employees Retirement System. Any additional ongoing annual administrative and investment expenses that occur after the establishment of a separate County Employees Retirement System board and the Kentucky Public Pensions Authority that are determined by the authority to be a direct result of establishing a separate County Employees Retirement System board and the Kentucky Public Pensions Authority shall be paid by the County Employees Retirement System.

- (b) ***Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48. The request from the Kentucky Public Pensions Authority shall include any specific administrative expenses requested by the Kentucky Retirement Systems board of trustees or the County Employees Retirement System board of trustees pursuant to subsection (13) of Section 29 of this Act or subsection (13) of Section 66 of this Act, as applicable, that are not otherwise expenses specified by paragraph (a) of this subsection.***
- (12) (a) An authority member shall discharge his or her duties as a member of the authority, including his or her duties as a member of a committee of the authority:
1. In good faith;
  2. On an informed basis; and
  3. In a manner he or she honestly believes to be in the best interest of the County Employees Retirement System and the Kentucky Retirement Systems, as applicable.
- (b) An authority member discharges his or her duties on an informed basis if, when he or she makes an inquiry into the business and affairs of the authority, system, or systems or into a particular action to be taken or decision to be made, he or she exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
- (c) In discharging his or her duties, an authority member may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
1. One (1) or more officers or employees of the authority whom the authority member honestly believes to be reliable and competent in the matters presented;
  2. Legal counsel, public accountants, actuaries, or other persons as to matters the authority member honestly believes are within the person's professional or expert competence; or
  3. A committee of the authority of which he or she is not a member if the authority member honestly believes the committee merits confidence.
- (d) An authority member shall not be considered as acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
- (e) Any action taken as a member of the authority, or any failure to take any action as an authority member, shall not be the basis for monetary damages or injunctive relief unless:
1. The authority member has breached or failed to perform the duties of the member's office in compliance with this section; and
  2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
- (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraph (e)1. and 2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems or County Employees Retirement System, as applicable.
- (g) In discharging his or her administrative duties under this section, an authority member shall strive to administer the systems in an efficient and cost-effective manner for the taxpayers of the Commonwealth

of Kentucky and shall take all actions available under the law to contain costs for the trusts, including costs for participating employers, members, and retirees.

➔Section 77. KRS 61.650 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) The board shall be the trustee of ~~the several~~ funds created by KRS 16.510, 61.515, and 61.701 ~~pertaining as it pertains~~ to the ***accounts for the Kentucky Employees Retirement System or State Police Retirement System*** ~~trust fund for the Kentucky Retirement Systems insurance trust fund~~, notwithstanding the provisions of any other statute to the contrary, and shall have exclusive power to invest and reinvest such ~~assets~~~~funds~~ in accordance with federal law.
  - (b)
    1. The board shall establish an investment committee whose membership shall be composed of the following:
      - a. The three (3) trustees ***of the Kentucky Retirement Systems board*** appointed by the Governor pursuant to KRS 61.645 who have investment experience; and
      - b. Additional trustees appointed by the board chair.
    2. The investment committee shall have authority to implement the investment policies adopted by the board and act on behalf of the board on all investment-related matters and to acquire, sell, safeguard, monitor, and manage the assets and securities of the several funds.
  - (c) A trustee, officer, employee, employee of the Kentucky Public Pensions Authority, or other fiduciary shall discharge duties with respect to the retirement system:
    1. Solely in the interest of the members and beneficiaries;
    2. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the system;
    3. With the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;
    4. Impartially, taking into account any differing interests of members and beneficiaries;
    5. Incurring any costs that are appropriate and reasonable; and
    6. In accordance with a good-faith interpretation of the law governing the retirement system.
  - (d) In addition to the standards of conduct prescribed by paragraph (c) of this subsection:
    1. All internal investment staff~~, including investment staff~~ of the Kentucky Public Pensions Authority, and investment consultants shall adhere to the Code of Ethics and Standards of Professional Conduct, and all board trustees shall adhere to the Code of Conduct for Members of a Pension Scheme Governing Body. All codes cited in this subparagraph are promulgated by the CFA Institute; and
    2. Investment managers shall comply with all applicable provisions of the federal Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder, and shall comply with all other applicable federal securities statutes and related rules and regulations that apply to investment managers.
- (2) ***The board, through adopted written policies, shall maintain ownership and control over its assets held in its unitized managed custodial account***~~[All securities acquired under authority of KRS 61.510 to 61.705 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 286.3-225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished pursuant to written policies adopted by the board].~~
  - (3) The board, in keeping with its responsibility as trustee and wherever consistent with its fiduciary responsibilities, shall give priority to the investment of funds in obligation calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
  - (4) The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for the system relative to the acquisition or disposition of property, until such time as all of the property has been acquired or sold, shall be excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction.

- (5) Based upon market value at the time of purchase, the board shall limit the amount of assets managed by any one (1) active or passive investment manager to fifteen percent (15%) of the assets in the pension and insurance funds.
- (6) All contracts for the investment or management of assets of the systems shall not be subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the following process to develop and adopt an investment procurement policy with which all prospective contracts for the investment or management of assets of the systems shall comply:
- (a) On or before July 1, 2017, the board shall consult with the secretary of the Finance and Administration Cabinet or his or her designee to develop an investment procurement policy, which shall be written to meet best practices in investment management procurement;
  - (b) Thirty (30) days prior to adoption, the board shall tender the preliminary investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee for review and comment;
  - (c) Upon receipt of comments from the secretary of the Finance and Administration Cabinet or his or her designee, the board shall choose to adopt or not adopt any recommended changes;
  - (d) Upon adoption, the board shall tender the final investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee;
  - (e) No later than thirty (30) days after receipt of the investment procurement policy, the secretary or his or her designee shall certify whether the board's investment procurement policy meets or does not meet best practices for investment management procurement; and
  - (f) Any amendments to the investment procurement policy shall adhere to the requirements set forth by paragraphs (b) to (e) of this subsection.

➔Section 78. KRS 61.557 is amended to read as follows:

- (1) Inasmuch as the takeover of the Kentucky State Employment Service by the federal government, through its United States Employment Service and War Manpower Commission, was recognized by both federal and state governments as a temporary measure during the war emergency, and the employment service was, in fact, returned to the state government at the close of the emergency period, the employees of the service are recognized as employees of the Commonwealth for the purposes of KRS 61.510 to 61.692 during the period of control by the federal government, in the same manner as if they had been employed in another department of the government of the Commonwealth during that period.
- (2) If a parted employer rejoins a department as a result of the cancellation of a contract or lease arrangement, thereby causing each employee thereof to again become an employee as defined in KRS 61.510(5), the system may negotiate with the publicly held corporation or other similar organizations for payment for the years of service credit under the system for all employees working on the date the contract or other lease arrangement is canceled in order to avoid an impairment in the retirement benefits of the employees, if any payment accepted by the system for the service is consistent with the provisions of **subsections (7)(b) and (8) of Section 52 of this Act** ~~KRS 61.552(6) and (8)~~. No payment made pursuant to this section shall be picked up by the employer, as described in KRS 61.560(4).

➔Section 79. KRS 61.701 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) There is hereby ***maintained*** ~~created and established~~ a trust fund ~~to be known as "Kentucky Retirement Systems insurance trust fund," and a trust fund to be known as the "County Employees Retirement System insurance trust fund."~~
- (b) ~~All assets received in the Kentucky Retirement Systems~~ Insurance trust fund ***assets*** shall be deemed trust funds to be held and applied solely as provided in this section. Assets ~~of the trust fund~~ shall not be used for any other purpose and shall not be used to pay the claims of creditors or any individual, person, or employer participating in the Kentucky Employees Retirement System, ***County Employees Retirement System***, or State Police Retirement System.
- (c) ~~All assets received in the County Employees Retirement System insurance trust fund shall be deemed trust funds to be held and applied solely as provided in this section. Assets of the trust fund shall not be used for any other purpose and shall not be used to pay the claims of creditors or any individual, person, or employer participating in the County Employees Retirement System.~~



- ~~(d)~~ The trust fund *has been* ~~is intended to be~~ established as a trust exempt from taxation under 26 U.S.C. sec. 115.
- ~~(e)~~ ~~Effective April 1, 2021, the assets held in the Kentucky Retirement Systems insurance trust fund as of March 31, 2021, that were attributable to contributions made by County Employees Retirement System members, employers, or recipients and the resulting investment returns shall be transferred to the County Employees Retirement System insurance trust fund.~~
- (2) The *insurance trust fund has been* ~~funds are~~ created for the purpose of providing a trust separate from the retirement funds. Trust fund assets are dedicated for use for health benefits as provided in KRS 61.702 *and Section 14 of this Act* and as permitted under 26 U.S.C. secs. 105 and 106, to retired recipients and employees of employers participating in the Kentucky Employees Retirement System ~~as it relates to the Kentucky Retirement Systems insurance trust fund~~, County Employees Retirement System ~~as it relates to the County Employees Retirement System insurance trust fund~~, and State Police Retirement System ~~as it relates to the Kentucky Retirement Systems insurance trust fund~~, and to certain of their dependents or beneficiaries, including but not limited to qualified beneficiaries as described in 42 U.S.C. secs. 300bb-1 et seq.
- (3) ~~The Kentucky Retirement Systems insurance trust fund shall be administered by the board of trustees of the Kentucky Retirement Systems and the County Employees Retirement System insurance trust fund shall be administered by the board of trustees of the County Employees Retirement System and the respective board shall serve as trustees of the fund.~~ The boards shall manage the assets of the *insurance fund* ~~funds~~ in the same manner in which the respective board administers its retirement funds, except that separate accounting and financial reporting shall be maintained for the *insurance trust fund* ~~funds~~.
- (4) In addition to the requirements of subsection (2) of this section, the employers participating in the trust funds are limited to the Commonwealth, political subdivisions of the Commonwealth, and entities whose income is exempt from taxation under 26 U.S.C. sec. 115. No other entity may participate in the *insurance trust funds*.
- (5) If ~~the~~ *insurance trust fund* is terminated, the assets in the *insurance trust fund* may revert, after the payment of all liabilities, to the participating employers as determined by the board of trustees.
- (6) The respective board of trustees may adopt regulations and procedures and take all action necessary and appropriate to provide that the income of the *insurance trust fund* the board administers is exempt from taxation under Title 26 of United States Code.
- (7) The establishment of the Kentucky Retirement Systems insurance trust fund ~~or the County Employees Retirement System insurance trust fund~~ shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.

➔Section 80. KRS 70.293 (Effective April 1, 2021) is amended to read as follows:

- (1) Individuals employed under KRS 70.291 to 70.293 shall:
- Serve for a term not to exceed one (1) year. The one (1) year employment term may be renewed annually at the discretion of the employing county police department or sheriff's office;
  - Receive compensation according to the standard procedures applicable to the employing county police department or sheriff's office; and
  - Be employed based upon need as determined by the county police department or the employing sheriff's office.
- (2) Notwithstanding any provisions of KRS 16.505 to 16.652, 18A.225 to 18A.2287, 61.510 to 61.705, or 78.510 to 78.852 to the contrary:
- Individuals employed under KRS 70.291 to 70.293 shall continue to receive all retirement and health insurance benefits to which they were entitled upon retiring in the applicable system administered by Kentucky Retirement Systems or the County Employees Retirement System;
  - Individuals employed under KRS 70.291 to 70.293 shall not be eligible to receive health insurance coverage through the county police department, the sheriff's office, or the fiscal court of the county police department or sheriff's office;
  - The county police department, sheriff's office, or fiscal court of the county police department or sheriff's office shall not pay any employer contributions or retiree health expense reimbursements to the Kentucky Retirement Systems required by *subsection (4) of Section 16 of this Act or subsection (17) of Section 65 of this Act* ~~KRS 61.637(17)~~ for individuals employed under KRS 70.291 to 70.293; and

- (d) The county police department, sheriff's office, or fiscal court of the county police department or sheriff's office shall not pay any insurance contributions to the state health insurance plan, as provided by KRS 18A.225 to 18A.2287, for individuals employed under KRS 70.291 to 70.293.
- (3) Individuals employed under KRS 70.291 to 70.293 shall be subject to any merit system, civil service, or other legislative due process provisions applicable to the county police department or sheriff's office. A decision not to renew a one (1) year appointment term under this section shall not be considered a disciplinary action or deprivation subject to due process.

➔Section 81. KRS 95.022 (Effective April 1, 2021) is amended to read as follows:

- (1) As used in this section:
  - (a) "City" means any incorporated city, consolidated local government, unified local government, urban-county government, or charter county government, operating under the law of this Commonwealth, and the offices and agencies thereof; and
  - (b) "Police officer" has the same meaning as "police officer" in KRS 15.420 and as "officer" in KRS 16.010.
- (2) Subject to the limitations of subsection (7) of this section, a city may employ individuals as police officers under this section who have retired from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System.
- (3) To be eligible for employment under this section, an individual shall have:
  - (a) Participated in the Law Enforcement Foundation Program fund under KRS 15.410 to 15.510 or retired as a commissioned officer pursuant to KRS Chapter 16;
  - (b) Retired with at least twenty (20) years of service credit;
  - (c) Been separated from service for the period required by KRS 61.637 *and Section 16 of this Act* so that the member's retirement is not voided;
  - (d) Retired with no administrative charges pending; and
  - (e) Retired with no preexisting agreement between the individual and the city prior to the individual's retirement for the individual to return to work for the city.
- (4) Individuals employed under this section shall:
  - (a) Serve for a term not to exceed one (1) year. The one (1) year employment term may be renewed annually at the discretion of the employing city;
  - (b) Receive compensation according to the standard procedures applicable to the employing city; and
  - (c) Be employed based upon need as determined by the employing city.
- (5) Notwithstanding any provisions of KRS 16.505 to 16.652, 18A.225 to 18A.2287, 61.510 to 61.705, or 78.510 to 78.852 to the contrary:
  - (a) Individuals employed under this section shall continue to receive all retirement and health insurance benefits to which they were entitled upon retiring in the applicable system administered by Kentucky Retirement Systems or the County Employees Retirement System;
  - (b) Individuals employed under this section shall not be eligible to receive health insurance coverage through the employing city;
  - (c) The city shall not pay any employer contributions or retiree health expense reimbursements to the Kentucky Retirement Systems required by KRS 61.637~~(17)~~ for individuals employed under this section; and
  - (d) The city shall not pay any insurance contributions to the state health insurance plan, as provided by KRS 18A.225 to 18A.2287, for individuals employed under this section.
- (6) Individuals employed under this section shall be subject to any merit system, civil service, or other legislative due process provisions applicable to the employing city. A decision not to renew a one (1) year appointment term under this section shall not be considered a disciplinary action or deprivation subject to due process.

- (7) A city government shall be limited in the number of retired police officers that it may hire under this section as follows:
- (a) A city government that employed an average of five (5) or fewer police officers over the course of calendar year 2015 shall not be limited in the number of officers that they may hire under this section;
  - (b) A city government that employed an average of more than five (5) but fewer than one hundred (100) police officers over the course of calendar year 2015 shall not hire more than five (5) police officers or a number equal to twenty-five percent (25%) of the police officers employed by the city in calendar year 2015, whichever is greater; and
  - (c) A city government that employed an average of one hundred (100) or more police officers over the course of calendar year 2015 shall not hire more than twenty-five (25) police officers or a number equal to ten percent (10%) of the police officers employed by the city in calendar year 2015, whichever is greater.
- (8) Retired police officers employed by a city government for purposes of KRS 158.4414 shall not apply against the limitations provided by subsection (7) of this section.

➔Section 82. KRS 161.155 is amended to read as follows:

- (1) As used in this section:
- (a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;
  - (b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;
  - (c) "Immediate family" shall mean the teacher's or employee's spouse, children including stepchildren and foster children, grandchildren, daughters-in-law and sons-in law, brothers and sisters, parents and spouse's parents, and grandparents and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's or employee's home;
  - (d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers or employees for use by teachers or employees who have exhausted all sick leave and other available paid leave days; and
  - (e) "Assault" shall mean an act that intentionally causes injury so significant that the victim is determined to be, by certification of a physician or surgeon duly qualified under KRS Chapter 342, incapable of performing the duties of his or her job.
- (2) Each district board of education shall allow to each teacher and full-time employee in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher or employee if he or she presents a personal affidavit or a certificate of a physician stating that the teacher or employee was ill, that the teacher or employee was absent for the purpose of attending to a member of his or her immediate family who was ill, or for the purpose of mourning a member of his or her immediate family. The ten (10) days of sick leave granted in this subsection may be taken by a teacher or employee on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher or employee under the provisions of subsection (4) of this section.
- (3) A school district shall coordinate among the income and benefits from workers' compensation, temporary disability retirement, and district payroll and benefits so that there is no loss of income or benefits to a teacher or employee for work time lost because of an assault while performing the teacher's or employee's assigned duties for a period of up to one (1) year after the assault. In the event a teacher or employee suffers an assault while performing his or her assigned duties that results in injuries that qualify the teacher or employee for workers' compensation benefits, the district shall provide leave to the teacher or employee for up to one (1) year after the assault with no loss of income or benefits under the following conditions:
- (a) The district shall pay the salary of the teacher or employee between the time of the assault and the time the teacher's or employee's workers' compensation income benefits take effect, or the time the teacher or employee is certified to return to work by a physician or surgeon duly qualified under KRS Chapter 342, whichever is sooner;

- (b) The district shall pay, for up to one (1) year from the time of the assault, the difference between the salary of the teacher or employee and any workers' compensation income benefits received by the teacher or employee resulting from the assault. Payments by the district shall include payments for intermittent work time missed as a result of the assault during the one (1) year period. If the teacher's or employee's workers' compensation income benefits cease during the one (1) year period after the assault, the district shall also cease to make payments under this paragraph;
  - (c) The Commonwealth, through the Kentucky Department of Education, shall make the employer's health insurance contribution during the period that the district makes payments under paragraphs (a) and (b) of this subsection;
  - (d) The Commonwealth, through the Kentucky Department of Education, shall make the employer's contribution to the retirement system in which the teacher or employee is a member during the period that the district makes payments under paragraphs (a) and (b) of this subsection; and
  - (e) Payments to a teacher or employee under paragraphs (a) and (b) of this subsection shall be coordinated with workers' compensation benefits under KRS Chapter 342, disability retirement benefits for teachers under KRS 161.661 to 161.663, and disability retirement benefits for employees under KRS 61.600 to 61.621 and *Sections 7 to 11 of this Act* ~~(78.545)~~ so that the teacher or employee receives income equivalent to his or her full contracted salary, but in no event shall the combined payments exceed one hundred percent (100%) of the teacher's or employee's full contracted salary.
- (4) Days of sick leave not taken by an employee or a teacher during any school year shall accumulate without limitation and be credited to that employee or teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow employees or teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to an employee or a teacher shall remain so credited in the event he or she transfers his or her place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district.
- (5) Accumulated days of sick leave shall be granted to a teacher or employee if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher or employee is unable to commence his or her duties on the opening day of the school year, but will be able to assume his or her duties within a period of time that the board determines to be reasonable.
- (6) Any school teacher or employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.
- (7) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher or employee may annually contribute to the bank and limitations upon the number of days a teacher or employee may annually draw from the bank. Only those teachers or employees who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher or employee. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.
- (8) (a) A district board of education shall establish a sick leave donation program to permit teachers or employees to voluntarily contribute sick leave to teachers or employees in the same school district who are in need of an extended absence from school. A teacher or employee who has accrued more than fifteen (15) days' sick leave may request the board of education to transfer a designated amount of sick leave to another teacher or employee who is authorized to receive the sick leave donated. A teacher or employee may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.
- (b) A teacher or employee may receive donations of sick leave if:
- 1. a. The teacher or employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher or employee to be absent for at least ten (10) days; or

- b. The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;
  - 2. The teacher's or employee's need for the absence and use of leave are certified by a licensed physician for leave requested under subparagraph 1.a. of this subsection;
  - 3. The teacher or employee has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and
  - 4. The teacher or employee has complied with the school district's policies governing the use of sick leave.
- (c) While a teacher or employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.
  - (d) Any sick leave that remains unused, is not needed by a teacher or employee, and will not be needed in the future shall be returned to the teacher or employee donating the sick leave.
  - (e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.
- (9) A teacher or employee may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.
  - (10) (a) After July 1, 1982~~, and except as otherwise provided by this subsection~~, a district board of education may compensate, at the time of retirement or upon the death of a member in active contributing status at the time of death who was eligible to retire by reason of service, an employee or a teacher, or the estate of an employee or teacher, for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days ~~is not to exceed the amount based upon the unused sick leave days accrued as of December 31, 2018,~~ shall be incorporated into the annual ~~salary~~**compensation** of the final year of service for inclusion in the calculation of the employee's or teacher's retirement allowance only at the time of his or her initial retirement; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.
  - (b) For a teacher or employee who begins employment with a local school district on or after July 1, 2008, the maximum amount of unused sick leave days a district board of education may recognize in calculating the payment of compensation to the teacher or employee under this subsection shall not exceed three hundred (300) days.
- (11) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (10) of this section.
  - (12) The death benefit provided in subsection (10) of this section may be cited as the Baughn Benefit.

➔Section 83. KRS 161.675 is amended to read as follows:

- (1) The board of trustees shall arrange by appropriate contract or on a self-insured basis to provide a broad program of group hospital and medical insurance for present and future eligible recipients of a retirement allowance from the Teachers' Retirement System. The board of trustees may also arrange to provide health insurance coverage through an insurer licensed pursuant to Subtitle 38 of KRS Chapter 304 and offering a managed care plan as defined in KRS 304.17A-500 as an alternative to group hospital and medical insurance for persons eligible for hospital and medical benefits under this section. The board of trustees may authorize eligible recipients of a retirement allowance from the Teachers' Retirement System who are less than age sixty-five (65) to be included in the state-sponsored health insurance that is provided to active teachers and state employees under KRS 18A.225. Members who are sixty-five (65) or older and retired for service shall not be eligible to participate in the state employee health insurance program as described in KRS 18A.225.

- (2) (a) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage and eligibility conditions to meet the changing needs of the annuitants and, when necessary, to contain the expenses of the insurance program within the funds available to finance the insurance program, except as provided by paragraph (b) of this subsection. The contracts and administrative regulations shall provide for but not be limited to hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. An annuitant whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years' creditable Kentucky service in the Teachers' Retirement System or five (5) years of combined creditable service in the state-administered retirement systems if the member is retiring under the reciprocity provisions of KRS 61.680, ~~and~~ 61.702, **and Section 14 of this Act**. An annuitant shall not elect coverage through more than one (1) of the state-administered retirement systems. The board of trustees shall offer coverage to the disabled child of an annuitant regardless of the disabled child's age if the annuitant pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (b) Individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, shall not be eligible for benefits under this section unless the member has at least fifteen (15) or more years of service credited under KRS 161.500 or another state-administered retirement system.
- (3) All expenses for benefits under this section shall be paid from the funding provisions contained in KRS 161.420(5), from a trust fund established by the board under 26 U.S.C. sec. 115, premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute.
- (4) (a) The board of trustees shall determine the amount of health insurance supplement payments that the Teachers' Retirement System will provide to assist eligible annuitants in paying the cost of their health insurance, based on the funds available in the medical insurance fund and any trust fund established by the board for this purpose under 26 U.S.C. sec. 115. The board of trustees shall establish the maximum monthly amounts of health insurance supplement payments that will be made by the Kentucky Teachers' Retirement System for eligible annuitants. The board of trustees shall annually establish the percentage of the maximum monthly health insurance supplement payment that will be made, based on age and years of service credit of eligible recipients of a retirement allowance. Monthly health insurance supplement payments made by the retirement system may not exceed the amount of the single coverage insurance premium chosen by the eligible annuitants. In order to qualify for health insurance supplements, the annuitant must agree to pay the difference between the insurance premium and the applicable supplement payment, by payroll deduction from his retirement allowance, or by a payment method approved by the retirement system.
- (b) The board shall, effective July 1, 2010, have the authority to charge retired members who are not paying the Standard Medicare Part B premium an amount equal to the Standard Medicare Part B premium in addition to any other payments determined by the board to be necessary to contain costs within the available funding. If the board determines that retired members who are not paying the Standard Medicare Part B premium should pay the equivalent of the Standard Medicare Part B premium, the board shall phase in the premium according to the following schedule:
 

July 1, 2010.....	Thirty-three percent (33%)
July 1, 2011.....	Sixty-seven percent (67%)
July 1, 2012, and thereafter.....	One hundred percent (100%)

Nothing in this paragraph shall limit the board's authority to change the levels of coverage, eligibility conditions, or levels of health insurance supplement for retirees in order to contain costs within available funding.
- (c) The board of trustees may offer, on a full-cost basis, health care insurance coverage provided by the retirement system to spouses and dependents of eligible annuitants not otherwise eligible for regular coverage. Recipients of a retirement allowance from the retirement system must agree to pay the cost of this coverage by payroll deduction from their retirement allowance or by a payment method approved by the retirement system.
- (d) The board of trustees shall offer, on a full-cost basis, health insurance coverage provided by the retirement system to the disabled child of an annuitant, regardless of the age of the disabled child. A

child shall be considered disabled for purposes of this section if the child has been determined to be eligible for federal Social Security disability benefits.

- (5) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from any trust fund established by the board for this purpose under 26 U.S.C. sec. 115, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to active and retired state employees and active teachers, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.
- (6) The board of trustees may approve health insurance supplement payments to eligible annuitants who are less than sixty-five (65) years of age, as reimbursement for hospital and medical insurance premiums made by annuitants for their individual coverage. Eligible annuitants or recipients are those annuitants who are not eligible for Medicare and who do not reside in Kentucky or in an area outside of Kentucky where comparable coverage is available. The reimbursement payments shall not exceed the minimum supplement payment that would have been made had the annuitant lived in Kentucky. Eligible annuitants or recipients shall submit proof of payment to the retirement system for hospital and medical insurance that they have obtained. Reimbursement payments shall be made on a quarterly basis.
- (7) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system or any trust fund established for this purpose by the board.
- (8) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.
- (9) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the medical insurance fund or another trust fund established by the board for this purpose shall not constitute taxable income to an insured recipient.
- (10) In the event that a member is providing services on less than a full-time basis under KRS 161.605, the retirement system may pay the full cost of the member's health insurance coverage for the full fiscal year that the member is providing those services, at the conclusion of which, the retirement system may then bill the active employer and the active employer shall reimburse the retirement system for the cost of the health insurance coverage incurred by the retirement system on a pro rata basis for the time that the member was employed by the active employer.

➔Section 84. KRS 164.952 is amended to read as follows:

- (1) As used in this section:
  - (a) "Police officer" has the same meaning as "police officer" in KRS 15.420, as "police officer" in KRS 164.950 to 164.980, and as "officer" in KRS 16.010; and
  - (b) "Postsecondary institution" means any public institution of postsecondary education authorized to establish a police department pursuant to KRS 164.950 to 164.980 that participates in the Kentucky Employees Retirement System.
- (2) Subject to the limitations of subsection (7) of this section, a postsecondary institution may employ individuals as police officers under this section who have retired from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System.
- (3) To be eligible for employment under this section, an individual shall have:
  - (a) Participated in the Law Enforcement Foundation Program fund under KRS 15.410 to 15.510, retired as a commissioned officer pursuant to KRS Chapter 16, or retired as a police officer from a postsecondary institution;
  - (b) Retired with at least twenty (20) years of service credit;
  - (c) Been separated from service for the period required by KRS 61.637 or **Section 16 of this Act** so that the member's retirement is not voided;

- (d) Retired with no administrative charges pending; and
  - (e) Retired with no preexisting agreement between the individual and the postsecondary institution prior to the individual's retirement for the individual to return to work for the postsecondary institution.
- (4) Individuals employed under this section shall:
- (a) Serve for a term not to exceed one (1) year. The one (1) year employment term may be renewed annually at the discretion of the employing postsecondary institution;
  - (b) Receive compensation according to the standard procedures applicable to the employing postsecondary institution; and
  - (c) Be employed based upon need as determined by the employing postsecondary institution.
- (5) Notwithstanding any provisions of KRS 16.505 to 16.652, 18A.225 to 18A.2287, 61.510 to 61.705, or 78.510 to 78.852 to the contrary:
- (a) Individuals employed under this section shall continue to receive all retirement and health insurance benefits to which they were entitled upon retiring in the applicable system administered by Kentucky Retirement Systems;
  - (b) Individuals employed under this section shall not be eligible to receive health insurance coverage through the employing postsecondary institution;
  - (c) The postsecondary institution shall not pay any employer contributions or retiree health expense reimbursements to the Kentucky Retirement Systems required by KRS 61.637(17) for individuals employed under this section; and
  - (d) The postsecondary institution shall not pay any insurance contributions to the state health insurance plan, as provided by KRS 18A.225 to 18A.2287, for individuals employed under this section.
- (6) Individuals employed under this section shall be subject to any legislative due process provisions applicable to police officers of the employing postsecondary institution. A decision not to renew a one (1) year appointment term under this section shall not be considered a disciplinary action or deprivation subject to due process.
- (7) The number of retired police officers a postsecondary institution may hire under the provisions of this section shall be limited to five (5) retired police officers or a number equal to twenty-five percent (25%) of the police officers employed by the postsecondary institution in calendar year 2018, whichever is greater.

➔Section 85. The following KRS sections are repealed:

61.5956 Optional 401(a) money purchase plan for new nonhazardous members who begin participating in KERS or CERS on or after January 1, 2019. (Declared void -- See LRC Note Below)

61.555 Service credit, creditable compensation, and other credits for military service. (Effective April 1, 2021)

61.5525 Method for determining purchase of service credit -- Exceptions.

➔Section 86. No provisions of this Act shall increase or decrease benefits being paid to retirees, beneficiaries, or recipients of the Kentucky Retirement Systems or the County Employees Retirement System nor shall any provisions of this Act increase or decrease benefits that have accrued to members of the Kentucky Retirement Systems or the County Employees Retirement System on the effective date of this Act.

➔Section 87. The provisions of this Act shall not be construed to limit the General Assembly's authority to amend, reduce, or suspend any provision of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, that the General Assembly had the authority to amend, reduce, or suspend, prior to April 1, 2021.

➔Section 88. Members of the board of the Kentucky Retirement Systems and the County Employees Retirement System who will serve on these respective boards on or after April 1, 2021, may meet prior to April 1, 2021, for purposes of discussion and preparing for the establishment of separate boards but no official action may be taken by these boards until April 1, 2021.

➔Section 89. The individual serving as the Executive Director of the Kentucky Retirement Systems immediately prior to April 1, 2021, shall serve as the interim Executive Director of the Kentucky Public Pensions Authority until a permanent Executive Director is established by the authority. On or before July 1, 2021, the Kentucky Public Pensions Authority shall select an individual to serve as the permanent Executive Director.



➔Section 90. Whereas the effective transfer of the County Employees Retirement System is imperative to the members of all state-administered retirement systems, an emergency is declared to exist and this Act takes effect on April 1, 2021, except that Section 88 shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor March 24, 2021.**

## CHAPTER 103

( HB 386 )

AN ACT relating to water pollution control and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 16 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *In accordance with the water quality standards established in 401 KAR 10:029 in effect on the effective date of this Act, which have been submitted to and deemed approved by the United States Environmental Protection Agency pursuant to its 2018 triennial review of Kentucky's water quality standards under 33 U.S.C. sec. 1313(c), any mixing zone for bioaccumulative chemicals of concern assigned by the cabinet on or before September 8, 2004, shall be in effect from that date unless and until explicitly extinguished by the cabinet after the effective date of this Act.*
- (2) *Any change or extinguishment in mixing zone assignments for bioaccumulative chemicals of concern by the cabinet shall only be accomplished through the promulgation of administrative regulations pursuant to KRS Chapter 13A.*

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 16 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "rapid and complete mixing" means the limited area surrounding or downstream from a wastewater discharge location where complete mixing of treated wastewater and receiving water occurs rapidly, including through the use of a submerged high-rate multi-port diffuser or outfall structure.*
- (2) *The cabinet shall apply rapid and complete mixing in establishing permit limitations and conditions for any discharge regulated under a Kentucky Pollutant Discharge Elimination System permit where the discharge occurs through a submerged high-rate multi-port diffuser or outfall structure.*

➔Section 3. Whereas continued regulatory uncertainty is an undue burden on Kentucky Pollutant Discharge Elimination System permit holders, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon otherwise becoming law.

**Became law without Governor's signature March 24, 2021.**

## CHAPTER 104

( HCR 25 )

A CONCURRENT RESOLUTION supporting civic education and declaring the third week in September as the kick-off week for America's Legislators Back to School Program, and encouraging participation in the "Principal for a Day" program.

WHEREAS, the Commonwealth of Kentucky was created as a representative democracy in which all governmental power is inherent in the people who exercise that power through the legislative, executive, and judicial branches; and

WHEREAS, in recent years, citizen interest in government and knowledge of the political system has declined in part due to a weakening belief in and a lack of understanding of the virtues and knowledge needed for a successful republican form of government; and

WHEREAS, Benjamin Rush, signer of the Declaration of Independence stated, "There is but one method of rendering a republican form of government durable, and that is by disseminating the seeds of virtue and knowledge through every part of the state by means of proper places and modes of education and this can be done effectively only by the aid of the legislature"; and

WHEREAS, the National Conference of State Legislatures (NCSL) has passed a resolution that says that the operations of the state legislatures and the roles of individual legislators are often little understood by citizens and that public understanding of the institutions and processes of the government is critical to building public trust and confidence; and

WHEREAS, the NCSL resolution also states that state legislatures need to bring about better understanding of the concept of representative democracy and that education about representative democracy should emphasize the importance of compromise and the difficulty of resolving competing interests in a diverse society; and

WHEREAS, civic education is a vital tool to promote greater understanding of the legislative institution and the role of legislators in representative democracy and is required for graduation from high school in Kentucky; and

WHEREAS, the NCSL urges the nation's state legislatures to promote civic education about representative democracy; and

WHEREAS, it is equally important for legislators to understand the impact of their policy and funding decisions on the daily operation of schools and upon school leaders, teachers and students; and

WHEREAS, the NCSL has established America's Legislators Back to School Program, a national program where state legislators across the nation visit schools and classrooms to talk about the legislature and to observe activities in the schools; and

WHEREAS, the Kentucky Association of School Administrators (KASA) has established a "Principal for a Day" program that encourages legislators to spend a portion of a school day shadowing a school principal in order to observe first-hand the role of a school leader and the work of teachers and students; and

WHEREAS, all legislators will benefit from interacting with students, teachers, and administrators and witnessing their daily commitment to improving Kentucky's schools;

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 supports civic education to promote greater understanding of the legislative institution and the role of legislators in representative democracy.

→Section 2. The General Assembly declares that the third week in September shall be designated as the kick-off week for Kentucky's Legislators Back to School Program and urges all members of the legislature to visit schools during that week and throughout the school year.

→Section 3. The General Assembly encourages all members of the legislature to spend some portion of these school visits shadowing the school principal as part of the "Principal for a Day" program.

**Signed by Governor March 24, 2021.**

## CHAPTER 105

( SB 172 )

AN ACT relating to underground facility protection.

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

→Section 1. KRS 367.4911 is amended to read as follows:

- (1) (a) Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.
- (b) An excavator may commence work before the two (2) full working days provided for in paragraph (a) of this subsection have elapsed if all affected operators have notified the person that the location of all the affected operators' facilities have been marked or that they have no facilities in the area of the proposed excavation, demolition, or timber harvesting.
- (2) Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.
- (3) Each excavator shall provide each applicable protection notification center with adequate information regarding:
  - (a) The name of the individual making the notification;
  - (b) The excavator's name, address, and a telephone number;
  - (c) The excavation or demolition site location or locations, each of which shall not exceed two thousand (2,000) feet in length unless the excavator and operator agree to a larger area, the city or community, county and street address, including the nearest cross street;
  - (d) The type and extent of excavation or demolition to be performed;
  - (e) A contact name and telephone number of the person responsible for the work to be performed.
- (4) If more than one (1) excavator will operate at the same site, each excavator shall notify the protection notification centers individually. Notification by an excavator will serve as notification for any of that excavator's employees. Failure by an excavator to notify the protection notification center does not relieve individual employees of responsibility.
- (5) The excavator shall inform and provide to excavation or demolition site employees:
  - (a) The underground facility location provided by each operator;
  - (b) Any related safety information provided by each operator; and
  - (c) The locate request identification number assigned by each protection notification center.
- (6) The excavator shall protect and preserve temporary underground facility markers until the scheduled excavation or demolition is completed.
- (7) If, after the two (2) day period provided by KRS 367.4909(5)(a), the excavator finds evidence of an unmarked underground facility at the site, he shall immediately notify the protection notification center.
- (8) The excavator shall contact the protection notification center to request remarking two (2) working days in advance of the expiration of each twenty-one (21) day period while excavation or demolition continues or if:
  - (a) The markings of any underground facility have been removed or are no longer visible; or
  - (b) The excavator has changed the work plan or location previously filed.
- (9) (a) Each excavator who conducts or is responsible for any excavation or demolition that results in underground facility damage shall cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage ***immediately upon discovery of the damage.***
- (b) ***Any individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under Section 2 of this Act, who conducts or is responsible for any excavation or demolition that results in underground facility damage to an underground facility or system used for producing, storing, conveying, transmitting, or distributing gas, petroleum, petroleum products, or hazardous liquids, shall cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage immediately upon discovery of the damage.***
- (c) If the underground facility damage causes concern for public or workplace safety, the excavator, ***or the individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under Section 2 of this Act,*** shall notify appropriate public safety agencies of the location and nature of the safety concern.

~~(d)(e)~~ If the underground facility damage results in the escape *or suspected escape* of any flammable, toxic, or corrosive gas or liquid, the excavator, *or the individual or entity that is otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under Section 2 of this Act*, shall cease excavation or demolition activities and immediately report to the appropriate authorities by calling the 911 emergency telephone number.

- (10) When excavation or demolition is necessary within the approximate location of the underground facility, the excavator shall hand-dig or use nonintrusive means to avoid damage to the underground facility.
- (11) Upon request by an operator or when the proposed excavation location cannot be accurately identified, an excavator shall mark the boundaries of the location to be excavated using the procedure set forth in KRS 367.4909(9)(k). After marking the boundaries, the excavator shall contact the protection notification center or centers. The requirements of KRS 367.4909(5) to (10) are reestablished upon the operator receiving notification of this marking from the protection notification center or centers. This marking shall not alter, or relieve the excavator from complying with, the requirements of KRS 367.4905 to 367.4917.

➔Section 2. KRS 367.4915 is amended to read as follows:

*Except as provided in subsection (9) of Section 1 of this Act*, the requirements of KRS 367.4905 to 367.4917 shall not apply to the following:

- (1) Excavation by an operator on its own easement except where that easement is crossed by another operator's facilities;
- (2) Routine road maintenance or railroad maintenance or repairs;
- (3) Tilling of soil for agricultural purposes;
- (4) Excavators excavating on private property, using nonmechanized equipment, if there is no encroachment on any operator's right-of-way or easement;
- (5) The opening of a grave in a cemetery;
- (6) A solid waste disposal site which is properly permitted;
- (7) Coal mining operations which are currently regulated under KRS Chapter 350;
- (8) A utility operator or utility operator subcontractor performing emergency work as defined in KRS 367.4903;
- (9) Leak migration testing using metal probes inserted by hand by an authorized representative of the operator; ~~or~~
- (10) Any nonintrusive excavating performed by an operator or his subcontractor to locate the operator's underground facilities in response to a notice of excavation from the notification center, if all reasonable precautions have been taken to protect the underground facilities; *or*
- (11) *Nonintrusive excavating to inspect or perform maintenance for an existing utility pole.*

**Signed by Governor March 24, 2021.**

## CHAPTER 106

### ( SB 169 )

AN ACT relating to duty-related disability benefits.

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

➔Section 1. KRS 16.505 is amended to read as follows:

As used in KRS 16.505 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.505 to 16.652;
- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of Kentucky State Police, or its successor;

- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "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 member's account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.505 to 16.652, and any other amounts the member shall have contributed, including interest credited. 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);
- (8) "Creditable compensation":
- (a) Except as provided by paragraph (b) or (c) of this subsection, means all salary and wages, 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 16.545(4);
- (b) Includes:
1. Lump-sum bonuses, severance pay, or employer-provided payments for purchase of service credit, which 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);
  2. Lump-sum payments for creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, or for any creditable compensation paid in anticipation of settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes, which shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer. This subparagraph shall also include lump-sum payments for reinstated wages pursuant to KRS 61.569, which shall be credited to the period during which the wages were earned or should have been paid by the employer;
  3. 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; and
  4. 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); and
- (c) Excludes:
1. Uniform, equipment, or any other expense allowances paid on or after January 1, 2019, living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board;
  2. For employees who begin participating on or after September 1, 2008, lump-sum payments for compensatory time; and
  3. Any salary or wages paid to an employee for services as a Kentucky State Police school resource officer as defined by KRS 158.441;
- (9) "Final compensation" means:
- (a) For a member who begins participating prior to September 1, 2008, who retires prior to January 1, 2019, the creditable compensation of a 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 the 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; or
- (b) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, or for a member who begins participating prior to September 1, 2008, who retires on or after January 1, 2019, the creditable compensation of the member during the three (3) complete fiscal years he or she 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. If the member does not have three (3) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least thirty-six (36) months;
- (10) "Final rate of pay" means the actual rate upon which earnings of a member 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 16.545(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 (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;
- (11) "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;
- (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;
- (13) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of 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. For members who began participating in the system prior to January 1, 2014, no disability retirement option shall be less than the same option computed under early retirement;
- (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of Kentucky State Police;
- (15) "Normal retirement date" means:
- (a) For a member who begins participating before September 1, 2008, the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959; or
- (b) For a member who begins participating on or after September 1, 2008, the first day of the month following a member's sixtieth birthday;
- (16) "Disability retirement date" means the first day of the month following the last day of paid employment;
- (17) "Dependent child" means a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22). Solely in the ~~cases where~~ ~~case of~~ a member ~~who~~ dies as a direct result of an act in line of duty as defined in this section, ~~or who~~ dies as a result of a duty-related injury as defined in KRS 61.621, ***becomes totally and permanently disabled as a direct result of an act in the line of duty as defined in this section, or becomes disabled as a result of a duty-related injury as defined in Section 3 of this Act and is eligible for the benefits provided by subsection (5)(a) of Section 3 of this Act,*** "dependent child" also means a naturally or legally adopted disabled child of the member, regardless of the child's age, if the child has been determined to be eligible for federal Social Security disability benefits or is being claimed as a qualifying child for tax purposes due to the child's total and permanent disability;
- (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.505 to 16.652;
- (19) "Act in line of duty" means:

- (a) A ~~single~~ act occurring or a *single* thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060; ~~;~~
  - (b) For employees in hazardous positions under KRS 61.592, ~~an "act in line of duty" shall mean~~ a ~~single~~ act occurring which was required in the performance of the principal duties of the position as defined by the job description; *or*
  - (c) *For employees participating in the State Police Retirement System and for employees who are in hazardous positions under KRS 61.592, a single act of violence committed against the employee that is found to be related to his or her job duties, whether or not it occurs at his or her job site;*
- (20) "Early retirement date" means:
- (a) For a member who begins participating before September 1, 2008, the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service; or
  - (b) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;
- (23) "Hazardous disability" as used in KRS 16.505 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (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" does 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) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (29) "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 account and considered as accumulated contributions of the individual member;
- (30) "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;
- (31) "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;

- (32) "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 established by 26 U.S.C. sec. 415;
- (33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543;
- (34) "Month" means a calendar month;
- (35) "Membership date" means the date upon which the member began participating in the system as provided by KRS 16.543;
- (36) "Participant" means a member, as defined by subsection (21) of this section, or a retired member, as defined by subsection (11) of this section;
- (37) "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;
- (38) "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;
- (39) "Accumulated employer credit" means the employer pay credit deposited to the member's account and interest credited on such amounts as provided by KRS 16.583;
- (40) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583, the combined sum of the member's accumulated contributions and the member's accumulated employer pay credit; and
- (41) "Monthly average pay" means:
- (a) *In the case of a member who dies as a direct result of an act in line of duty as defined in this section or who dies as a result of a duty-related injury as defined in Section 3 of this Act, the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the deceased member during his or her last twelve (12) months of employment; or*
  - (b) *In the case where a member becomes totally and permanently disabled as a direct result of an act in line of duty as defined in this section or becomes disabled as a result of a duty-related injury as defined in Section 3 of this Act and is eligible for the benefits provided by subsection (5)(a) of Section 3 of this Act, the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the disabled member during his or her last twelve (12) months of employment prior to the date the act in line of duty or duty-related injury occurred.*
- ➔Section 2. KRS 16.582 is amended to read as follows:
- (1) (a) Total and permanent disability means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent.
  - (b) Hazardous disability means a disability which results in the member's total incapacity to continue as a regular full-time officer or as an employee in a hazardous position, as defined in KRS 61.592, but which does not result in the member's total and permanent incapacity to engage in other occupations for remuneration or profit.
  - (c) In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. Part 1630 shall be considered.



- (d) If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability.
- (2) Any person may qualify to retire on disability, subject to the following:
- (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;
  - (b) For a person whose membership date is prior to August 1, 2004, the person shall not be eligible for an unreduced retirement allowance;
  - (c) The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment, as defined in KRS 16.505, as a regular full-time officer or in a regular full-time hazardous position under KRS 61.592;
  - (d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and
  - (e) A person's disability application based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment as a regular full-time officer or in a regular full-time hazardous position.
- (3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
- (a) The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;
  - (b) The incapacity is deemed to be permanent; and
  - (c) The incapacity does not result directly or indirectly from:
    - 1. Injury intentionally self-inflicted while sane or insane; or
    - 2. Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:
      - a. The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or
      - b. The person has at least sixteen (16) years' current or prior service for employment with employers participating in the retirement systems administered by the Kentucky Retirement Systems.
- For purposes of this subparagraph, "reemployment" shall not mean a change of employment between employers participating in the retirement systems administered by the Kentucky Retirement Systems with no loss of service credit.
- (4) (a) 1. An incapacity shall be deemed to be permanent if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a position as regular full-time officer or a hazardous position.
2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
- (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments,

postural and manipulative limitations, and environmental restrictions, shall be considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.

- (c) The person's physical exertion requirements shall be determined based on the following standards:
1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.
  2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.
  3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.
  4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.
  5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.
- (5) (a) The disability retirement allowance shall be determined as provided in KRS 16.576, except if the member's total service credit on his last day of paid employment in a regular full-time position is less than twenty (20) years, service shall be added beginning with his last date of paid employment and continuing to his fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his last day of paid employment, and the maximum service credit for calculating his retirement allowance, including his total service and service added under this section, shall not exceed twenty (20) years.
- (b) For a member whose participation begins on or after August 1, 2004, but prior to January 1, 2014, the disability retirement allowance shall be the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of the date of his disability.
- (c) For a member who begins participating on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583, the disability retirement allowance shall be the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his or her normal retirement date under KRS 16.583.
- (6) If the member receives a satisfactory determination of ~~total and permanent disability or~~ hazardous disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty *as defined in Section 1 of this Act*, the member's retirement allowance shall be calculated as follows:
- (a) For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and
  - (b) For each dependent child of the member on his disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty

percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system.

(7) ***If the member receives a satisfactory determination of total and permanent disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty as defined in Section 1 of this Act, the member's retirement allowance shall be calculated as follows:***

(a) ***For the disabled member, the benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than seventy-five percent (75%) of the member's monthly average pay; and***

(b) ***For each dependent child of the member on his or her disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly average pay, except that:***

1. ***Member and dependent children payments under this subsection shall not exceed one hundred percent (100%) of the member's monthly average pay; and***

2. ***Total maximum dependent children's benefits shall not exceed twenty-five percent (25%) of the member's monthly average pay while the member is living and forty percent (40%) of the member's monthly average pay after the member's death. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system, and shall be divided equally among all dependent children.***

~~(8)(7)~~ No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is age fifty-five (55) or older.

~~(9)(8)~~ If a regular full-time officer or hazardous position member has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the system's medical examiner.

~~(10)(9)~~ For a member of the State Police Retirement System, in lieu of the allowance provided in subsection (5) ~~to (7) or (6)~~ of this section, the member may be retained on the regular payroll and receive the compensation authorized by KRS 16.165, if he is qualified.

➔Section 3. KRS 61.621 is amended to read as follows:

(1) Notwithstanding any provision of any statutes to the contrary, effective June 1, 2000, any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position, as defined in KRS 61.592, shall be eligible for minimum benefits equal to the benefits payable under this section or KRS 61.702 if the employee dies or becomes totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury.

(2) (a) For purposes of this section, "duty-related injury" means:

1. a. A single traumatic event that occurs while the employee is performing the duties of his position; or
- b. A single act of violence committed against the employee that is found to be related to his job duties, whether or not it occurs at his job site; and
2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.

(b) "Duty-related injury" does not include the effects of the natural aging process, a communicable disease unless the risk of contracting the disease is increased by nature of the employment, or a psychological, psychiatric, or stress-related change in the human organism unless it is the direct result of a physical injury.

(3) (a) If the employee dies as a result of a duty-related injury and is survived by a spouse, the surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased employee's retirement account, except as provided in KRS 61.542(2)(e).

(b) The surviving spouse, provided he or she supersedes all previously designated beneficiaries, may elect to receive the benefits payable under KRS 61.640 or other applicable death benefit statutes, or may elect to receive a lump-sum payment of ten thousand dollars (\$10,000) and a monthly payment equal to

seventy-five percent (75%) of the member's monthly average pay beginning in the month following the member's death and continuing each month until the death of the surviving spouse.

- (c) In addition, if the member is also survived by dependent children, monthly payments shall be made for each dependent child equal to ten percent (10%) of the deceased member's monthly average pay, except that the combined maximum payment made to the:
1. Surviving spouse and dependent children under this subsection shall not exceed one hundred percent (100%) of the deceased member's monthly average pay; and
  2. Dependent children, while the surviving spouse is living, shall not exceed twenty-five percent (25%) of the deceased member's monthly average pay. Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.

- (4) If the employee dies as a result of a duty-related injury and is not survived by a spouse but is survived by a dependent child or children, the following benefits shall be paid to the dependent child or children:

- (a) Fifty percent (50%) of the deceased member's monthly average pay, if the deceased member has one (1) dependent child;
- (b) Sixty-five percent (65%) of the deceased member's monthly average pay, if the deceased member has two (2) dependent children; or
- (c) Seventy-five percent (75%) of the deceased member's monthly average pay, if the deceased member has three (3) or more dependent children.

Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.

- (5) If the employee is determined to be disabled as provided in KRS 61.600, or other applicable disability statutes in any other state-administered retirement system, as the result of a duty-related injury, the employee may elect to receive benefits determined under the provisions of KRS 61.605, or other applicable disability statutes in any other state-administered retirement system, except that:

- (a) *If an employee is working in a nonhazardous position that could be certified as a hazardous position based upon KRS 61.592, the monthly retirement allowance shall not be less than seventy-five percent (75%) of the employee's monthly average pay; or*
- (b) *If an employee is working in a nonhazardous position that could not be certified as a hazardous position based upon KRS 61.592, the monthly retirement allowance shall not be less than twenty-five percent (25%) of the employee's monthly final rate of pay.*

For purposes of determining a disability *that is the result of a duty related injury*, the service requirement in KRS 61.600(1)(a), or other applicable statutes in any other state-administered retirement system, shall be waived.

- (6) (a) *In the period of time following the disability of a member covered by paragraph (5)(a) of this subsection during which dependent children survive, a monthly payment shall be made for each dependent child who is alive which shall be equal to ten percent (10%) of the disabled member's monthly average pay, except that:*

1. *Member and dependent children payments under this section shall not exceed one hundred percent (100%) of the member's monthly average pay; and*
2. *Total maximum dependent children's benefits shall not exceed twenty-five percent (25%) of the member's monthly average pay while the member is living and forty percent (40%) of the disabled member's monthly average pay after the member's death. The payment shall commence in the month following the date of disability of the member and shall be payable to the dependent children, or to a legally appointed guardian, or as directed by the system and shall be divided equally among all dependent children.*

- (b) In the period of time following ~~the [a member's]~~ disability *of a member covered by paragraph (5)(b) of this subsection* during which dependent children survive, a monthly payment shall be made for each dependent child who is alive which shall be equal to ten percent (10%) of the disabled member's monthly final rate of pay; ~~except that [however,]~~ total maximum dependent children's benefits shall not exceed forty percent (40%) of the disabled member's monthly final rate of pay at the time any particular payment is due. The payment shall commence in the month following the date of disability of the

member and shall be payable to the *dependent children* [beneficiaries], or to a legally appointed guardian, or as directed by the system.

- (7) Benefits for death as a result of a duty-related injury to a dependent child shall be payable under this section notwithstanding an election by a surviving spouse or beneficiary to withdraw the deceased member's accumulated account balance as provided in KRS 61.625 or benefits under any other provisions of KRS 61.515 to 61.705 or other applicable death benefit statutes in any other state-administered retirement system.
- (8) (a) A spouse applying for benefits under this section who is also eligible for benefits under KRS 61.640 may elect to receive benefits under KRS 61.640(2)(a) or (b) while the application for benefits under this section is pending.
- (b) If a final determination results in a finding of eligibility for benefits under this section, the system shall recalculate the benefits due the spouse in accordance with this subsection.
- (c) If the spouse has been paid less than the amount of benefits to which the spouse was entitled to receive under this section, the system shall pay the additional funds due to the spouse.
- (d) If the spouse has been paid more than the benefit the spouse was eligible to receive under this section, then the system shall deduct the amount owed by the spouse from the ten thousand dollars (\$10,000) lump-sum payment and from the monthly retirement allowance payments until the amount owed to the systems has been recovered.
- (9) For purposes of this section, "dependent child" has the same meaning as in KRS 16.505.
- (10) This section shall be known as "The Fred Capps Memorial Act."

➔Section 4. KRS 61.702 (Effective April 1, 2021) is amended to read as follows:

- (1) (a) 1. The board of trustees of Kentucky Retirement Systems and the County Employees Retirement System shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the systems the respective boards administer, except as provided in subsection (8) of this section. Each respective board shall also arrange to provide health care coverage through an insurer licensed pursuant to Subtitle 38 of KRS Chapter 304 and offering a managed care plan as defined in KRS 304.17A-500, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section.
2. Any person who chooses coverage under a hospital and medical insurance plan shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of the hospital and medical insurance plan coverage and the benefits to which he or she would be entitled under this section.
3. For purposes of this section, "hospital and medical insurance plan" may include, at each respective board's discretion, any one (1) or more of the following:
- a. Any hospital and medical expense policy or certificate, provider-sponsored integrated health delivery network, self-insured medical plan, health maintenance organization contract, or other health benefit plan;
  - b. Any health savings account as permitted by 26 U.S.C. sec. 223 or health reimbursement arrangement or a similar account as may be permitted by 26 U.S.C. sec. 105 or 106. Such arrangement or account, in the board's discretion, may reimburse any medical expense permissible under 26 U.S.C. sec. 213; or
  - c. A medical insurance reimbursement program established by the board through the promulgation of administrative regulation under which members purchase individual health insurance coverage through a health insurance exchange established under 42 U.S.C. sec. 18031 or 18041.
- (b) Each respective board may authorize present and future recipients of a retirement allowance from any of the retirement systems the board administers to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status, except as provided in subsection (8) of this section. Notwithstanding the provisions of any other statute, recipients

shall be included in the same class as current state employees in determining medical insurance policies and premiums.

- (c) For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, each respective board shall provide a medical insurance reimbursement plan as described in subsection (7) of this section.
  - (d) Notwithstanding anything in KRS Chapter 61 to the contrary, each respective board of trustees, in its discretion, may take necessary steps to ensure compliance with 42 U.S.C. secs. 300bb-1 et seq., including but not limited to receiving contributions and premiums from, and providing benefits pursuant to this section to, persons entitled to continuation coverage under 42 U.S.C. secs. 300bb-1 et seq., regardless of whether such persons are recipients of a retirement allowance.
- (2) (a) Each employer participating in the State Police Retirement System as provided for in KRS 16.505 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the insurance trust funds established by KRS 61.701 the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565 or 78.635, as applicable.
- (b) 1. Each employer described in paragraph (a) of this subsection shall deduct from the creditable compensation of each member having a membership date on or after September 1, 2008, an amount equal to one percent (1%) of the member's creditable compensation. The deducted amounts shall, at the discretion of the board, be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510, 61.515, and 78.520, or the insurance trust funds established under KRS 61.701, or partially to one (1) fund with the remainder deposited to the other fund. Notwithstanding the provisions of this paragraph, a transfer of assets between the accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510, 61.515, and 78.520, and the insurance trust funds established under KRS 61.701 shall not be allowed.
  - 2. The employer shall file the contributions as provided by subparagraph 1. of this paragraph at the retirement office in accordance with KRS 61.675 and 78.625. Any interest or penalties paid on any delinquent contributions shall be credited to accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510, 61.515, and 78.520, or the insurance trust funds established under KRS 61.701. Notwithstanding any minimum compensation requirements provided by law, the deductions provided by this paragraph shall be made, and the compensation of the member shall be reduced accordingly.
  - 3. Each employer shall submit payroll reports, contributions lists, and other data as may be required by administrative regulation promulgated by each respective board of trustees pursuant to KRS Chapter 13A.
  - 4. Every member shall be deemed to consent and agree to the deductions made pursuant to this paragraph, and the payment of salary or compensation less the deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by the payment, except as to any benefits provided by KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. No member may elect whether to participate in, or choose the contribution amount payable to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, or the insurance trust funds established under KRS 61.701. The member shall have no option to receive the contribution required by this paragraph directly instead of having the contribution paid to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, or the insurance trust funds established under KRS 61.701. No member may receive a rebate or refund of contributions. If a member establishes a membership date prior to September 1, 2008, pursuant to KRS 61.552(1) or 61.552(20), then this paragraph shall not apply to the member and all contributions previously deducted in accordance with this paragraph shall be refunded to the member without interest. The contribution made pursuant to this paragraph shall not act as a reduction or offset to any other contribution required of a member or recipient under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

5. The respective board of trustees, at its discretion, may direct that the contributions required by this paragraph be accounted for within accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, or the insurance trust funds established under KRS 61.701, through the use of separate accounts.
- (3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:
1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;
  2. Wholly or partly from funds contributed by the insurance trust funds established under KRS 61.701;
  3. Wholly or partly from funds contributed to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520;
  4. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the insurance trust funds or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems or County Employees Retirement System;
  5. Partly from subparagraphs 1. to 4. of this paragraph, except that any premium for hospital and medical insurance over the amount contributed by the insurance trust funds; accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520; or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient by an automatic electronic transfer of funds. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the insurance trust funds or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall pay the balance, not to exceed the monthly contribution; or
  6. In full from the insurance trust funds or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 for all recipients of a retirement allowance from any of the three (3) retirement systems administered by the Kentucky retirement systems or the County Employees Retirement System where such recipient is a retired former member of one (1) or more of the three (3) retirement systems administered by the Kentucky retirement systems or the County Employees Retirement System (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his or her retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his or her retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his or her retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who becomes disabled as a direct result of an act in line of duty as defined in KRS 16.505 or as a result of a duty-related injury as defined in KRS 61.621, shall have his or her premium paid in full as if he or she had two hundred forty (240) months or more of service. Further, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who ~~dies~~ is killed as a direct result of an act in line of duty as

defined in KRS 16.505, ~~or dies~~ as a result of a duty-related injury as defined in KRS 61.621, *becomes totally and permanently disabled as a direct result of an act in line of duty as defined in Section 1 of this Act, or becomes disabled as a result of a duty-related injury as defined in Section 3 of this Act and is eligible for the benefits provided by subsection (5)(a) of Section 3 of this Act*, shall have the premium for *his or her* ~~the~~ spouse, *if the member is disabled, his or her* beneficiary, if the beneficiary is the member's spouse *and the member is deceased*, and for each dependent child as defined in KRS 16.505, paid so long as *the member, beneficiary, or dependent child* ~~they~~ individually ~~remains~~ ~~remain~~ eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems administered by the Kentucky retirement systems or the County Employees Retirement System, except service added to determine disability benefits shall not be counted as "months of service." For current and former employees of the Council on Postsecondary Education who were employed prior to January 1, 1993, and who earn at least fifteen (15) years of service credit in the Kentucky Employees Retirement System, "months of service" shall also include vested service in another retirement system other than the Kentucky Teachers' Retirement System sponsored by the Council on Postsecondary Education.

- (b) 1. For a member electing insurance coverage through the Kentucky Retirement Systems or County Employees Retirement System, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one (1) of the other state-administered retirement plans.
  2. Effective August 1, 1998, the Kentucky Retirement Systems or County Employees Retirement System shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium to be paid by the insurance trust fund accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, according to the criteria established in paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance trust fund the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his or her total combined service. The amounts paid by the other state-administered retirement plans and the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.
  3. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.
  4. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.
  5. The premium paid by the insurance trust funds established by KRS 61.701 or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall not exceed one hundred percent (100%) of the monthly contribution rate toward hospital and medical insurance coverage approved by the board of trustees of the Kentucky Retirement Systems or the board of trustees of the County Employees Retirement System.
- (4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, each dependent child, and each disabled child, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the hospital and medical insurance for the spouse, each dependent child, and each disabled child, or beneficiary is paid by payroll deduction from the retirement allowance or by another method. For purposes of this subsection only, a child shall be considered disabled if he or she has been determined to be eligible for federal Social Security disability benefits or meets the dependent disability standard established by the Department of Employee Insurance in the Personnel Cabinet.
  - (b) The other provisions of this section notwithstanding, the insurance trust funds or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall pay a percentage of the monthly contribution for the spouse and for each dependent child of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General



Assembly service, of the Kentucky Employees Retirement System and determined to be in a hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System. The percentage of the monthly contribution paid for the spouse and each dependent child of a recipient who was in a hazardous position shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section, except that for any recipient of a retirement allowance from the County Employees Retirement System who was contributing to the system on January 1, 1998, for service in a hazardous position, the percentage of the monthly contribution shall be based on the total of hazardous service and any nonhazardous service as a police or firefighter with the same agency, if that agency was participating in the County Employees Retirement System but did not offer hazardous duty coverage for its police and firefighters at the time of initial participation.

- (c) The insurance trust funds or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance trust funds or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 provides coverage for the spouse or each dependent child of a former member of the County Employees Retirement System, the insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall continue the same level of coverage for the spouse or each dependent child after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent child is not eligible for Medicare coverage.
- (5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.
- (6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance trust funds or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.
- (7) Each respective board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance premiums of recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly premium determined under subsection (3) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.
- (8)
  - (a)
    - 1. For employees having a membership date on or after July 1, 2003, and before September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred twenty (120) months of service in the state-administered retirement systems.
    - 2. For an employee having a membership date on or after September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred eighty (180) months of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system.
  - (b) An employee who meets the minimum service requirements as provided by paragraph (a) of this subsection shall be eligible for benefits as follows:

1. For employees who are not in a hazardous position, a monthly insurance contribution of ten dollars (\$10) for each year of service as a participating employee.
  2. For employees who are in a hazardous position or who participate in the State Police Retirement System, a monthly insurance contribution of fifteen dollars (\$15) for each year of service as a participating employee in a hazardous position or as a participating member of the State Police Retirement System. Upon the death of the retired member, the beneficiary, if the beneficiary is the member's spouse, shall be entitled to a monthly insurance contribution of ten dollars (\$10) for each year of service the member attained as a participating employee in a hazardous position or as a participating member of the State Police Retirement System.
- (c)
1. The minimum service requirement to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who **receives a satisfactory determination of a hazardous disability that is** ~~disabled as~~ a direct result of an act in line of duty as defined in KRS 16.505, and the member or his spouse and eligible dependents shall be entitled to the benefits payable under this subsection as though the member had twenty (20) years of service in a hazardous position.
  2. The minimum service required to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who is disabled ~~as a result of~~<sup>by</sup> a duty-related injury as defined in KRS 61.621 **and is eligible for the benefits provided by subsection (5)(b) of Section 3 of this Act,** and the member shall be entitled to the benefits payable under this subsection as though the member has twenty (20) years of service in a nonhazardous position.
  3. Notwithstanding the provisions of this section, the minimum service required to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who dies as a direct result of an act in line of duty as defined in KRS 16.505, **who becomes totally and permanently disabled as a direct result of an act in line of duty as defined in Section 1 of this Act,** ~~for~~ who dies as a result of a duty-related injury as defined in KRS 61.621, **or becomes disabled as a result of a duty-related injury as defined in Section 3 of this Act and is eligible for the benefits provided by subsection (5)(a) of Section 3 of this Act,** and the premium for the **member,** member's spouse, and for each dependent child as defined in KRS 16.505 shall be paid in full by the systems so long as they individually remain eligible for a monthly retirement benefit.
- (d) Except as provided by paragraph (c)3. of this subsection, the monthly insurance contribution amount shall be increased July 1 of each year by one and one-half percent (1.5%). The increase shall be cumulative and shall continue to accrue after the member's retirement for as long as a monthly insurance contribution is payable to the retired member or beneficiary.
- (e) The benefits of this subsection provided to a member whose participation begins on or after July 1, 2003, shall not be considered as benefits protected by the inviolable contract provisions of KRS 61.692, 16.652, and 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in its judgment the welfare of the Commonwealth so demands.
- (f) An employee whose membership date is on or after September 1, 2008, who retires and is reemployed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems shall not be eligible for health insurance coverage or benefits provided by this section and shall take coverage with his or her employing agency during the period of reemployment in a regular full-time position.

➔Section 5. KRS 61.510 (Effective April 1, 2021) 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' 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 and 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation":
  - (a) 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);
  - (b) Includes:
    1. Lump-sum bonuses, severance pay, or employer-provided payments for purchase of service credit, which 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);
    2. Cases where compensation includes maintenance and other perquisites, but the board shall fix the value of that part of the compensation not paid in money;
    3. Lump-sum payments for creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, or for any creditable compensation paid in anticipation of settlement of an action before a court of

competent jurisdiction, the Personnel Board, or the Commission on Human Rights, including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes, which shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer. This subparagraph shall also include lump-sum payments for reinstated wages pursuant to KRS 61.569, which shall be credited to the period during which the wages were earned or should have been paid by the employer;

4. 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; and
  5. 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); and
- (c) Excludes:
1. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board;
  2. For employees who begin participating on or after September 1, 2008, lump-sum payments for compensatory time;
  3. For employees who begin participating on or after August 1, 2016, nominal fees paid for services as a volunteer; and
  4. Any salary or wages paid to an employee for services as a Kentucky State Police school resource officer as defined by KRS 158.441;

(14) "Final compensation" of a member means:

- (a) For a member who begins participating before September 1, 2008, who is employed in a nonhazardous position, the creditable compensation of the member during the five (5) fiscal years he or she 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 employed in a nonhazardous position, 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 or she 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, but prior to January 1, 2014, who is employed in a nonhazardous position, 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, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least sixty (60) months; or

- (e) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, 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 or she 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. If the member does not have three (3) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least thirty-six (36) months;
- (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. For members who began participating in the system prior to January 1, 2014, 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 and are nonrenewable;
  - (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 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. The term "parted employer" shall not include a department, board, or agency that ceased participation in the system pursuant to KRS 61.522;
- (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 of time and the unfunded actuarially accrued liability shall be projected to be fully amortized at the conclusion of the set period of years;
- (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 Public Pensions Authority's 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;
- (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;
- (40) "Accumulated employer credit" mean the employer pay credit deposited to the member's account and interest credited on such amounts as provided by KRS 16.583 and 61.597;
- (41) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583 and 61.597, the combined sum of the member's accumulated contributions and the member's accumulated employer credit;
- (42) "Volunteer" means an individual who:
- (a) Freely and without pressure or coercion performs hours of service for an employer participating in one (1) of the systems administered by Kentucky Retirement Systems without receipt of compensation for services rendered, except for reimbursement of actual expenses, payment of a nominal fee to offset the costs of performing the voluntary services, or both; and
  - (b) If a retired member, does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twelve (12) months following the retired member's most recent retirement date;
- (43) "Nominal fee" means compensation earned for services as a volunteer that does not exceed five hundred dollars (\$500) per month. Compensation earned for services as a volunteer from more than one (1) participating employer during a month shall be aggregated to determine whether the compensation exceeds the five hundred dollars (\$500) per month maximum provided by this subsection;
- (44) "Nonhazardous position" means a position that does not meet the requirements of KRS 61.592 or has not been approved by the board as a hazardous position;
- (45) "Monthly average pay" means:
- (a) ***In the case of a member who dies as a direct result of an act in line of duty as defined in Section 1 of this Act or who dies as a result of a duty-related injury as defined in Section 3 of this Act, the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the deceased member during his or her last twelve (12) months of employment; or***
  - (b) ***In the case where a member becomes totally and permanently disabled as a direct result of an act in line of duty as defined in Section 1 of this Act or becomes disabled as a result of a duty-related injury as defined in Section 3 of this Act and is eligible for the benefits provided by subsection (5)(a) of Section 3 of this Act, the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the disabled member during his or her last twelve (12) months of employment prior to the date the act in line of duty or duty-related injury occurred;***
- (46) "Authority" means the Kentucky Public Pensions Authority as provided by KRS 61.505; and
- (47) "Executive director" means the executive director of the Kentucky Public Pensions Authority.

➔Section 6. KRS 78.510 (Effective April 1, 2021) 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 78.782;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his or her employees, county clerk and his or her employees, circuit clerk and his

or her deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, cities, charter county governments, urban-county governments, consolidated local governments, or unified local governments 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 or she 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 ceased under KRS 78.535;
- (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' 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. "Accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the fund established in KRS 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation":
  - (a) Except as limited by paragraph (c) of this subsection, 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). The creditable compensation of fee officers who receive salary, fees, maintenance, or other perquisites as a result of their official duties is the gross amount received decreased by the cost of salary paid deputies and clerks and the cost of office supplies and other official expenses;
  - (b) Includes:
    1. Lump-sum bonuses, severance pay, or employer-provided payments for purchase of service credit, which 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);
    2. Cases where compensation includes maintenance and other perquisites, but the board shall fix the value of that part of the compensation not paid in money;



3. Lump-sum payments for creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, or for any creditable compensation paid in anticipation of settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes, which shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer. This subparagraph shall also include lump-sum payments for reinstated wages pursuant to KRS 61.569, which shall be credited to the period during which the wages were earned or should have been paid by the employer;
  4. 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; and
  5. 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); and
- (c) Excludes:
1. 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;
  2. For employees who begin participating on or after September 1, 2008, lump-sum payments for compensatory time;
  3. Training incentive payments for city officers paid as set out in KRS 64.5277 to 64.5279;
  4. For employees who begin participating on or after August 1, 2016, nominal fees paid for services as a volunteer; and
  5. Any salary or wages paid to an employee for services as a Kentucky State Police school resource officer as defined by KRS 158.441;
- (14) "Final compensation" means:
- (a) For a member who begins participating before September 1, 2008, who is employed in a nonhazardous position, the creditable compensation of the member during the five (5) fiscal years he or she 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 employed in a nonhazardous position, 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;
  - (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 or she 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, which may contain less than twelve (12) months of service credit, shall be used;
  - (d) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, who is employed in a nonhazardous position, 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, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least sixty (60) months; or
- (e) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, 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 or she 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. If the member does not have three (3) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least thirty-six (36) months;
- (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. For members who begin participating in the system prior to January 1, 2014, 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 employer 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 positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable;
- (d) Probationary positions which are positions of employment with a participating employer that do not exceed twelve (12) months and that are used uniformly by the participating agency on new employees who would otherwise be eligible for participation in the system. Probationary positions shall not be renewable by the participating employer for the same employee, unless the employee has not been employed with the participating employer for a period of at least twelve (12) months; or

- (e) 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 Public Pensions Authority 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 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;
- (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;
- (37) "Accumulated employer credit" means the employer pay credit deposited to the member's account and interest credited on such amounts as provided by KRS 16.583 and 61.597;
- (38) "Accumulated account balance" means:
  - (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions; or

- (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583 and 61.597, the combined sum of the member's accumulated contributions and the member's accumulated employer credit;
- (39) "Volunteer" means an individual who:
- (a) Freely and without pressure or coercion performs hours of service for an employer participating in one (1) of the systems administered by Kentucky Retirement Systems or the County Employees Retirement System without receipt of compensation for services rendered, except for reimbursement of actual expenses, payment of a nominal fee to offset the costs of performing the voluntary services, or both; and
- (b) If a retired member, does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twelve (12) months following the retired member's most recent retirement date;
- (40) "Nominal fee" means compensation earned for services as a volunteer that does not exceed five hundred dollars (\$500) per month. Compensation earned for services as a volunteer from more than one (1) participating employer during a month shall be aggregated to determine whether the compensation exceeds the five hundred dollars (\$500) per month maximum provided by this subsection;
- (41) "Nonhazardous position" means a position that does not meet the requirements of KRS 61.592 or has not been approved by the board as a hazardous position;
- (42) "Hazardous position" means a position that meets the requirements of KRS 61.592 and has been approved by the board as hazardous;
- (43) "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;
- (44) "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;
- (45) "Monthly average pay" means:
- (a) *In the case of a member who dies as a direct result of an act in line of duty as defined in Section 1 of this Act or who dies as a result of a duty-related injury as defined in Section 3 of this Act, the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the deceased member during his or her last twelve (12) months of employment; or*
- (b) *In the case where a member becomes totally and permanently disabled as a direct result of an act in line of duty as defined in Section 1 of this Act or becomes disabled as a result of a duty-related injury as defined in Section 3 of this Act and is eligible for the benefits provided by subsection (5)(a) of Section 3 of this Act, the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the disabled member during his or her last twelve (12) months of employment prior to the date the act in line of duty or duty-related injury occurred;*
- (46) "Authority" means the Kentucky Public Pensions Authority as provided by KRS 61.505; and
- (47) "Executive director" means the executive director of the Kentucky Public Pensions Authority.

➔Section 7. KRS 61.607 is amended to read as follows:

Notwithstanding any other provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852, a maximum disability benefit is hereby established which shall apply, upon disability retirement, to any disabled employee's account to which service credit is added to determine disability benefits or in any case where disability benefits are determined by computing a percentage of the disabled employee's final monthly rate of pay **or monthly average pay**. The maximum disability benefit shall be determined by the following formula:

- (1) Add the monthly benefit payable to the disabled employee from the retirement system, using the monthly disability retirement allowance (not optional plan) but excluding dependent children's allowances, if any, to his monthly benefit, if any, from Social Security, even though these payments may not begin for a period of time as required for qualification under the federal Social Security law, excluding spouse or dependent benefits, and his monthly benefit, if any, from workers' compensation, even though these payments may not have begun as

of the date the disabled member applies for disability retirement benefits, excluding spouse or dependent children's allowances, from workers' compensation, to arrive at a projected combined monthly benefit.

- (2) If the projected combined monthly benefit exceeds one hundred percent (100%) of the disabled employee's final rate of pay or his final compensation, whichever is greater, his disability retirement allowance from the retirement system shall be reduced to an amount which would cause his projected combined monthly benefit to equal one hundred percent (100%) of his final rate of pay or his final compensation, whichever is greater; however, the disability retirement allowance shall not be reduced below an amount which would result from a computation of his disability retirement allowance from the retirement system using the disabled employee's actual total service.
- (3) The system may pay estimated benefits to a disabled employee, upon qualification for disability retirement, based on an estimate of his Social Security and workers' compensation benefits until the amounts are actually determined, at which time a final calculation of the member's actual benefits shall be determined and his account corrected retroactive to his effective retirement date.
- (4) Any increase in Social Security benefits or workers' compensation benefits which becomes law, regardless of their effective date, subsequent to the disabled employee's effective retirement date, shall not be considered in determination of the maximum benefit payable, as the maximum benefit payable is based on the amount of combined benefits under these programs as of the disabled employee's effective retirement date.
- (5) Any disabled recipient whose potential payments from the system were reduced as provided for in this section shall advise the system if his payments under the Federal Social Security Act or Workers' Compensation Act cease at any time subsequent to his effective retirement date. Upon investigation, if the system determines that the disabled recipient continues to be eligible for disability benefits, the system may increase his retirement allowance by adding to his payment an amount equal to the reduction applied upon the effective retirement date in accordance with subsection (2) of this section.
- (6) ***Subsequent to his or her effective retirement date, each disability recipient who is still eligible to receive disability payments based upon a total and permanent disability that occurred as a direct result of an act in line of duty as defined in Section 1 of this Act or a disablement that occurred as a result of a duty-related injury as defined in Section 3 of this Act, shall annually file on a form or via an electronic method established by the Authority, information on whether payments to the recipient have ceased or began under the federal Social Security Act or Workers' Compensation Act and the Authority shall make any necessary adjustments as provided by this section.***

➔Section 8. KRS 61.610 is amended to read as follows:

- (1) Once each year following the retirement of a person on a disability retirement allowance, ***except for persons who become totally and permanently disabled as a direct result of an act in line of duty as defined in Section 1 of this Act or become disabled as a result of a duty-related injury as defined in Section 3 of this Act in which case shall be once every three (3) years following retirement,*** or less frequently as determined by the board's medical examiner but not less than once every five (5) years, the system may require the person, prior to his normal retirement date, to undergo an employment and medical staff review and, if necessary, be required to file at the retirement office on the review form prescribed by the board current employment information and current medical information for the bodily injury, mental illness, or disease for which he receives a disability retirement allowance. The person shall have one hundred eighty (180) days from the day the system mailed the review form to the person's last address on file in the retirement office to file at the retirement office the review form and the current employment and medical information. The person shall certify to the retirement office that the review form, including current employment and medical information, is ready to be evaluated by the medical examiner in accordance with KRS 61.615.
- (2) If, after good faith efforts, the person informs the system that he has been unable to obtain the employment or medical information, the system shall assist the person in obtaining the records and may use the authority granted pursuant to KRS 61.685(1) to obtain the records.
- (3) If the person fails or refuses to file at the retirement office the review form, including the current employment and medical information, his retirement allowance shall be discontinued or reduced on the first day of the month following the expiration of the one hundred eighty (180) days from the day the system mailed the review form to the person's last address on file in the retirement office. The system shall send notice of the discontinuance or reduction of the disability retirement allowance by United States first-class mail to the person's last address on file in the retirement office. If the person's benefits are discontinued or reduced under

this section, his rights to further disability retirement allowances shall cease, except as provided by KRS 61.615.

- (4) ***The system shall hire or contract for the services of an investigator to investigate potential fraud involving disability benefits with the system. The investigator shall evaluate potential cases of disability fraud and conduct spot audits for potential fraud as determined by the system in cases involving members who become totally and permanently disabled as a direct result of an act in line of duty as defined in Section 1 of this Act or become disabled as a result of a duty-related injury as defined in Section 3 of this Act.***

➔Section 9. KRS 7A.255 is amended to read as follows:

- (1) Notwithstanding KRS 21.345 to 21.580, 61.661, 61.870 to 61.884, or 161.585 to the contrary, on or before November 15 following the close of each fiscal year, the state-administered retirement systems shall collectively file a report with the Public Pension Oversight Board that shall include the following information for each member or recipient of a retirement allowance from any of the state-administered retirement systems:
- (a) A unique identification number for each member or recipient that is created solely for purposes of compiling the report provided by this section and which shall not be the member's Social Security number or personal identification number issued by the systems. For individual members or recipients with multiple accounts in the state-administered retirement systems, all of the state-administered retirement systems shall use the same unique identification number;
  - (b) The system or systems in which the member has an account or from which the retired member is receiving a monthly retirement allowance;
  - (c) The status of the member or recipient, including but not limited to whether he or she is a contributing member, a member who is not currently contributing to the systems but has not retired, a retired member, a beneficiary, or a retired member who has returned to work following retirement with an agency participating in the systems;
  - (d) If the individual is a retired member or beneficiary, the annualized monthly retirement allowance that he or she was receiving at the end of the most recently completed fiscal year; and
  - (e) If the individual is a member who has not yet retired, the estimated annual retirement allowance that he or she is eligible to receive at his or her normal retirement date based upon his or her service credit, final compensation, and accumulated account balance at the end of the most recently completed fiscal year.

Under no circumstances shall the member's name, address, or Social Security number be included in the information required to be reported to the board by this section, nor shall the unique identification number established by subsection (1) of this section be capable of being linked to a specific member's retirement account with a state-administered retirement system.

- (2) On or before November 15 following the close of each fiscal year, the state-administered retirement systems shall report to the Public Pension Oversight Board the percentage of system assets and managers for which fees and commissions are being reported in accordance with KRS 21.540(4)(m), 61.645(19)(i), and 161.250(4)(i). This subsection shall apply on a fiscal year basis beginning on or after July 1, 2017.
- (3) On or before November 15, 2017, the state-administered retirement systems shall tender to the Public Pension Oversight Board a copy of their board-adopted investment procurement policy along with certification from the secretary of the Finance and Administration Cabinet that the investment procurement policy meets or does not meet the best practices for investment management procurement. If the board amends its investment procurement policy, it shall tender a copy of its amended investment procurement policy to the Public Pension Oversight Board within sixty (60) days of adoption along with certification from the secretary of the Finance and Administration Cabinet that the policy meets or does not meet the best practices for investment management procurement.
- (4) ***On or before November 15 following the close of each fiscal year, the Kentucky Public Pensions Authority shall report to the Public Pensions Oversight Board the number of individuals and total payments to members who become totally and permanently disabled as a direct result of an act in line of duty as defined in Section 1 of this Act or become disabled as a result of a duty-related injury as defined in Section 3 of this Act. The data shall be broken down by system and for recipients who are drawing a benefit from the disablement of a hazardous member, a nonhazardous member who worked in a nonhazardous position that could be certified as a hazardous position based upon KRS 61.592, and a nonhazardous member who***

*worked in a nonhazardous position that could not be certified as a hazardous position based upon KRS 61.592.*

→Section 10. Notwithstanding KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 161.220 to 161.716, or any provision of Sections 1 to 6 of this Act to the contrary, the Kentucky Retirement Systems shall provide the following benefit adjustments to members, and beneficiaries and dependent children of those members, who become disabled prior to the effective date of this Act, subject to adjustment as provided by Section 7 of this Act, and whose disability was determined by the systems to be a total and permanent disability that was the direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act or whose disability resulted from a duty-related injury as defined in Section 3 of this Act who worked in a nonhazardous position that could be certified as a hazardous position based upon KRS 61.592:

- (1) In the month following the effective date of this Act, the member, or the beneficiary of the member if the beneficiary is receiving a monthly benefit due to a member's death and selection of a payment pursuant to KRS 61.635 that provided a monthly payment to the beneficiary upon their death, and the dependent children of the member, shall have his or her monthly benefit increased to the amount specified by Section 2 or 3 of this Act, as applicable, except that the amount payable to the member or beneficiary of the member shall not be increased above a level that exceeds 100 percent of the member's monthly average pay when combined with any dependent child payments from the systems and prior to any adjustment for an optional payment plan selected by the member upon retirement in accordance with KRS 61.635. The systems may adjust this amount to reflect any optional payment plans selected by the member in accordance with KRS 61.635 upon disability retirement and shall adjust benefits in accordance with Section 7 of this Act;
- (2) In the month following the effective date of this Act, any member, spouse of a disabled or deceased member, and any dependent child of a deceased member who is receiving a monthly benefit shall be eligible for the health benefits specified by the amendments to Section 4 of this Act; and
- (3) The provisions of this section shall only be construed to provide benefit adjustments to members, beneficiaries, and dependent children of those members who were disabled prior to the effective date of this Act and only in situations where the member's disability was determined by the systems to be a total and permanent disability that was the direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act or was a disability that resulted from a duty-related injury as defined in Section 3 of this Act who worked in a nonhazardous position that could be certified as a hazardous position based upon KRS 61.592.

→Section 11. The provisions of Sections 1 to 10 of this Act shall not reduce any benefits payable to any member, beneficiary, or dependent children of a member who became disabled prior to the effective date of this Act and whose disability was determined by the systems to either be a total and permanent disability that was the direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act or was a disability that resulted from a duty-related injury as defined in Section 3 of this Act.

→Section 12. The provisions of Sections 1 to 11 of this Act shall, notwithstanding any other bill enacted by the 2021 General Assembly, apply to the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System as provided by Sections 1 to 11 of this Act.

→Section 13. The provisions of KRS 6.945 shall not apply to Sections 1 to 11 of this Act.

**Signed by Governor March 24, 2021.**

## CHAPTER 107

( SB 166 )

AN ACT relating to alcohol and drug counselors and declaring an emergency.

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

→SECTION 1. A NEW SECTION OF KRS 309.080 TO 309.089 IS CREATED TO READ AS FOLLOWS:

- (1) *An applicant for certification as a certified clinical supervisor shall pay the board the initial fee for certification, and shall:*

- (a) *Hold and maintain an alcohol and drug counselor license, clinical alcohol and drug counselor license, or alcohol and drug counselor certification at the International Certification and Reciprocity Consortium reciprocal level;*
  - (b) *Meet all education, continuing education, work experience, and supervision requirements of the International Certification and Reciprocity Consortium for the Clinical Supervisor;*
  - (c) *Have passed a written examination that has been approved by the International Certification and Reciprocity Consortium; and*
  - (d) *Have signed an agreement to abide by the standards of practice and code of ethics approved by the board.*
- (2) *The board shall promulgate administrative regulations establishing a time limit of not less than ninety (90) days or more than one (1) year by which a person who was approved by the board as a supervisor prior to the effective date of this Act is required to meet the requirements for a certified clinical supervisor in subsection (1) of this section.*
- (3) *A certified clinical supervisor may supervise registered alcohol and drug peer support specialists, licensed alcohol and drug counselors, licensed clinical alcohol and drug counselors, certified alcohol and drug counselors, and persons who are seeking registration or certification.*

➔SECTION 2. A NEW SECTION OF KRS 309.080 TO 309.089 IS CREATED TO READ AS FOLLOWS:

*An applicant for licensure as a licensed alcohol and drug counselor shall pay the board the initial fee for licensure, and shall:*

- (1) *Be at least eighteen (18) years of age;*
- (2) *Have obtained from a regionally accredited college or university, or a college or university accredited by an agency recognized by the United States Department of Education, a thirty (30) hour master's degree in a human services field with clinical application;*
- (3) *Meet all education, work experience, and supervision requirements of the International Certification and Reciprocity Consortium for the Alcohol and Drug Counselor, with the required supervision hours being under the direct supervision of:*
  - (a) *A licensed alcohol and drug counselor who has at least two (2) years of post-licensure experience and has attended the board-sponsored supervision training; or*
  - (b) *A licensed clinical alcohol and drug counselor who has at least twelve (12) months of post-licensure experience or who has attended the board-sponsored supervision training;*
- (4) *Have passed a written examination that has been approved by the International Certification and Reciprocity Consortium;*
- (5) *Have signed an agreement to abide by the standards of practice and code of ethics approved by the board;*
- (6) *Have completed at least six (6) hours of ethics training; three (3) hours of domestic violence training; and two (2) hours training in the transmission, control, treatment, and prevention of the human immunodeficiency virus, in addition to the educational requirements in subsection (2) of this section;*
- (7) *Have submitted two (2) letters of reference from certified alcohol and drug counselors, licensed alcohol and drug counselors, or licensed clinical alcohol and drug counselors;*
- (8) *Live or work at least a majority of the time in Kentucky; and*
- (9) *Have complied with the requirements for the training program in suicide assessment, treatment, and management in KRS 210.366 and any administrative regulations promulgated thereunder.*

➔Section 3. KRS 309.080 (Effective March 1, 2021) is amended to read as follows:

As used in KRS 309.080 to 309.089, unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of Alcohol and Drug Counselors;
- (2) "Certified alcohol and drug counselor associate I" means a person certified by the board who meets the requirements of KRS 309.0841;



- (3) "Certified alcohol and drug counselor associate II" means a person certified by the board who meets the requirements of KRS 309.0842;
- (4) "Certified alcohol and drug counselor" means a person certified by the board who meets the requirements in KRS 309.083;
- (5) **"Certified clinical supervisor" means a person certified by the board who meets the requirements of Section 1 of this Act;**
- (6) "Certificate holder" means an alcohol and drug counselor who is certified pursuant to KRS 309.080 to 309.089;
- ~~(7)(6)~~ **"Licensed alcohol and drug counselor" means a person licensed by the board who meets the requirements of Section 2 of this Act;**
- (8) "Licensed clinical alcohol and drug counselor" means a person licensed by the board who meets the requirements of KRS 309.0832;
- ~~(9)(7)~~ "Licensed clinical alcohol and drug counselor associate" means a person licensed by the board who meets the requirements of KRS 309.0833;
- ~~(10)(8)~~ "Licensee" means a clinical alcohol and drug counselor who is licensed pursuant to KRS 309.080 to 309.089;
- ~~(11)(9)~~ "Practice of alcohol and drug counseling":
- (a) Means the assessment and counseling of an individual, family, or group dealing with an alcohol or drug problem or addiction; and
  - (b) Does not include the diagnosis or treatment of a mental health condition, or the administration or interpretation of psychological tests;
- ~~(12)(10)~~ "Registered alcohol and drug peer support specialist" means a person registered by the board who meets the requirements in KRS 309.0831; and
- ~~(13)(11)~~ "Registrant" means an alcohol and drug peer support specialist who is registered pursuant to KRS 309.080 to 309.089.

➔Section 4. KRS 309.0805 (Effective March 1, 2021) is amended to read as follows:

- (1) No person shall use the title "**certified clinical supervisor,**" "**licensed alcohol and drug counselor,**" "licensed clinical alcohol and drug counselor," "licensed clinical alcohol and drug counselor associate," "certified alcohol and drug counselor," "certified alcohol and drug counselor associate II," "certified alcohol and drug counselor associate I," or "registered alcohol and drug peer support specialist," or hold himself or herself out as a "licensed clinical alcohol and drug counselor," "licensed clinical alcohol and drug counselor associate," "certified alcohol and drug counselor," or "registered alcohol and drug peer support specialist" unless he or she is licensed, certified, or registered pursuant to KRS 309.080 to 309.089.
- (2) Nothing in KRS 309.080 to 309.089 shall apply to persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes, including but not limited to physicians, social workers, psychologists, marriage and family therapists, art therapists, nurses, or students in accredited training programs in those professions, and nothing in KRS 309.080 to 309.089 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 KRS 309.080 to 309.089 shall be construed to alter, amend, or interfere with the practice of those who render counseling services, including but not limited to employment counseling, job placement counseling, vocational rehabilitation counseling, pastoral counseling based on any tenet of one's religious beliefs, or school counseling.
- (4) Nothing in KRS 309.080 to 309.089 shall apply to the activities and services of a student intern or trainee who is pursuing a program of studies in alcohol and drug counseling at an accredited institution of higher education, if these activities are performed under the supervision or direction of an approved supervisor and the activities are part of the supervised program of studies.

➔Section 5. KRS 309.0813 (Effective March 1, 2021) is amended to read as follows:

The board shall:

- (1) Promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089;
- (2) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing a code of ethics, standards of practice, and continuing education for *certified clinical supervisors, licensed alcohol and drug counselors*, licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, certified alcohol and drug counselor associates II, certified alcohol and drug counselor associates I, and registered alcohol and drug peer support specialists;
- (3) Approve and disapprove, at least once every other month, those persons who shall be licensed, certified, or registered under KRS 309.080 to 309.089;
- (4) Approve the examination required of applicants for licensure or certification as *certified clinical supervisors, or as* alcohol and drug counselors and applicants for registration as alcohol and drug peer support specialists, and promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and grading of the examination;
- (5) Promulgate administrative regulations pursuant to KRS Chapter 13A to define the process to register with the board as a *certified clinical supervisor, licensed alcohol and drug counselor*, registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor;
- (6) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing grounds and procedures for denying, suspending, failing to reissue, or revoking a license, certificate, or registration, and issuing reprimands and admonishments pursuant to KRS 309.080 to 309.089;
- (7) Hold a hearing pursuant to KRS Chapter 13B upon the request of an aggrieved licensee, licensee associate, certificate holder, or registrant, or an applicant for a license, certificate, or registration;
- (8) Employ needed personnel and establish their duties and compensation;
- (9) Maintain a register of *certified clinical supervisors, licensed alcohol and drug counselors*, licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, and registered alcohol and drug peer support specialists;
- (10) Keep a complete record of the board's proceedings;
- (11) Investigate suspected or alleged violations of KRS 309.080 to 309.089 and the administrative regulations promulgated pursuant to KRS 309.080 to 309.089;
- (12) Promulgate administrative regulations pursuant to KRS Chapter 13A establishing an initial licensure fee, certification fee, registration fee, and annual renewal fees not to exceed three hundred dollars (\$300) each;
- (13) Take legal action as necessary to restrain or enjoin violations of KRS 309.080 to 309.089 and the administrative regulations promulgated pursuant to KRS 309.080 to 309.089;
- (14) Submit an annual report to the Governor and the Legislative Research Commission by January 1 of each year, which lists all hearings conducted by the board and the decisions rendered; and
- (15) Collect and deposit all fees, fines, and other moneys owed to the board into the State Treasury to the credit of the revolving fund established in KRS 309.082.

➔Section 6. KRS 309.088 (Effective March 1, 2021) is amended to read as follows:

- (1) The board may permit an out-of-state *certified clinical supervisor, licensed alcohol and drug counselor*, licensed clinical alcohol and drug counselor, certified alcohol and drug counselor, certified alcohol and drug counselor associate II, certified alcohol and drug counselor associate I, or alcohol and drug peer support specialist to obtain a license, certificate, or registration by reciprocity if:
  - (a) The out-of-state licensee, certificate holder, or registrant possesses a valid license, certificate, or registration from another jurisdiction that grants the same privileges to persons licensed, certified, or registered by this state as Kentucky grants to persons licensed, certified, or registered by the other jurisdiction;
  - (b) The requirements for licensure, certification, or registration are substantially similar to the requirements in KRS 309.080 to 309.089; and

- (c) The out-of-state licensee, certificate holder, or registrant seeking licensure, certification, or registration states that he or she has studied, is familiar with, and shall abide by KRS 309.080 to 309.089 and the administrative regulations promulgated thereunder.
- (2) If the requirements for licensure, certification, or registration under KRS 309.080 to 309.089 are more restrictive than the standards of the other jurisdiction, then the out-of-state licensee, certificate holder, or registrant shall comply with the additional requirements in KRS 309.080 to 309.089 to obtain a reciprocal license, certificate, or registration.

➔Section 7. KRS 309.0832 (Effective March 1, 2021) is amended to read as follows:

An applicant for licensure as a licensed clinical alcohol and drug counselor shall pay the board the initial fee for licensure, and shall:

- (1) Be at least eighteen (18) years of age;
- (2) Have obtained from a regionally accredited college or university or a college or university accredited by an agency recognized by the United States Department of Education:
  - (a) A sixty (60) hour master's degree in a behavioral science with clinical application;
  - (b) A thirty (30) hour advanced placement master's degree in a behavioral science with clinical application; or
  - (c) A doctoral degree in a behavioral science with clinical application;
- (3) Meet all education and supervision requirements of the International Certification and Reciprocity Consortium for the Advanced Alcohol and Drug Counselor (AADC);
- (4) ~~Have completed at least one hundred eighty (180) classroom hours of alcohol and drug counselor specific board approved curriculum;~~
- ~~(5) Have passed a written examination as specified by the board in administrative regulation;~~
- ~~(5)(6)~~ Have signed an agreement to abide by the standards of practice and code of ethics approved by the board;
- ~~(6)(7)~~ Have completed at least six (6) hours of ethics training; three (3) hours of domestic violence training; and two (2) hours training in the transmission, control, treatment, and prevention of the human immunodeficiency virus, in addition to the educational requirements in subsection (2) of this section;
- ~~(7)(8)~~ Have submitted two (2) letters of reference from certified alcohol and drug counselors or licensed clinical alcohol and drug counselors;
- ~~(8)(9)~~ Live or work at least a majority of the time in Kentucky; **and**
- ~~(9)(10)~~ Have complied with the requirements for the training program in suicide assessment, treatment, and management in KRS 210.366 and any administrative regulations promulgated thereunder; ~~and~~
- ~~(11) Have completed two thousand (2,000) hours of board approved experience working with persons having a substance use disorder, three hundred (300) hours of which shall have been under the direct supervision of a licensed clinical alcohol and drug counselor.~~

➔Section 8. KRS 309.0833 (Effective March 1, 2021) is amended to read as follows:

- (1) An applicant for licensure as a licensed clinical alcohol and drug counselor associate shall:
  - (a) Pay the board the initial fee for licensure;
  - (b) Complete the requirements under KRS 309.0832(1) to ~~(9)(10)~~; and
  - (c) Obtain a board-approved supervisor of record.
- (2) Upon completion of the hours of board-approved experience ~~specified in KRS 309.0832(11)~~, a licensed clinical alcohol and drug counselor associate may apply to the board for licensure as a licensed clinical alcohol and drug counselor.

➔Section 9. Whereas there is a shortage of counselors who are qualified and available to treat individuals during the current substance use disorder crisis and it is of the utmost importance that all qualified counselors be able to provide treatment, an emergency is declared to exist and this Act takes effect March 1, 2021 if passed and approved by the Governor or upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor March 24, 2021.**

## CHAPTER 108

### ( SB 128 )

AN ACT relating to supplementary education and declaring an emergency.

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

➔Section 1. The Supplemental School Year Program for the 2021-2022 school year is hereby established.

➔Section 2. (1) Notwithstanding any passing grades a public school student may receive during the 2020-2021 school year, any student enrolled in a Kentucky public school in grades kindergarten through 12 during the 2020-2021 school year may request to use the 2021-2022 school year as a supplemental school year to retake or supplement the courses or grades the student has already taken. A retaken high school course under this subsection shall not count as an additional credit towards graduation unless the student failed the original course. Retaking a course under this section shall count towards full-time enrollment for the student.

(2) To allow a high school student enrolled in a Kentucky public high school in grade 12 during the 2020-2021 school year to request the supplemental school year notwithstanding any passing grades and the student satisfying state and district graduation requirements and graduating under KRS 158.140 and 156.160 and 704 KAR 3:305, a local board of education may establish a temporary program for graduated seniors for the 2021-2022 school year. Graduated students enrolled in a program under this subsection shall be eligible for inclusion in the school district's average daily attendance for the purposes of calculating SEEK funds; however, SEEK eligibility for each of the two semesters shall be tied to the student's completion of courses during that semester and enrollment during the entirety of the semester. A graduated student enrolled in a program under this subsection shall not receive any additional credits or certifications as a result of coursework unless the student completes the course and remains enrolled in the program until the completion of such course.

(3) A student under subsection (1) or (2) of this section shall submit the request to the local board of education of the district in which the student is enrolled by May 1, 2021. A local board of education shall not approve or reject requests on an individual basis, but shall determine by June 1, 2021, whether the district shall or shall not accept all requests. A local board approving the requests shall develop a plan for implementing the supplemental school year and the temporary program for graduated seniors and may adopt policies on grades, schedules, classifications, graduation ceremonies, and other operational issues in offering the supplemental school year. The local board shall notify the Kentucky Department of Education and submit the plan along with any requests for waivers from Kentucky Board of Education regulations to the department by June 16, 2021.

➔Section 3. Any Kentucky nonpublic school may implement a supplemental school year program and allow a student enrolled during the 2020-2021 school year to use the 2021-2022 school year as a supplemental school year to retake or supplement the courses the student has already taken. However, in order for students to qualify under Section 4 of this Act, the student shall submit the request to the nonpublic school by May 1, 2021, and the student shall only use the supplemental school year at the nonpublic school at which the student was enrolled on that date.

➔Section 4. Notwithstanding any rule or regulation of the Kentucky Board of Education or the Kentucky High School Athletic Association, but in compliance with KRS 156.070(2)(f) relating to age limits, if a member school provides evidence to the Kentucky High School Athletic Association documenting a student enrolled in grades 9 through 12 during the 2020-2021 school year as utilizing the 2021-2022 school year as a supplemental school year under Section 2 or 3 of this Act at the member school, then the student shall have five consecutive calendar years of eligibility from the date of first entry into grade 9, and retaking courses pursuant to Section 2 or 3 of this Act shall not otherwise disqualify the student from eligibility. However, any other rules or regulations governing eligibility, such as rules regarding transfers, are not waived under this section. The Kentucky High School Athletic Association may adopt rules, policies, and bylaws and promulgate administrative regulations necessary to carry out this section.

➔Section 5. Whereas school districts and state agencies will require sufficient time to establish the procedures necessary to carry out this Act, an emergency is hereby 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 24, 2021.**

**CHAPTER 109****( SB 147 )**

AN ACT relating to the adjutant general.

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

➔Section 1. KRS 36.040 is amended to read as follows:

- (1) The adjutant general shall:
  - (a) Represent the Governor in all military matters pertaining to the Commonwealth of Kentucky;
  - (b) Be the executive head of the Department of Military Affairs and exercise all functions vested by law in the department;
  - (c) Establish the internal organizational structure of the major organizations of the department;
  - (d) Organize and supervise all programs, functions, and personnel assigned to the department in accordance with all state and federal statutes and administrative regulations;
  - (e) Be responsible to the Governor for the proper carrying into effect of all laws, rules, and regulations of the United States and of this state affecting the militia and other military organizations established by law;
  - (f) Perform the duties prescribed for him by laws of the United States and regulations issued thereunder;
  - (g) Direct and supervise the chiefs of staff departments and supervise all troops and all departments, arms, and branches of the Kentucky Army and Air National Guard;
  - (h) Supervise the preparation of all returns and reports of the Department of Military Affairs;
  - (i) Keep a register of all the officers of the Kentucky National Guard, and make a written report to the Governor for the annual period ending on June 30 of each year of the operations and conditions of the Department of Military Affairs;
  - (j) Cause to be prepared and issued all necessary blank books, forms, and notices required to carry into full effect matters assigned to the adjutant general under the provisions of KRS Chapters 36, 37, and 38;
  - (k) Direct and supervise the safekeeping and repairing of the ordnance, arms, accouterments, equipment, and all other military property belonging to the state or issued to it by the United States;
  - (l) Notify the Finance and Administration Cabinet of all military property of the state which after inspection is found unsuitable for use of the cabinet;
  - (m) Keep an account of:
    1. All expenses, including pay of officers and enlisted men, allowance to officers and organizations;
    2. Any other moneys required to be disbursed by him and through his office, including subsistence and transportation of the National Guard; and
    3. All military property of the United States;
  - (n) Issue and make requisitions for military property under the direction of the Governor, but no military property shall be issued to persons or organizations other than those belonging to the National Guard, except to such portion of the Kentucky active militia as is called out by the Governor;
  - (o) Maintain as a part of his office a Bureau of War Records in which all records pertaining to wars and relics shall be kept, and be custodian of all such records, relics, colors, standards, and battle flags now the property of the state, or in its possession, or which the state may hereafter acquire;
  - (p) Organize units of the National Guard at places designated by the Governor and have the members mustered into service under regulations prescribed by the Governor;

- (q) Issue all regulations, orders, and directives for the proper functioning and utilization of the Department of Military Affairs and its divisions;~~and~~
  - (r) Hire, discharge, and pay any personnel that the adjutant general deems necessary to fulfill defense contracts without regard to KRS Chapter 18A; **and**
  - (s) ***Make contracts, acquire real and personal property by gift, purchase, or by condemnation in the manner prescribed in the Eminent Domain Act of Kentucky, and do all things necessary to perform its duties under this section and KRS 36.080.***
- (2) The adjutant general, or his or her designee, may enter into any federal contracts, federal grants, and federal agreements with the United States of America, by and through the Department of Defense, Department of the Army, Department of the Air Force, National Guard Bureau, Federal Aviation Administration, United States Department of Homeland Security, and Federal Emergency Management Agency, and any other division, department, or agency of the federal government, as may be deemed necessary to carry out the general intent and purposes of the Department of Military Affairs.

➔Section 2. KRS 36.070 is amended to read as follows:

The facilities division shall be headed by a director experienced in the administration of real property. The division ***shall administer real and personal property of the Department of Military Affairs*** ~~[may make contracts, acquire real and personal property by gift, purchase, or by condemnation in the manner prescribed in the Eminent Domain Act of Kentucky, and may do all things necessary to perform its duties under this section and KRS 36.080].~~

Signed by Governor March 24, 2021.

## CHAPTER 110

### ( SB 161 )

AN ACT relating to National Guard leadership.

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

➔Section 1. KRS 36.025 is amended to read as follows:

- (1) ***For the Army National Guard, the*** ~~[The]~~ Governor, with the recommendation of the adjutant general, may appoint a deputy adjutant general ***and an assistant adjutant general*** ~~[for the Army National Guard and a deputy adjutant general for the Air National Guard]~~, who at the time of appointment shall be at least thirty (30) years of age and shall be serving as a commissioned officer in the Kentucky National Guard. The Governor shall issue a commission to each such deputy adjutant general ***and assistant adjutant general*** in the grade of brigadier general, provided such individual is qualified for federal recognition in that grade. ~~[The position of deputy adjutant general shall require full-time employment in the Department of Military Affairs.]~~ ***The adjutant general, in his or her discretion, may require either the deputy or assistant adjutant general to serve as a full-time employee in the Department of Military Affairs.*** The deputy ~~adjutant~~ ~~adjutants~~ general ***or assistant adjutant general who serves as an employee of the department may*** ~~[shall]~~ be compensated at the base rate of pay, not including subsistence and quarters allowances, as provided in KRS 38.205, or as prescribed in KRS 64.640.
- (2) ***For the Air National Guard, the*** ~~[The]~~ Governor, with the recommendation of the adjutant general, may appoint an assistant adjutant general ~~[for the Army National Guard]~~ ***and a chief-of-staff*** ~~[an assistant adjutant general for the Air National Guard]~~, who at the time of appointment shall be at least thirty (30) years of age and shall be serving as a commissioned officer in the Kentucky National Guard. The Governor shall issue a commission to each such assistant adjutant general ***and chief-of-staff*** in the grade of brigadier general, provided such individual is qualified for federal recognition in that grade. ***The adjutant general, in his or her discretion, may require either the assistant adjutant general or chief-of-staff to serve as a full-time employee in the Department of Military Affairs.*** The assistant ~~adjutant~~ ~~adjutants~~ general ***or chief-of-staff who serves as an employee of the department may*** be compensated ***at the base rate of pay, not including subsistence and quarters allowances*** ~~[for all state service performed by them]~~, as provided in KRS 38.205, ***or as prescribed in KRS 64.640.***

➔Section 2. KRS 36.030 is amended to read as follows:

The office of the adjutant general, deputy adjutant general, *chief-of-staff*, or assistant adjutants general shall not necessarily be incompatible with or serve to vacate the commission in the Kentucky National Guard held by the officer appointed as the adjutant general, deputy adjutant general, *chief-of-staff*, or assistant adjutant general at the time of his appointment, nor shall it be incompatible with any office of the National Guard to which he might be promoted or appointed, nor interfere with or prevent his attending to the duties of the office held at the time or to which he may thereafter be promoted or appointed.

**Signed by Governor March 24, 2021.**

## CHAPTER 111

( SB 79 )

AN ACT relating to the Kentucky Public Employees Deferred Compensation Authority plans.

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

➔Section 1. KRS 18A.230 is amended to read as follows:

As used in KRS 18A.230 to 18A.275, unless the context requires otherwise:

- (1) "Employee" means a person holding an office, position or employment in state government and agencies thereof and also includes persons in the public school system;
- (2) "Income" means earnings of a person while an employee of the state and agencies thereof or public school system;
- (3) "Asset" means any owned physical object or right having a monetary value;
- (4) "Trust fund" means a fund consisting of assets received and held by a government unit or its designated custodian to be expended or invested in accordance with conditions of the trust;
- (5) "Deferred compensation" means a method which allows employees to authorize income to be deducted from their current earning and set aside to be paid at a later date;
- (6) "Board" means the board of trustees as established by KRS 18A.245; ~~and~~
- (7) "Authority" means the Kentucky Public Employees' Deferred Compensation Authority ~~and~~; *and*
- (8) *"Financial planning" means the process of determining whether and how a participant can meet retirement goals through the proper management of financial resources.*

➔Section 2. KRS 18A.245 is repealed, reenacted, and amended to read as follows:

- (1) The authority shall be administered by a board of trustees composed of seven (7) members, who shall be as follows:
  - (a) Secretary, Finance and Administration Cabinet, ex officio;
  - (b) Secretary of personnel, ex officio;
  - (c) The state controller, ex officio;
  - (d) The State Treasurer, ex officio; and
  - (e) Three (3) at-large members appointed by the Governor, who do not have a conflict of interest as provided by KRS 18A.262, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall be a representative of a nonstate government employer.
- (2) The members of the board appointed by the Governor shall serve for a period of four (4) years and the ex officio members of the board shall serve only for the period of their term of office. Each ex officio member may designate a proxy by written notice to the authority prior to call of order of each meeting, and the proxy shall be entitled to participate as a full voting member.

- (3) Any vacancy which may occur shall be filled in the same manner provided for the selection of the particular member for a full term. Vacancies shall be filled for the unexpired term only.
- (4) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists, and no member shall be subject to removal from office, except upon conviction of a felony, or of a misdemeanor involving moral turpitude.
- (5) Board members who do not otherwise receive a salary or compensation from the State Treasury shall receive a per diem of one hundred dollars (\$100) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards applicable to state employees.
- (6) The board shall meet at least once in each quarter of the year, and may meet in special session upon the call of the chairman. It shall elect a chairman and a vice chairman. A majority of the members shall constitute a quorum, and all actions taken by the board shall be by affirmative vote of a majority of the members present.
- (7) The authority shall be attached to the Personnel Cabinet for administrative purposes only. The board may take but is not limited to the following actions:
  - (a) Appoint such employees as it deems necessary and fix the compensation for all employees of the board, subject to the approval of the secretary. The authority shall be headed by an executive director who shall be appointed by the board of directors of the authority without the limitations imposed by KRS 12.040 and KRS Chapter 18A. The executive director of the authority and employees appointed by the board shall serve at its will and pleasure. All other staff of the authority shall be employed under KRS 18A.005 to 18A.200;
  - (b) Require such employees as it thinks proper to execute bonds for the faithful performance of their duties;
  - (c) Establish a system of accounting;
  - (d) Contract for such services as may be necessary for the operation or administration of deferred compensation plans authorized in KRS 18A.230 to 18A.275, including annual audits;
  - (e) Do all things, take all actions, and adopt plans for participation consistent with federal law and with the provisions of KRS 18A.230 to 18A.275, including but not limited to:
    1. Amending the board's plan for the Kentucky Public Employees 401(k) Deferred Compensation Plan or the Kentucky Employees 457 Deferred Compensation Plan, or both such plans, to adopt, maintain, and terminate a deemed IRA program under Internal Revenue Code Section 408;
    2. Amending the board's plan for the Kentucky Public Employees 401(k) Deferred Compensation Plan to adopt, maintain, and terminate a qualified Roth contribution program under Internal Revenue Code Section 402A; *and*
    3. Adopting, maintaining, and terminating an Internal Revenue Code Section 403(b) plan for qualified employees; and
    - ~~4. Upon the request of the Kentucky Retirement Systems board of trustees, establishing an investment program for the 401(a) defined contribution plan as provided by KRS 61.5956; and~~
  - (f) Contract with persons or companies duly licensed by the state of Kentucky and applicable federal regulatory agencies, at the cost of the trust fund *or individual participant accounts*, to provide investment advice *and financial planning* to participants in the plans, with respect to their selection of ~~permitted~~ investments ~~in the plans~~. *The board may promulgate administrative regulations for provision of financial planning to participants in the plans.*
- (8) The Attorney General, or an assistant designated by him, may act as legal adviser and attorney for the board. The board may also appoint legal counsel in accordance with KRS Chapter 12.
- (9) The board shall prepare an annual financial report showing all receipts, disbursements, assets, and liabilities and shall submit a copy to the Governor and the Legislative Research Commission. All board meetings and records shall be open for inspection by the public.

➔Section 3. KRS 18A.250 is amended to read as follows:

- (1) The authority shall establish and maintain a deferred compensation plan for the employees of the State of Kentucky. Participation in such plan shall be by agreement between such employees and the authority and shall provide for the deferral of such amount of compensation as requested by the employee. Participating



employees must authorize that such deductions be made from their wages for the purpose of participation in such program.

- (2) The board is directed to develop and obtain, for the benefit of employees, a qualified employee plan that includes a qualified cash or deferred arrangement as described in Section 401(k) of the Internal Revenue Code. The board is directed to develop a program for participants to borrow from their account or accounts in the plan. The plan shall be in addition to other plans offered by the board, and shall be offered to employees upon receipt of appropriate approval of the Internal Revenue Service or on January 1, 1985, whichever occurs later.
- (3) Notwithstanding the provisions of KRS 337.060, agreements to participate and plan elections made by employees pursuant to subsections (1) and (2) of this section may be made in writing or by electronic record, signature, or contract as determined by the authority and in accordance with the provisions of KRS 369.101 to 369.120. Agreements and elections, including but not limited to hardship withdrawal applications, loan applications, beneficiary designations, and withdrawal requests made by participating employees under the plan, shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.
- (4) Notwithstanding KRS 337.060 and subsections (1) to (3) of this section:~~;~~
  - (a) Each full-time employee of the executive, judicial, and legislative branches of Kentucky state government hired on or after July 1, 2019, shall be automatically enrolled in the 401(k) plan established pursuant to this section, and the employee's compensation shall be reduced by thirty dollars (\$30) per month and contributed as a pre-tax deferral to the 401(k) plan unless and until the employee makes a deferral election under the terms of the 401(k) plan. ***Full-time status shall be determined by an employee's employer. The authority shall not be responsible or liable for any cost or liabilities resulting from such eligibility determinations made by an employer;***
  - (b) ***Each new member of the General Assembly elected or appointed on or after July 1, 2021, upon taking office, shall be automatically enrolled in the 401(k) plan established pursuant to this section, and the member's compensation shall be reduced by thirty dollars (\$30) per month and contributed as a pre-tax deferral to the 401(k) plan unless and until the member makes a deferral election under the terms of the 401(k) plan;***
  - (c) ***Each new justice of the Supreme Court and each new regular judge of the Court of Appeals, Circuit Court, District Court, and Family Court elected or appointed on or after July 1, 2021, upon taking office, shall be automatically enrolled in the 401(k) plan, and the justice's or judge's compensation, as applicable, shall be reduced by thirty dollars (\$30) per month and contributed as a pre-tax deferral to the 401(k) plan unless and until the justice or judge, as applicable, makes a deferral election under the terms of the 401(k) plan. This section shall not apply to special judges appointed under KRS 26A.020; and***
  - (d) The automatic enrollment shall begin as of the employee's first paycheck or as soon as administratively feasible thereafter. The board shall select a default investment fund or funds, pursuant to applicable federal law, for investment of an employee's deferrals into the employee's account until the employee makes an investment election. The board shall amend the 401(k) plan for the implementation and administration of employee automatic enrollment, and the board shall have authority to implement automatic enrollment consistent with applicable requirements of the Internal Revenue Code of 1986, as amended. ***The board may promulgate administrative regulations for implementation of automatic enrollment.***

➔Section 4. KRS 18A.255 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS 18A.230 to 18A.275, funds held for the State of Kentucky public employees deferred compensation trust fund pursuant to agreement between the state and participating employees may be invested in such investments as are deemed appropriate by the trustees, including but not limited to annuity contracts. Agreements may be made in writing or by electronic record, signature, or contract as determined by the authority in accordance with the provisions of KRS 369.101 to 369.120 and shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.
- (2) Funds deposited to the credit of the trust fund from payroll deductions made pursuant to KRS 18A.250 shall be temporarily invested as provided in KRS 42.500 until such funds are invested pursuant to the deferred compensation agreements between the state and participating employees and actually credited to accounts for plan participants. Notwithstanding KRS 42.500, interest earned from such temporary investments shall be used to defray the expenses of administering the deferred compensation system.

- (3) Neither the authority nor the board shall be liable for any losses or claims due to a participant's actions in connection with the investment advice *or financial planning* provided to the participant by operation of KRS 18A.245(7)(f) or otherwise. The authority and board shall have no duty or obligation to monitor, review, or assess the specific investment advice *or financial planning* provided to a participant.

➔Section 5. KRS 18A.262 is repealed and reenacted to read as follows:

- (1) No trustee or employee of the board or authority shall:
- (a) Have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board or authority, except that any such trustee or employee may be a member, employee, or beneficiary of the plans administered by the board or authority;
  - (b) Directly or indirectly, for himself or herself or as an agent, use the assets of the plans administered by the board or authority, except to make current and necessary payments authorized by the board or authority;
  - (c) Become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the board or authority;
  - (d) Have a contract or agreement with the board or authority, individually or through a business owned by the trustee or the employee;
  - (e) Use his or her official position with the board or authority to obtain a financial gain or benefit or advantage for himself or herself or a family member;
  - (f) Use confidential information acquired during his or her tenure with the board or authority to further his or her own economic interests or that of another person; or
  - (g) Hold outside employment with, or accept compensation from, any person or business with which he or she has involvement as part of his or her official position with the board or authority. The provisions of this paragraph shall not prohibit a trustee from serving as an employee of an agency participating in the plans.
- (2) No trustee or employee of the board or authority, who has served as a trustee or employee of the board or authority on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board or authority for a period of five (5) years following termination of his or her position, except that any such trustee or employee may be a member, employee, or beneficiary of the plans administered by the board or authority.
- (3) (a) No person who is serving as a member of the General Assembly or is a public servant as defined by KRS 11A.010(9) shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board or authority, except that any such trustee or public servant may be a member, employee, or beneficiary of the plans administered by the board or authority.
- (b) No person who was serving as a member of the General Assembly on or after July 1, 2017, or was serving as a public servant as defined by KRS 11A.010(9) on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board or authority for a period of five (5) years following termination of his or her position, except that any such member or public servant may be a member, employee, or beneficiary of the plans administered by the board or authority.

**Signed by Governor March 24, 2021.**

## CHAPTER 112

( SB 127 )

AN ACT relating to student health and safety.

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

➔Section 1. KRS 158.832 is amended to read as follows:

As used in KRS 158.830 to 158.838:

- (1) "Anaphylaxis" means an allergic reaction resulting from sensitization following prior contact with an antigen which can be a life-threatening emergency. Anaphylaxis may be triggered by, among other agents, foods, drugs, injections, insect stings, and physical activity; ~~and~~
- (2) **"Bronchodilator rescue inhaler" means medication used to relieve asthma symptoms or respiratory distress along with devices and device components needed to appropriately administer the medication, including but not limited to disposable spacers;**
- (3) "Medications" means all medicines individually prescribed by a health care practitioner for the student that pertain to his or her asthma or **areis** used to treat anaphylaxis, including but not limited to **injectable** ~~EpiPen or other auto-injectable~~ epinephrine **devices or bronchodilator rescue inhalers;**
- ~~(4)~~~~(3)~~ "Health care practitioner" means a physician or other health care provider who has prescriptive authority;
- ~~(5)~~~~(4)~~ "Self-administration" means the student's use of his or her prescribed asthma or anaphylaxis medications, pursuant to prescription or written direction from the health care practitioner; and
- ~~(6)~~~~(5)~~ "Seizure action plan" means a written, individualized health plan designed to acknowledge and prepare for the health care needs of a student diagnosed with a seizure disorder that is prepared by the student's treating physician.

➔Section 2. KRS 158.836 is amended to read as follows:

- (1) Upon fulfilling the requirements of KRS 158.834, a student with asthma or a student who is at risk of having anaphylaxis may possess and use medications to treat the asthma or anaphylaxis when at school, at a school-sponsored activity, under the supervision of school personnel, or before and after normal school activities while on school properties including school-sponsored child care or after-school programs.
- (2) A student who has a documented life-threatening allergy shall have:
  - (a) An **injectable** epinephrine **device** ~~auto-injector~~ provided by his or her parent or guardian in his or her possession or in the possession of the school nurse, school administrator, or his or her designee in all school environments that the student may be in, including the classroom, the cafeteria, the school bus, and on field trips; and
  - (b) A written individual health care plan in place for the prevention and proactive management for the student in all school environments that the student may be in, including the classroom, the cafeteria, the school bus, and on field trips. The individual health care plan required under this paragraph may be incorporated in the student's individualized education program required under Pub. L. No. 94-142 or the student's 504 plan required under Pub. L. No. 93-112.
- (3)
  - (a) Each school is encouraged to keep an **injectable** epinephrine **device** ~~auto-injector~~ in a minimum of two (2) locations in the school, including but not limited to the school office and the school cafeteria, so that epinephrine may be administered to any student believed to be having a life-threatening allergic or anaphylactic reaction. Schools electing to keep **injectable** epinephrine **devices** ~~auto-injectors~~ shall maintain them in a secure, accessible, but unlocked location. The provisions of this paragraph shall apply to the extent that the **injectable** epinephrine **devices** ~~auto-injectors~~ are donated to a school or a school has sufficient funding to purchase the **injectable** epinephrine **devices** ~~auto-injectors~~.
  - (b) **Each school is encouraged to keep a bronchodilator rescue inhaler in a minimum of two (2) locations in the school, including but not limited to the school office and athletic office, so that bronchodilator rescue inhalers may be administered to any student believed to be having asthma symptoms or respiratory distress. Schools electing to keep bronchodilator rescue inhalers shall maintain them in a secure, accessible, but unlocked location. The provisions of this paragraph shall apply to the extent that the bronchodilator rescue inhalers are donated to a school or a school has sufficient funding to purchase the bronchodilator rescue inhalers.**
  - (c) Each school electing to keep **injectable** epinephrine **devices or bronchodilator rescue inhalers** ~~auto-injectors~~ shall implement policies and procedures for managing a student's life-threatening allergic reaction, ~~for~~ anaphylactic reaction, **or asthma** developed and approved by the local school board.

~~(d)(c)~~ The Kentucky Department for Public Health shall develop clinical protocols in the school health section of the Core Clinical Service Guide manual that is maintained in the county or district public health department to address **injectable** epinephrine **devices and bronchodilator rescue inhalers** ~~auto-injectors~~ kept by schools under this subsection and to advise on clinical administration of the **injectable** epinephrine **devices and bronchodilator rescue inhalers** ~~auto-injectors~~. The protocols shall be developed in collaboration with local health departments or local clinical providers and local schools and local school districts.

- (4) Any school employee authorized under KRS 156.502 to administer medication shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the administration or the assistance in the administration of epinephrine **or a bronchodilator rescue inhaler** to any student believed in good faith to be having a life-threatening allergic or anaphylactic reaction **or asthma symptoms or respiratory distress**.

➔Section 3. KRS 311.645 is amended to read as follows:

As used in KRS 311.645 to 311.647:

- (1) "Anaphylaxis" means an allergic reaction resulting from sensitization following prior contact with an antigen which can be a life-threatening emergency, including reactions triggered by, among other agents, foods, drugs, injections, insect stings, and physical activity;
- (2) "Administer" means to directly apply an **injectable** epinephrine **device** ~~auto-injector~~ to the body of an individual;
- (3) **"Asthma" means a respiratory condition marked by coughing, wheezing, or shortness of breath often triggered by allergies, exercise, or irritants;**
- (4) "Authorized entity" means an entity that may at any time have allergens present that are capable of causing a severe allergic reaction and has an individual who holds a certificate issued under KRS 311.646 on the premises or officially associated with the entity. The term includes but is not limited to licensed child-care centers and certified family child-care homes, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas;
- (5) **"Bronchodilator rescue inhaler" means medication used to relieve asthma symptoms or respiratory distress along with devices and device components needed to appropriately administer the medication, including but not limited to disposable spacers;**
- ~~(6)(4)~~ "Certified individual" means an individual who successfully completes an approved educational training program and **obtains** ~~obtain~~ a certificate, as described in KRS 311.646;
- ~~(7)(5)~~ **"Injectable** epinephrine **device** ~~auto-injector~~" means a single-use device used to administer a premeasured dose of epinephrine;
- ~~(8)(6)~~ "Health-care practitioner" means a physician or other health-care provider who has prescriptive authority; and
- ~~(9)(7)~~ "Self-administration" means an individual's administration of an **injectable** epinephrine **device or bronchodilator rescue inhaler** ~~auto-injector~~ on herself or himself.

➔Section 4. KRS 311.646 is amended to read as follows:

- (1) A health-care practitioner may prescribe **injectable** epinephrine **devices and bronchodilator rescue inhalers** ~~auto-injectors~~ in the name of an authorized entity or to a certified individual for use in accordance with this section.
- (2) A pharmacist may dispense **injectable** epinephrine **devices and bronchodilator rescue inhalers** ~~auto-injectors~~ pursuant to a prescription issued in the name of an authorized entity or to a certified individual.
- (3) The Department for Public Health, the Kentucky Board of Medical Licensure, the Kentucky Board of Nursing, the American Red Cross, or other training programs approved by the Department for Public Health may conduct in-person or on-line training for administering lifesaving treatment to persons believed in good faith to be experiencing severe allergic reactions **and asthma symptoms or respiratory distress** and issue a certificate of training to persons completing the training. The training shall include instructions for recognizing the symptoms of anaphylaxis **and asthma** and administering an **injectable** epinephrine **device or a bronchodilator rescue inhaler** ~~auto-injector~~.
- (4) An individual who has a certificate issued under this section may:

- (a) Receive a prescription for *injectable* epinephrine *devices and bronchodilator rescue inhalers*~~[auto-injectors]~~ from a health-care practitioner;
  - (b) Possess prescribed *injectable* epinephrine *devices and bronchodilator rescue inhalers*~~[auto-injectors]~~; and
  - (c) In an emergency situation when a physician is not immediately available and the certified individual in good faith believes a person is experiencing a severe allergic reaction, *asthma symptoms, or respiratory distress* regardless of whether the person has a prescription for an *injectable* epinephrine *device or a bronchodilator rescue inhaler*~~[auto-injector]~~ or has previously been diagnosed with an allergy *or asthma*:
    - 1. Administer an *injectable* epinephrine *device or a bronchodilator rescue inhaler*~~[auto-injector]~~ to the person; and
    - 2. Provide an *injectable* epinephrine *device or a bronchodilator rescue inhaler*~~[auto-injector]~~ to the person for immediate self-administration.
- (5) An authorized entity that acquires and stocks a supply of *injectable* epinephrine *devices or bronchodilator rescue inhalers*~~[auto-injectors]~~ with a valid prescription shall:
- (a) Store the *injectable* epinephrine *devices and bronchodilator rescue inhalers*~~[auto-injectors]~~ in accordance with manufacturer's instructions and with any additional requirements established by the department; and
  - (b) Designate an employee or agent who holds a certificate issued under this section to be responsible for the storage, maintenance, and general oversight of *injectable* epinephrine *devices and bronchodilator rescue inhalers*~~[auto-injectors]~~ acquired by the authorized entity.
- (6) Any individual or entity who administers or provides an *injectable* epinephrine *device*~~[auto-injector]~~ to a person who is experiencing a severe allergic reaction shall contact the local emergency medical services system as soon as possible.
- (7) Any individual or entity who acquires and stocks a supply of *injectable* epinephrine *devices*~~[auto-injectors]~~ in accordance with this section shall notify an agent of the local emergency medical services system and the local emergency communications or vehicle dispatch center of the existence, location, and type of the *injectable* epinephrine *devices*~~[auto-injectors]~~ acquired if a severe allergic reaction has occurred.

➔Section 5. KRS 311.647 is amended to read as follows:

- (1) Any individual or entity who, in good faith and without compensation, renders emergency care or treatment by the use of an *injectable* epinephrine *device or a bronchodilator rescue inhaler*~~[auto-injector]~~ shall be immune from civil liability for any personal injury as a result of the care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment, if the person acts as an ordinary, reasonable prudent person would have acted under the same or similar circumstances.
- (2) The immunity from civil liability for any personal injury under subsection (1) of this section includes:
  - (a) A health-care practitioner who prescribes or authorizes the emergency use of the *injectable* epinephrine *device or bronchodilator rescue inhaler*~~[auto-injector]~~;
  - (b) A pharmacist who fills a prescription for the *injectable* epinephrine *device or bronchodilator rescue inhaler*~~[auto-injector]~~;
  - (c) A certified individual who provides or administers the *injectable* epinephrine *devices or bronchodilator rescue inhaler*~~[auto-injector]~~;
  - (d) An authorized entity who stores or provides the *injectable* epinephrine *device or bronchodilator rescue inhaler*~~[auto-injector]~~ to a certified individual or authorized noncertified individual; and
  - (e) An individual trainer or training entity providing the certified individual.
- (3) The immunity from civil liability under subsection (1) of this section shall not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering the emergency care.
- (4) The requirements of KRS 311.646(6) shall not apply to any individual who provides or administers an *injectable* epinephrine *device or a bronchodilator rescue inhaler*~~[auto-injector]~~ if that individual is acting as a Good Samaritan under KRS 313.035 and 411.148.

Signed by Governor March 24, 2021.

## CHAPTER 113

## ( HB 427 )

AN ACT relating to the Kentucky Opioid Abatement Advisory Commission, 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 15 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established the Kentucky Opioid Abatement Advisory Commission. The commission shall be attached to the Department of Law for administrative purposes.*
- (2) (a) *The commission shall consist of the following voting members:*
1. *The Attorney General or his or her designee, who shall act as chair;*
  2. *The State Treasurer or his or her designee;*
  3. *The secretary of the Cabinet for Health and Family Services or his or her designee;*
  4. *One (1) member appointed by the University of Kentucky from the HEALing Communities Study Team;*
  5. *One (1) member appointed by the Attorney General representing victims of the opioid crisis;*
  6. *One (1) member appointed by the Attorney General representing the drug treatment and prevention community;*
  7. *One (1) member appointed by the Attorney General representing law enforcement; and*
  8. *Two (2) citizens at large appointed by the Attorney General.*
- (b) *The commission shall consist of the following nonvoting members who shall serve at the pleasure of their appointing authority:*
1. *One (1) member appointed by the Speaker of the House of Representatives; and*
  2. *One (1) member appointed by the President of the Senate;*
- (3) (a) *Members of the commission appointed under subsection (2)(a)1. to 3. of this section shall serve terms concurrent with holding their respective offices or positions.*
- (b) *The remaining members of the commission shall serve staggered two (2) year terms as follows:*
1. *Members of the commission appointed under subsection (2)(a)4. to 6. of this section shall serve an initial term of two (2) years; and*
  2. *Members of the commission appointed under subsection (2)(a)7. to 8. of this section shall serve an initial term of one (1) year.*
- (c) *Members of the commission shall not receive compensation for their services but may be reimbursed for necessary travel and lodging expenses incurred in the performance of their duties.*
- (4) (a) *Meetings of the commission shall be conducted according to KRS 61.800 to 61.850.*
- (b) *The commission shall meet at least twice within each calendar year.*
- (c) *Five (5) voting members of the commission shall constitute a quorum for the transaction of business.*
- (d) *Each member of the commission shall have one (1) vote, with all actions being taken by an affirmative vote of the majority of members present.*

- (5) *The commission shall award moneys from the opioid abatement trust fund established in Section 2 of this Act to reimburse prior expenses or to fund projects according to the following criteria related to opioid use disorder (OUD) or any co-occurring substance use disorder or mental health (SUD/MH) issues:*
- (a) *Reimbursement for:*
1. *Any portion of the cost related to outpatient and residential treatment services, including:*
    - a. *Services provided to incarcerated individuals;*
    - b. *Medication-assisted treatment;*
    - c. *Abstinence-based treatment; and*
    - d. *Treatment, recovery, or other services provided by community health centers or not-for-profit providers;*
  2. *Emergency response services provided by law enforcement or first responders; or*
  3. *Any portion of the cost of administering naloxone; or*
- (b) *Provide funding for any project which:*
1. *Supports intervention, treatment, and recovery services provided to persons:*
    - a. *With OUD or co-occurring SUD/MH issues; or*
    - b. *Who have experienced an opioid overdose;*
  2. *Supports detoxification services, including:*
    - a. *Medical detoxification;*
    - b. *Referral to treatment; or*
    - c. *Connections to other services;*
  3. *Provides access to opioid-abatement-related housing, including:*
    - a. *Supportive housing; or*
    - b. *Recovery housing;*
  4. *Provides or supports transportation to treatment or recovery programs or services;*
  5. *Provides employment training or educational services for persons in treatment or recovery;*
  6. *Creates or supports centralized call centers that provide information and connections to appropriate services;*
  7. *Supports crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH issues or persons that have experienced an opioid overdose;*
  8. *Improves oversight of opioid treatment programs to ensure evidence-based and evidence-informed practices;*
  9. *Provides scholarships and support for certified addiction counselors and other mental and behavioral health providers, including:*
    - a. *Training scholarships;*
    - b. *Fellowships;*
    - c. *Loan repayment programs; or*
    - d. *Incentives for providers to work in rural or underserved areas of the Commonwealth;*
  10. *Provides training on medication-assisted treatment for health care providers, students, or other supporting professionals;*
  11. *Supports efforts to prevent over-prescribing and ensures appropriate prescribing and dispensing of opioids;*

12. *Supports enhancements or improvements consistent with state law for prescription drug monitoring programs;*
  13. *Supports the education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with opioids or individuals with OUD or co-occurring SUD/MH issues;*
  14. *Supports opioid-related emergency response services provided by law enforcement or first responders;*
  15. *Treats mental health trauma issues resulting from the traumatic experiences of opioid users or their family members;*
  16. *Engages nonprofits, the faith community, and community coalitions to support prevention and treatment, and to support family members in their efforts to care for opioid users in their family;*
  17. *Provides recovery services, support, and prevention services for women who are pregnant, may become pregnant, or who are parenting with OUD or co-occurring SUD/MH issues;*
  18. *Trains healthcare providers that work with pregnant or parenting women on best practices for compliances with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of care;*
  19. *Addresses Neonatal Abstinence Syndrome, including prevention, education, and treatment of OUD and any co-occurring SUD/MH issues;*
  20. *Offers home-based wrap-around services to persons with OUD and any co-occurring SUD/MH issues, including parent-skills training;*
  21. *Supports positions and services, including supportive housing and other residential services relating to children being removed from the home or placed in foster care due to custodial opioid use;*
  22. *Provides public education about opioids or opioid disposal;*
  23. *Provides drug take-back disposal or destruction programs;*
  24. *Covers the cost of administering naloxone;*
  25. *Supports pre-trial services that connect individuals with OUD and any co-occurring SUD/MH issues to evidence-informed treatment and related services;*
  26. *Supports treatment and recovery courts for persons with OUD and any co-occurring SUD/MH issues, but only if they provide referrals to evidence-informed treatment;*
  27. *Provides evidence-informed treatment, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH issues who are incarcerated, leaving jail or prison, have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities;*
  28. *Meets the criteria included in any settlement agreement or judgment between the parties listed in subsection (3)(a) of Section 2 of this Act; or*
  29. *Any other project deemed appropriate for opioid-abatement purposes by the commission.*
- (6) *The commission may identify additional duties or responsibilities, including:*
- (a) *Reporting on projects and programs related to addressing the opioid epidemic;*
  - (b) *Developing priorities, goals, and recommendations for spending on the projects and programs;*
  - (c) *Working with state agencies or outside entities to develop measures for projects and programs that address substance use disorders; or*
  - (d) *Making recommendations for policy changes on a state or local level, including statutory law and administrative regulations.*
- (7) *The commission shall:*



- (a) *Create and maintain a Web site on which it shall publish its minutes, attendance rolls, funding awards, and reports of funding by recipients; and*
- (b) *Promulgate administrative regulations to implement this section. The commission may promulgate emergency administrative regulations to take effect immediately so that funds may be distributed more quickly and efficiently to combat the opioid epidemic.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "commission" means the Kentucky Opioid Abatement Advisory Commission created in Section 1 of this Act.*
- (2) *There is hereby established in the State Treasury a trust and agency account to be known as the opioid abatement trust fund. Moneys in the fund are hereby appropriated for the purposes set forth in Section 1 of this Act, distributed as described in subsection (3) of this section, and shall not be appropriated or transferred by the General Assembly for any other purposes.*
- (3) *The fund shall consist of:*
  - (a) *Fifty percent (50%) of all proceeds received by the Commonwealth, counties, consolidated local governments, urban-county governments, and cities of the Commonwealth in any settlement or judgment against McKesson Corporation, Cardinal Health 5, LLC, Amerisourcebergen Drug Corporation, and Johnson & Johnson, and any of their affiliates or subsidiaries related to opioid manufacturing or distribution to the extent included in a settlement agreement; and*
  - (b) *Any other moneys received from state appropriations, gifts, grants, or federal funds.*
- (4) (a) *The fund shall not consist of the remaining fifty percent (50%) of all proceeds received by the Commonwealth, counties, consolidated local governments, urban-county governments, and cities of the Commonwealth in any settlement or judgment against McKesson Corporation, Cardinal Health 5, LLC, Amerisourcebergen Drug Corporation, and Johnson & Johnson, and any of their affiliates or subsidiaries related to opioid manufacturing or distribution to the extent included in a settlement agreement.*
  - (b) *The remaining fifty percent (50%) of all proceeds not included in the fund shall be paid to counties, consolidated local governments, urban-county governments, and cities of the Commonwealth in accordance with an agreement reached among them that incorporates the criteria of subsection (5) of Section 1 of this Act. If no such agreement is reached, the money shall be paid to a trustee appointed jointly by the Kentucky Association of Counties and the Kentucky League of Cities for distribution of the funds to counties, consolidated local governments, urban-county governments, and cities of the Commonwealth using the criteria listed in subsection (5) of Section 1 of this Act.*
- (c)
  1. *Each recipient of moneys from the fund shall submit on an annual basis a certification that the funds were used consistent with the criteria in subsection (5) of Section 1 of this Act, a description of the use of such funds, and such other information as the commission requests through administrative regulation.*
  2.
    - a. *Each county, consolidated local government, urban-county government, or city of the Commonwealth that receives any proceeds under paragraph (b) of this subsection shall submit, on an annual basis a certification that the funds were used consistent with the criteria in subsection (5) of Section 1 of this Act, a list of fund recipients and amounts, a description of the use of the funds, and any other information as the commission requests through the promulgation of an administrative regulation.*
    - b. *If a trustee is appointed under paragraph (b) of this subsection, the certifications shall be sent to the trustee, and the trustee will compile and submit one (1) report to the commission.*
    - c. *If a trustee is not appointed, the certifications shall be submitted to the commission as provided by administrative regulation.*
    - d. *Funds shall be withheld from any county, consolidated local government, urban-county government, or city of the Commonwealth that does not comply with this paragraph until such time as compliance is achieved.*

- (d) *To the extent that a settlement has been reached in any litigation against the companies listed in paragraph (a) of this subsection, each county, consolidated local government, urban-county government, city, political subdivision, and public agency, as that term is defined in KRS 61.805(2), of the Commonwealth shall be deemed to have released its claims against the companies listed in paragraph (a) of this subsection and their affiliates and subsidiaries to the extent referenced in a settlement agreement, consent judgment, order, or other document that reflects the terms of any settlement.*
- (5) *Amounts deposited in the fund shall be used only for the purposes described in Section 1 of this Act.*
- (6) *Notwithstanding KRS 45.229, moneys in the fund not expended at the close of a fiscal year shall not lapse but shall be carried forward into the next fiscal year.*
- (7) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (8) *Moneys in the fund shall be distributed no less than annually.*
- (9) (a) *The Department of Law may recover its reasonable costs of litigation from the moneys received under subsection (3)(a) of this section.*
- (b) *The Department of Law may recover any direct costs, including employee time, used to perform or administer the duties required by Sections 1 and 2 of this Act from the moneys received under subsection (3)(a) of this section. The Department of Law shall report all such recovered costs to the commission no less than annually.*
- (10) *The commission shall continue to make distributions from the fund as long as defendants in the opioid litigation make payments to the Commonwealth or until the time that the moneys in the fund are exhausted.*

→Section 3. Whereas the ongoing opioid epidemic has taken a costly toll on the Commonwealth and immediate relief is necessary to combat the epidemic, 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 24, 2021.**

## CHAPTER 114

### ( HB 44 )

AN ACT relating to mental health and making an appropriation therefor.

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

→Section 1. KRS 210.365 is amended to read as follows:

- (1) As used in this section:
- (a) *"Commission" means the Kentucky Fire Commission;*
- (b) *"Crisis intervention team (CIT) training" means a forty (40) hour training curriculum based on the Memphis Police Department Crisis Intervention Team model of best practices for law enforcement intervention with persons who may have a mental illness, substance use disorder, an intellectual disability, developmental disability, or dual diagnosis that meets the requirements of subsections (2) to (5) of this section and is approved by the **commission and the** Kentucky Law Enforcement Council;*
- (c)~~(b)~~ *"Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities;*
- (d)~~(c)~~ *"Prisoner" has the same meaning as set out in KRS 441.005; and*
- (e)~~(d)~~ *"Qualified mental health professional" has the same meaning as set out in KRS 202A.011.*
- (2) The department shall, in collaboration with the **commission**, Justice and Public Safety Cabinet, the regional community boards for mental health or individuals with an intellectual disability, and representatives of the Kentucky statewide affiliate of the National Alliance on Mental Illness, coordinate the development of CIT training designed to train **firefighters and** law enforcement officers to:

- (a) Effectively respond to persons who may have a mental illness, substance use disorder, intellectual disability, developmental disability, or dual diagnosis;
  - (b) Reduce injuries to *firefighters*, officers, and citizens;
  - (c) Reduce inappropriate incarceration;
  - (d) Reduce liability; and
  - (e) Improve risk management practices for *firefighter and* law enforcement agencies.
- (3) The CIT training shall include but not be limited to:
- (a) An introduction to crisis intervention teams;
  - (b) Identification and recognition of the different types of mental illnesses, substance use disorders, intellectual disabilities, developmental disabilities, and dual diagnoses;
  - (c) Interviewing and assessing a person who may have a mental illness, substance use disorder, intellectual disability, developmental disability, or dual diagnosis;
  - (d) Identification and common effects of psychotropic medications;
  - (e) Suicide prevention techniques;
  - (f) Community resources and options for treatment;
  - (g) Voluntary and involuntary processes for hospitalization of a person with a mental illness, substance use disorder, intellectual disability, developmental disability, or dual diagnosis; and
  - (h) Hostage or other negotiations with a person with a mental illness, intellectual disability, substance use disorder, developmental disability, or dual diagnosis.
- (4) The curriculum shall be presented by a team composed of, at a minimum:
- (a) A *firefighter, firefighter personnel training instructor, or a* law enforcement training instructor who has completed a forty (40) hour CIT training course and a CIT training instructor's course which has been approved by the *commission or the* Kentucky Law Enforcement Council, and at least forty (40) hours of direct experience working with a CIT;
  - (b) A representative from the local community board for mental health or individuals with an intellectual disability serving the region where CIT training is conducted;
  - (c) A consumer of mental health services; and
  - (d) A representative of the Kentucky statewide affiliate of the National Alliance on Mental Illness.
- (5) (a) The department shall submit the CIT training curriculum and the names of available instructors approved by the department to conduct or assist in the delivery of CIT training to the *commission or* Kentucky Law Enforcement Council no later than July 1, ~~2021~~<sup>2007</sup>.
- (b) The *commission or* Kentucky Law Enforcement Council shall notify the department of approval or disapproval of the CIT training curriculum and trainers within thirty (30) days of submission of the curriculum and the names of instructors.
- (c) The *commission or* Kentucky Law Enforcement Council may waive instructor requirements for *non-firefighter trainers or* non-law enforcement trainers whose names are submitted by the department.
- (d) If the curriculum or trainers are not approved, the department shall have an opportunity to revise and resubmit the curriculum and to submit additional names of instructors if necessary.
- (6) If the curriculum is approved, the *commission or* Kentucky Law Enforcement Council shall:
- (a) ***Notify all agencies employing firefighters, as defined in KRS 61.315 (1)(b), of the availability of the CIT training;***
  - (b) Notify the Department of Kentucky State Police and all law enforcement agencies employing peace officers certified under KRS 15.380 to 15.404 of the availability of the CIT training; and
  - (c) ~~(b)~~ Notify all instructors and entities approved for *firefighter or* law enforcement training under KRS 15.330 ***and 95A.040*** of the availability of the CIT training.

- (7) Any **firefighter training entity** or law enforcement training entity approved by the **commission** or Kentucky Law Enforcement Council may use the CIT training model and curriculum in **firefighter** or law enforcement in-service training as specified by subsection (1) of this section that is consistent with the Memphis CIT national model for best practices.
- (8) No later than one (1) year after June 26, ~~2021~~<sup>2007</sup>, the department shall submit to the **commission and** Kentucky Law Enforcement Council a CIT training instructors' curriculum and the names of available instructors approved by the department to conduct or assist in the delivery of CIT training instructors' training. Additional instructors may be submitted on a schedule determined by the **commission** or Kentucky Law Enforcement Council.
- (9) All CIT-trained **firefighters and** law enforcement officers shall report to his or her agency on forms provided with the CIT curriculum on encounters with persons with mental illness, substance use disorders, intellectual disabilities, developmental disabilities, and dual diagnoses. The **firefighter and** law enforcement ~~agencies~~<sup>[agency]</sup> shall aggregate reports received and submit nonidentifying information to the department on a monthly basis. Except for information pertaining to the number of **firefighter** or law enforcement agencies participating in CIT training, the reports to the department shall include the information specified in subsection (10) of this section.
- (10) The department shall aggregate all reports from **firefighter** or law enforcement agencies under subsection (9) of this section and submit nonidentifying statewide information to the Justice and Public Safety Cabinet, the Criminal Justice Council, the Cabinet for Health and Family Services, and the Interim Joint Committee on Health and Welfare by December 1, 2008, and annually thereafter. The report shall include but not be limited to:
  - (a) The number of **firefighters** or law enforcement officers trained per agency;
  - (b) **Firefighter** or law enforcement responses to persons with mental illness, substance use disorders, intellectual disabilities, developmental disabilities, and dual diagnoses;
  - (c) Incidents of harm to the **firefighter** or law enforcement officer or to the citizen;
  - (d) The number of times physical force was required and the type of physical force used; and
  - (e) The outcome of the encounters that may include but not be limited to incarceration or hospitalization.
- (11) To implement the requirements of subsections (2) to (5) and (8) to (10) of this section, the department may use public or private funds as available and may develop a contract with a nonprofit entity that is a Kentucky statewide mental health advocacy organization that has a minimum of five (5) years of experience in implementation of the CIT training program in Kentucky.
- (12) The Cabinet for Health and Family Services shall create a telephonic behavioral health jail triage system to screen prisoners for mental health risk issues, including suicide risk. The triage system shall be designed to give the facility receiving and housing the prisoner an assessment of his or her mental health risk, with the assessment corresponding to recommended protocols for housing, supervision, and care which are designed to mitigate the mental health risks identified by the system. The triage system shall consist of:
  - (a) A screening instrument which the personnel of a facility receiving a prisoner shall utilize to assess inmates for mental health, suicide, intellectual disabilities, and acquired brain injury risk factors; and
  - (b) A continuously available toll-free telephonic triage hotline staffed by a qualified mental health professional which the screening personnel may utilize if the screening instrument indicates an increased mental health risk for the assessed prisoner.
- (13) In creating and maintaining the telephonic behavioral health jail triage system, the cabinet shall consult with:
  - (a) The Department of Corrections;
  - (b) The Kentucky Jailers Association; and
  - (c) The regional community services programs for mental health or individuals with an intellectual disability created under KRS 210.370 to 210.460.
- (14) The cabinet may delegate all or a portion of the operational responsibility for the triage system to the regional community services programs for mental health or individuals with an intellectual disability created under KRS 210.370 to 210.460 if the regional program agrees and the cabinet remains responsible for the costs of delegated functions.

- (15) The cabinet shall design into the implemented triage system the ability to screen and assess prisoners who communicate other than in English or who communicate other than through voice.
- (16) The cost of operating the telephonic behavioral health jail triage system shall be borne by the cabinet.
- (17) Records generated under this section shall be treated in the same manner and with the same degree of confidentiality as other medical records of the prisoner.
- (18) Unless the prisoner is provided with an attorney during the screening and assessment, any statement made by the prisoner in the course of the screening or assessment shall not be admissible in a criminal trial of the prisoner, unless the trial is for a crime committed during the screening and assessment.
- (19) The cabinet may, after consultation with those entities set out in subsection (13) of this section, promulgate administrative regulations for the operation of the telephonic behavioral health jail triage system and the establishment of its recommended protocols for prisoner housing, supervision, and care.

➔Section 2. KRS 95A.220 is amended to read as follows:

- (1) There is established the "Firefighters Foundation Program Fund" consisting of appropriations from the general fund of the Commonwealth of Kentucky, and insurance premium surcharge proceeds and earnings on the investments of those proceeds which accrue to this fund pursuant to KRS 42.190 and 136.392. The fund may also receive any other funds, gifts or grants made available to the state for distribution to local governments and volunteer fire departments in accordance with the provisions of KRS 95A.200 to 95A.300 and KRS 95A.262.
- (2) All moneys remaining in this fund on July 1, 1982, and deposited thereafter, including earnings from their investment, shall be deemed a trust and agency account. Beginning with the 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) Moneys in the fund are hereby appropriated by the General Assembly for the purposes provided in KRS 95A.200 to 95A.300.
- (4)
  - (a) *A post-traumatic stress injury that arises solely from a legitimate personnel action such as transfer, promotion, demotion, or termination shall not be considered a compensable injury.*
  - (b) *Post-traumatic stress injury and post-traumatic stress disorder shall be defined as set out by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.*
  - (c) *The firefighter shall be diagnosed, by a psychiatrist, psychologist, or professional counselor credentialed under the provisions of KRS 335.500 to 335.599, with post-traumatic stress injury or post-traumatic stress disorder that has been caused by an event or an accumulation of events that have occurred in the course and scope of their employment as a full-time, career or volunteer firefighter, regardless of whether or not there is an initial physical injury.*
  - (d) *Once diagnosed, if a firefighter seeks mental health treatment, after in-network health insurance has been utilized, he or she may submit corresponding receipts for medical bills paid by the firefighter to the commission for reimbursement to the firefighter of out-of-pocket costs incurred from the funds specifically allocated in the commission's budget for firefighter mental health treatment. The firefighter shall pay his or her out-of-pocket share for the mental health treatment before submitting for reimbursement.*
  - (e) *From the time a firefighter seeks mental health treatment, there shall be a maximum limit of twelve (12) months for the benefit described in paragraph (d) of this subsection.*

Signed by Governor March 25, 2021.

## CHAPTER 115

( HB 98 )

AN ACT relating to enforcement of a lien against a storage unit occupant.

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

➔Section 1. KRS 359.230 is amended to read as follows:

- (1) (a) If the occupant is in default for a period of more than forty-five (45) days, the operator may enforce a lien by selling the property stored in the leased space at a public or private sale, for cash.
- (b) Proceeds shall then be applied to satisfy the lien, with any surplus disbursed as provided in subsection (5) of this section.
- (2) Before conducting a sale under subsection (1) of this section, the operator shall:
  - (a) Notify the occupant of the default by regular or verified electronic mail at the occupant's last known address;
  - (b) Send a second notice of default by verified mail or verified electronic mail to the occupant at the occupant's last known address which includes:
    1. A statement that the contents of the occupant's leased space are subject to the operator's lien;
    2. A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date those additional charges shall become due;
    3. A demand for payment of the charges due within a specified time, not less than fourteen (14) days after the date of the notice;
    4. A statement that unless the claim is paid within the time stated, the contents of the occupant's leased space shall be sold at a specified time and place; and
    5. The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice; and
  - (c) At least three (3) days before the sale, advertise the time, place, and terms of the sale in:
    1. A ~~an~~ newspaper of general circulation in the jurisdiction where the sale is to be held; *or*
    2. ***Any other commercially reasonable manner. The manner of advertisement shall be deemed commercially reasonable if at least three (3) independent bidders participate in, or attend the sale at the time and place advertised.***
- (3) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.
- (4) The sale under this section shall be held at the self-service storage facility, the location of the self-contained storage unit where the personal property is stored, or a publicly accessible Web site.
- (5) If a sale is held under this section, the operator shall:
  - (a) Satisfy the lien from the proceeds of the sale;
  - (b) Hold the balance, if any, for delivery to any other recorded lienholders who present claims within sixty (60) days. Notwithstanding Article 9 of KRS Chapter 355, claims shall be satisfied on a first come first served basis; and
  - (c) Deliver, upon expiration of sixty (60) days, the balance of any remaining proceeds to the occupant.
- (6) A purchaser in good faith of any personal property sold under KRS 359.200 to 359.250 takes the property free and clear of any rights of:
  - (a) Persons against whom the lien was valid; and
  - (b) Other lienholders.
- (7) If the operator complies with the provisions of KRS 359.200 to 359.250, the operator's liability:
  - (a) To the occupant shall be limited to the net proceeds received from the sale of the personal property;
  - (b) To other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by that other lien; and

- (c) To the occupant or valid lienholders shall be relieved upon full distribution of proceeds in accordance with the provisions of KRS 359.200 to 359.250.
- (8) If an occupant is in default, the operator may deny the occupant access to the leased space.
- (9) (a) Unless otherwise specifically provided, all notices required by KRS 359.200 to 359.250 shall be sent by verified mail or verified electronic mail.
  - (b) 1. Notices sent to the operator shall be sent to the operator's principal office, as listed on the rental agreement.
  - 2. Notices to the occupant shall be sent to the occupant at the occupant's last known address.
- (c) Notices shall be deemed delivered when deposited with the United States Postal Service, properly addressed as provided in paragraph (b) of this subsection, with postage paid, or sent by verified electronic mail.
- (10) Provided, however, unless the rental agreement specifically provides otherwise and until a lien sale under KRS 359.200 to 359.250, the exclusive care, custody, and control of all personal property stored in the leased space shall remain vested in the occupant.
- (11) If the rental agreement specifies a limit on the value of the personal property that may be stored in the occupant's leased space, the limit shall be deemed to be the maximum value of the stored personal property.
- (12) If the occupant is in default for more than sixty (60) days and the personal property stored in the leased space is a motor vehicle as defined in KRS 376.268, the operator may, in lieu of a sale authorized in this chapter, have the vehicle or watercraft towed or removed from the self-service storage facility, and the towing company shall execute the notice provisions as specified in KRS 376.275.

**Signed by Governor March 25, 2021.**

## CHAPTER 116

( HB 120 )

AN ACT relating to consolidated emergency services districts and making an appropriation therefor.

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

➔SECTION 1. KRS CHAPTER 75A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*For the purposes of Sections 1 to 14 of this Act:*

- (1) *"Board" means the board of trustees of a consolidated emergency services board;*
- (2) *"Chief" means a chief executive officer appointed by a board to manage the affairs of a consolidated emergency services district;*
- (3) *"District" means a consolidated emergency services district, established in accordance with Section 2 of this Act; and*
- (4) *"Trustee" means a member of the board of trustees of a consolidated emergency services district.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

- (1) *A new consolidated emergency services district may be formed by one (1) of the following processes:*

(a) *The board of:*

- 1. *Any two (2) or more fire protection districts established under KRS Chapter 75 or 273, any special district whose services are subject to the licensure provisions of KRS Chapter 311A, or any rescue squads established under KRS Chapter 39F; or*
- 2. *Any fire protection districts established under KRS Chapter 75 or 273, any special district whose services are subject to the licensure provisions of KRS Chapter 311A, or any rescue*

*squads established under KRS Chapter 39F that have merged within the five (5) years prior to the adoption of this section that would have been eligible to consolidate under the provisions of this section;*

3. *May adopt resolutions agreeing to the formation of a consolidated emergency services district and requesting the creation of a consolidated emergency services district. The governing bodies shall notify the county fiscal court, consolidated local government, charter county government, or unified local government with jurisdiction over the proposed district and request the formation of a consolidated emergency services district; or*
  - (b) *The board of any two (2) or more consolidated emergency service districts established under Sections 1 to 14 of this Act may adopt resolutions agreeing to the merger of consolidated emergency services districts and requesting the creation of a new consolidated emergency services district. The governing bodies shall notify the county fiscal court, consolidated local government, charter county government, or unified local government with jurisdiction over the proposed district and request the formation of a new consolidated emergency services district.*
- (2)
  - (a) *Any county fiscal court, consolidated local government, charter county government, or unified local government, upon receipt of a request from two (2) or more fire protection districts, special districts whose services are subject to the licensure provisions of KRS Chapter 311A, or rescue squads established under KRS Chapter 39F, may create a consolidated emergency services district in their jurisdiction by adoption of an ordinance approving the establishment of a consolidated emergency services district and authorizing any relevant fire protection district to join if its governing authority has approved it to join the consolidated district.*
  - (b) *The ordinance shall describe the boundaries by metes and bounds and name for the consolidated district. No consolidated emergency services district shall take effect less than sixty (60) days from completing the required elements outlined in this section.*
  - (c) *The county fiscal court, consolidated local government, charter county government, or unified local government clerk shall notify all planning commissions, cities, and area development districts within whose jurisdiction the approved service area is located and any state agencies required by law to be notified of the proposal for the creation of the taxing district within thirty (30) days from adoption of the ordinance authorizing creation of the district.*
  - (d) *The creation of a consolidated emergency services taxing district shall be of legal effect only after adoption of an ordinance creating the taxing district and after a certified copy of the ordinance creating the taxing district is filed with the county clerk.*
  - (e) *Any aggrieved person may bring an action in the Circuit Court having jurisdiction of that county to contest the decision of the county fiscal court or legislative body of the county to establish a consolidated emergency services district or to protest the inclusion of any county, consolidated local government, charter county government, unified local government, fire protection district or volunteer fire department district established pursuant to KRS Chapter 75 or 273, any special district whose services are subject to the licensure provisions of KRS Chapter 311A, or any rescue squad established pursuant to KRS Chapter 39F within a consolidated emergency services district.*
- (3)
  - (a) *If the governing body of any fire protection district established under KRS Chapter 75 or 273, any special district whose services are subject to the licensure provisions of KRS Chapter 311A, or any rescue squad established under KRS Chapter 39F desires to have its district become part of an established consolidated emergency services district after the creation of the district, it shall by motion so record its desire in the minutes of the board, in the case of any fire protection district, any emergency medical services special district, or any rescue squad. The board shall convey this request to the consolidated emergency service district's board. Within sixty (60) days of receiving the request the consolidated emergency service district's board shall vote upon this request. The approval shall be certified to the clerk of the county, consolidated local government, charter county government, or unified local government in the jurisdiction in which the consolidated district is located.*
  - (b) *The approval of the addition of a district to the consolidated emergency services district shall become effective upon the adoption of an ordinance amending the ordinance creating the consolidated emergency services district by the county fiscal court, consolidated local government, charter county government, or unified local government and authorizing the inclusion of the petitioning fire*



*protection district. The amended ordinance shall identify the boundaries by metes and bounds of the amended consolidated emergency services district.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Upon passage of an ordinance by the county fiscal court, consolidated local government, charter county government, or unified local government creating the district, the affairs of the district shall be conducted by the board of trustees consisting of seven (7) members, four (4) to be elected by the members of the district as set out in this subsection and three (3) to be appointed by the county judge/executive pursuant to KRS 67C.139 or the chief executive officer of the county.*
- (b) *Two (2) members of the board shall be elected by the members providing emergency services within the district and shall be active members of the district.*
- (c) *Two (2) members of the board shall be property owners who own real or personal property which is subject to the fire protection tax pursuant to KRS 75.040, who personally reside in the district, and who are not active members of the district and shall be elected by the property owners of the district.*
- (d) *Property owners voting to select representatives to the board shall have attained the age of eighteen (18).*
- (e) *The county judge/executive of the county in which district is located, shall, with the approval of the fiscal court, appoint three (3) members of the board.*
- (f) *Appointment and election of trustees to a newly created district shall be completed within sixty (60) days of the passage of the ordinance creating the district.*
- (g) *At the first election held after the district is formed:*
1. *One (1) active member shall be elected to serve on the board for a period of one (1) year;*
  2. *One (1) active member for a period of three (3) years;*
  3. *One (1) property owner shall be elected to serve on the board for a period of two (2) years; and*
  4. *One (1) property owner for a period of four (4) years.*
- On the expiration of the respective terms, the successor to each shall have the same qualifications as his or her predecessor and shall be elected for a term of four (4) years.*
- (h) *The original appointed members of the board shall be appointed for terms of one (1), two (2), and three (3) years respectively. On the expiration of the respective terms, the successors to each shall be appointed for a term of three (3) years.*
- (i) *In the event of a vacancy in the term of an appointed or elected trustee, the county judge/executive shall, with the approval of the fiscal court, appoint a trustee for the remainder of the term, or the chief executive officer of the county pursuant to KRS 67C.139 shall appoint a trustee for the remainder of the term.*
- (2) *An appointed trustee may be removed from office as provided by KRS 65.007.*
- (3) *No person shall be an elected trustee who, at the time of his or her election, is not a citizen of Kentucky and has not attained the age of twenty-one (21).*
- (4) *Unless otherwise provided by law, an elected active member trustee may be removed from office by the county judge/executive or chief executive officer of the county in which district is located. An elected active member trustee may be removed after a hearing with notice as required by KRS Chapter 424, for inefficiency, neglect of duty, malfeasance, or conflict of interest. The hearing shall be initiated and chaired by the county judge/executive of a county or the chief executive officer of the county, who shall prepare a written statement setting forth the reasons for removal. The trustee to be removed shall be notified of his or her proposed removal and the reasons for the proposed removal by registered mail sent to his or her last known address at least ten (10) days prior to the hearing. The person proposed to be removed may employ counsel to represent him or her. A record of the hearing shall be made by the county judge/executive or mayor respectively.*
- (5) *The removal of an elected active member trustee of a district shall be subject to the approval of the fiscal court of the county or the legislative body of the county in which the district is located.*

- (6) *An elected active member trustee removed pursuant to subsections (4) and (5) of this section may appeal, within ten (10) days of the rendering of the decision of the fiscal court or legislative council, respectively, to the Circuit Court of the county in which the district is located. The scope of the appeal shall be limited to whether the county judge/executive, mayor, legislative body, or the fiscal court respectively, abused their discretion in removing the trustee.*
- (7) (a) *The elective offices of members of the board shall be filled by an election to be held once each year on the fourth Saturday of June between the hours of 11:00 a.m. and 2:00 p.m.*
- (b) *The polls shall be located at the principal fire house in the district.*
- (c) *The date, time, and place of the election shall be advertised in accordance with KRS 424.120. This notice shall be advertised at least thirty (30) days prior to the election date and shall include the names and addresses of the candidates to be voted on for each position of trustee.*
- (d) *In lieu of the published notice for the election of the active member trustees, written notice containing the information required to be advertised may be sent by first-class mail to each member of the consolidated emergency services district, addressed to the member at his or her residence, at least thirty (30) days prior to the election date.*
- (8) *The nominations for candidates for trustees representing both the active members and the property owners residing in the district shall be made in accordance with the bylaws of the district. The terms of the three (3) trustees appointed by the county judge/executive or chief executive officer of the county shall start at the same time as the terms of the elected trustees.*
- (9) *The trustees shall elect from their number a chairman, a secretary, and a treasurer, the latter of whom shall give bond in an amount be determined by the county judge/executive of the county or chief executive officer of the county in which district is located, conditioned upon the faithful discharge of the duties of his or her office, and the faithful accounting for all funds which may come into his or her possession as treasurer. The premiums on the bonds shall be paid out of the funds of the district.*
- (10) *Unless previously removed for cause in the last four (4) years, an elected trustee may seek reelection to the board.*
- (11) *If no one is nominated for, or elected and qualified to, an open seat on the board, the county judge/executive or the chief executive officer of the county shall promptly fill the vacancy by appointment of a qualified person who shall serve for the same period as if otherwise elected.*
- (12) *A quorum of the board shall consist of a majority of its members.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

- (1) *The board may fix the respective salaries of its members on a per meeting basis not to exceed twenty-five dollars (\$25) per meeting and not to exceed one (1) meeting per month.*
- (2) *The board shall meet at least once a month at a time and place designated by the board and all meetings, except executive meetings, shall be open to the public.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Upon the creation of a district, the trustees of a district are authorized to provide fire services, emergency medical services subject to KRS Chapter 311A, or rescue services pursuant to KRS Chapter 39F, as provided in paragraph (c) of this subsection, and to levy a tax upon the property in the district.*
- (b) *The property taxed shall be subject to county tax, and the tax levied by the board upon creation of the district shall be approved by the county fiscal court, consolidated local government, charter county government, or unified local government having jurisdiction over the district at the time of passage of the ordinance creating the district. The tax shall not exceed ten cents (\$0.10) per one hundred dollars (\$100) of valuation as assessed for county taxes, for the purpose of defraying the expenses for the provision of fire services or rescue services. The rate set in this subsection shall apply, notwithstanding the provisions of KRS 132.023.*
- (c) *The district that establishes and operates an emergency ambulance service and is the primary service provider in the district may levy a tax upon the property in the district. The tax to be levied shall be proposed by the board, shall be approved by the county fiscal court, consolidated local government, charter county government, or unified local government having jurisdiction over the district and the*

*tax shall not exceed twenty cents (\$0.20) per one hundred dollars (\$100) of valuation as assessed for county taxes, for the purpose of defraying the expenses of the provision of fire services, emergency medical services, or rescue service, or to make contracts for fire protection for the districts as provided in KRS 75.050. The rate set in this subsection shall apply, notwithstanding KRS 132.023.*

- (d) 1. *Any increase of the total tax levy beyond the rate initially approved by the board and authorized by the county fiscal court, consolidated local government, charter county government, or unified local government shall be subject to KRS 132.023. Any increase in excess of the annual compensating rate for the consolidated emergency services district shall require the approval of the county fiscal court, consolidated local government, charter county government, or unified local government having jurisdiction over the district. If at any time an election resulting from a recall petition pursuant to KRS 132.017 is required, the question shall be presented to all voters in every precinct for which any part of the precinct is served by the district subject to the recall petition.*
2. *If two (2) or more established consolidated emergency services merge to create a new consolidated emergency services district, as authorized in this chapter, the initial tax to be levied, as proposed by the board, shall be approved by the county fiscal court, consolidated local government, charter county government, or unified local government having jurisdiction over the district, and the initial tax levied shall not exceed the highest tax rate currently levied by one (1) of the merging districts. Any increase to the initial tax rate shall be subject to KRS 132.023. Any increase in excess of the annual compensating rate for the consolidated emergency services district shall require the approval of the county fiscal court, consolidated local government, charter county government, or unified local government having jurisdiction over the district. If at any time an election resulting from a recall petition pursuant to KRS 132.017 is required, the question shall be presented to all voters in every precinct for which any part of the district serves.*
- (2) *The property valuation administrator of the county in which the district is created, with the cooperation of the board, shall note on the tax rolls the taxpayers and valuation of the property subject to such assessment. The county clerk shall compute the tax on the regular state and county tax bills in such manner as may be directed by regulation of the Department of Revenue.*
- (3) *These taxes shall be subject to the same delinquency date, discounts, penalties, and interest as are applied to the collection of ad valorem taxes and shall be collected by the sheriff of the county involved and accounted for to the treasurer of the district. The sheriff shall be entitled to a fee of the amount collected by him. The fiscal court shall, in the ordinance set forth in subsection (2) of this section and in consultation with the sheriff and the consolidated emergency services district, set a collection fee for the sheriff in an amount not to exceed four and one-fourth percent (4.25%).*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall oversee the provision of emergency services to residents within the service area of the district and may:*
  - (a) *Purchase vehicles and all other necessary equipment and employ trained personnel who meet all federal and state requirements;*
  - (b) *Adopt rules and regulations necessary to effectively and efficiently provide emergency services for the district;*
  - (c) *Employ a chief;*
  - (d) *Employ persons to administer the daily operations of the emergency services district;*
  - (e) *Compensate employees of the district at a rate determined by the board;*
  - (f) *Apply for and receive available funds from the state and federal governments for the purpose of maintaining or improving the emergency services of the district; and*
  - (g) *Acquire by bequest, gift, grant, or purchase any real or personal property necessary to provide emergency services.*
- (2) *The establishment, maintenance, and operation of a consolidated emergency services district shall include but not be limited to the following activities:*

- (a) *Acquisition and maintenance of adequate fire protection and, where applicable, emergency medical response facilities or rescue facilities;*
  - (b) *Acquisition and maintenance of adequate firefighting and, where applicable, medical response, equipment or rescue equipment;*
  - (c) *Recruitment, training and supervision of firefighters and, where applicable, any emergency medical service or rescue personnel;*
  - (d) *Control and extinguishment of fires;*
  - (e) *Prevention of fires;*
  - (f) *Conducting fire safety activities;*
  - (g) *Payment of compensation to firefighters and where applicable, to emergency medical service and rescue personnel, and providing the necessary support and supervisory personnel;*
  - (h) *Payment for reasonable benefits or a nominal fee to volunteer firefighters when benefits and fees do not constitute wages or salaries under KRS Chapter 337 and are not taxable as income to the volunteer firefighters under Kentucky or federal income tax laws; and*
  - (i) *Use of consolidated emergency services district equipment for activities which are for a public purpose and which do not materially diminish the value of the equipment.*
- (3) *The board shall comply with KRS 65A.010 to 65A.090.*

→SECTION 7. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

*The board, upon the assumption of office, shall assume all the duties, responsibilities, and liabilities of all previous entities that have been merged into the district. The territories of former districts, cities, and unincorporated territory shall become special taxing districts until their indebtedness has been relieved. Any agreements established by former entities now merged into the district for the provision of services outside the district as established and for other legally binding agreements only until expired shall remain in effect for terms of service and duration as the agreement created has specified.*

→SECTION 8. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

*The chief of the district, subject to directives and guidance from the board, shall be responsible for:*

- (1) *The hiring and discipline of all staff;*
- (2) *The creation of administrative, personnel, and operational policies, subject to the relevant federal and state administrative regulations and directives from the board; and*
- (3) *The preparation of plans for the distribution of personnel, apparatus, and equipment for the board's approval to provide for the optimal provision of emergency services within the district.*

→SECTION 9. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

- (1) *The district may, through the board, make and enter into contracts with any other fire protection district, fire prevention district, municipal corporation, volunteer fire department, volunteer fire prevention unit, volunteer fire protection unit, any special district whose services are subject to the licensure provisions of KRS Chapter 311A, or any rescue squads established under KRS Chapter 39F, either within the same county or within an adjoining county in an area adjacent to the boundary line between the counties, for the furnishing or receiving of emergency services for all property within the confines of the area included in and covered by the contract or contracts, where these emergency services are not otherwise provided by some division of government or governmental agency.*
- (2) *The personnel acting in their official capacities and equipment of a contracting party, in going to and returning from an emergency, or in answering and responding to a false alarm or call, and while endeavoring to provide emergency services within the area covered by the contract, shall be deemed and is declared to be engaged in the exercise of a governmental function.*

→SECTION 10. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

*All district personnel providing emergency services outside the district as provided in Sections 1 to 14 of this Act, or area normally served by the consolidated emergency services district, shall be considered as serving in their regular line of duty as fully as if they were serving within the limits of their own district, but full-paid emergency*

*personnel shall receive no additional compensation and volunteer emergency service personnel shall receive only such compensation provided for by district bylaws or administrative rules in these cases, and all such emergency services personnel shall be entitled to all benefits of any pension fund, in the same manner as if the provision of emergency services had been within the limits of the district.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

*The trustees of the district wherein water pipes have been constructed and are maintained in the public ways thereof may by resolution duly adopted cause the erection of fire hydrants and attachments to the water pipes in the public ways, after the trustees have made a written contract for water to be furnished for use in the hydrants. The cost of the erection and attachments shall be apportioned by the trustees against the owners of the property fronting the public ways in which the fire hydrants are erected, by any equitable mode of apportionment which the board prescribes in the resolution ordering the erection of the fire hydrants and a lien shall exist against the property against which the apportionment runs for the cost of the improvement in the amount of the apportionment and interest thereon at the rate of six percent (6%) per annum. The lien is enforceable by proceedings in court. The erection and installation of fire hydrants may be under contract let to the lowest and best bidder after advertisement by publication pursuant to KRS Chapter 424.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

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

- (a) *"Board" means the board of trustees a consolidated emergency services district organized under Sections 1 to 14 of this Act;*
- (b) *"Chairman" means the chairman of the board of a consolidated emergency services district organized under Sections 1 to 14 of this Act;*
- (c) *"Chief" means the chief of the consolidated emergency services district organized under Sections 1 to 14 of this Act;*
- (d) *"Consolidated Emergency Services District" means districts organized under Sections 1 to 14 of this Act;*
- (e) *"Dismissal" means the discharge of an employee by lawful authority;*
- (f) *"Employees" means all persons employed, and paid wages, salary, or other compensation for emergency services performed, by the board of trustees of a consolidated emergency services district organized under Sections 1 to 14 of this Act. The term "employees" does not include any individual who is a volunteer as defined in paragraph (n) of this subsection.*
- (g) *"Member" shall include the chief and all officers; all providers of emergency services, including volunteer, paid, regular, and all employees, or special firefighters; of a consolidated emergency services district organized under Sections 1 to 14 of this Act;*
- (h) *"Paid emergency service worker" means all personnel who are employees of the consolidated emergency services district organized under Sections 1 to 14 of this Act involved in the provision of emergency medical services subject to the licensure provisions of KRS Chapter 311A or the provision of rescue services pursuant to KRS Chapter 39F;*
- (i) *"Paid firefighters" means all firefighters who are employees of the consolidated emergency services district organized under Sections 1 to 14 of this Act;*
- (j) *"Regular firefighters" means all firefighters who are members of a consolidated emergency services district organized under Sections 1 to 14 of this Act, except for special firefighters appointed by the chairman of the board of trustees pursuant to KRS 75.110;*
- (k) *"Salary" and "wages" mean any compensation received by an employee by reason of his employment for services performed for a consolidated emergency services district organized under Sections 1 to 14 of this Act;*
- (l) *"Suspension" means the separation of an employee from the service for a temporary or fixed period of time, by his appointing authority, as a disciplinary measure;*
- (m) *"Trustees" means the board of trustees of a consolidated emergency services district organized under Sections 1 to 14 of this Act; and*

- (n) *"Volunteer" means any person who is a member of a consolidated emergency services district organized under this Act who volunteers to provide services for the district, if the individual receives no salary, wages, or other compensation for services performed, or if the individual is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered, and the services are not the same type of services which the individual is employed to perform for the consolidated emergency services district organized under Sections 1 to 14 of this Act.*
- (2) (a) *The chairman may, if in his or her discretion there is a case of need, appoint special firefighters to do special duties at any place within the limits of the consolidated emergency services district, on terms he or she deems proper.*
- (b) *These special firefighters shall be governed by rules as the board may provide, and be given the powers the board may provide, including the powers enumerated in KRS 75.160 in the discretion of the board; if rules are not provided they shall be deemed to have the powers and duties of regular firefighters.*
- (3) (a) *Except as provided in subsection (4) of this section no member or employee of a consolidated emergency services district shall be reprimanded, dismissed, suspended, or reduced in grade or pay for any reason except inefficiency, misconduct, insubordination, or violation of law or of the rules adopted by the board the district, and only after charges are preferred and a hearing conducted as provided in this section.*
- (b) *Any person may file charges against a member or employee of the district by filing them with the secretary of the board and by delivering or mailing the charges to the principal offices of the district. The secretary shall immediately communicate the charges to the board by mailing or delivering a copy of the charges to each member of the board within seven (7) days of receipt of the charges at the principal fire house. The chairman shall, after conducting or having conducted any inquiry or investigation which may be necessary, determine if probable cause appears. The chairman shall prefer charges to the board against any member or employee, against whom probable cause exists, of conduct justifying the dismissal or punishment of the member or employee. If probable cause does not exist, the chairman shall dismiss the charges. All charges shall be written and shall set out clearly the charges made. The person filing the charges may withdraw them at any time before the conclusion of the hearing. The charges may then be dismissed.*
- (c) *Charges preferred by the chairman shall be heard by either the full board or a committee consisting of at least three (3) members of the board appointed by the chairman. At the hearing all charges shall be considered, and the trial shall be confined to matters related to the issues presented. Within forty-five (45) days after the charges have been preferred by the chairman to the board, that body, or a committee consisting of at least three (3) members of the board appointed by the chairman, shall proceed to hear the charges. At least ten (10) days before the hearing the member or employee accused shall be served personally or by registered mail with a copy of the charges and a statement of the day, place, and hour at which the hearing of the charges will begin. The person accused may, in writing, waive the service of charges and demand trial within thirty (30) days after the charges are preferred to the board.*
- (d) *The board of the district may summon and compel attendance of witnesses at hearings by subpoena issued by the secretary of that body and served upon the witnesses by any officer authorized to serve court subpoenas. If any witness fails to appear in response to a summons, or refuses to testify concerning any matter on which he may lawfully be interrogated, any District Judge, on application of the board, may compel obedience by proceedings for contempt, as in the case of disobedience of a subpoena issued from the District Court. The member or employee accused may have subpoenaed any witnesses he or she may desire, upon furnishing their names to the secretary of the board. The written records of the charges, the hearing, if held, and any other actions or decisions of the board on the charges shall be kept as an open public record and maintained as required by KRS Chapter 61.*
- (e) *When the board or the chief of the district has probable cause to believe a member or employee of a district has been guilty of conduct justifying dismissal or punishment, the board or the chief may suspend the member or employee from duty or from both pay and duty, pending trial, and the member or employee shall not be placed on duty, or allowed pay, until the charges are heard. If the member is suspended, there shall be no continuances granted without the consent of the member or employee accused. If the member suspended is a paid firefighter or an employee, the hearing on the*

*charges shall be conducted within fourteen (14) days after the charges have been preferred by the chairman of the board.*

- (f) *The board of the district shall fix the punishment of a member or employee of the district found guilty, by a reprimand, suspension for any length of time not to exceed six (6) months, by reducing the grade if the accused is an officer, or by combining any two (2) or more of those punishments, or by dismissal as a member or employee of the district.*
- (4) (a) *Any member or employee of the district found guilty by the board of the district of any charge, as provided by KRS 75.130, may appeal to the Circuit Court of the county in which the district is located, but the enforcement of the judgment of the district shall not be suspended pending appeal. The notice of the appeal shall be filed not later than thirty (30) days after the date the board of the district makes its determination on the charge.*
  - (b) *Upon request of the accused, the secretary of the board shall file a certified copy of the charges and the judgment of the board in the Circuit Court. Upon the transcript being filed, the case shall be docketed in the Circuit Court and tried as an original action.*
  - (c) *If the secretary of the board fails to certify the transcript to the Circuit Court within thirty (30) days after the request is made, the party aggrieved may file an affidavit in the Circuit Court setting out as fully as possible the charges made, the time of the hearing, and the judgment of the board, together with a statement that demand for transcript was made upon the secretary of the board more than thirty (30) days before the filing of the affidavit. Upon the filing of the affidavit in the Circuit Court, the case shall be docketed and the Circuit Court may compel the filing of the transcript by the secretary of the board by entering the proper mandatory order, and by fine and imprisonment for contempt. The appeal shall have precedence over other business, and be determined speedily.*
  - (d) *An appeal will lie from the judgment of the Circuit Court to the Court of Appeals as in other cases.*
- (5) (a) *No person shall be appointed a member of the district on account of any political service, contribution, sentiment, or affiliation. No member shall be dismissed, suspended, or reduced in grade or pay for any political opinion.*
  - (b) *Members and employees of the district, while off duty and out of uniform, shall be entitled to:*
    - 1. *Place political bumper stickers on their privately owned vehicles;*
    - 2. *Wear political buttons;*
    - 3. *Contribute money to political parties, political candidates, and political groups of their choice;*
    - 4. *Work at the polls on election days;*
    - 5. *Aid in the registration or purgation of voters;*
    - 6. *Become members of political groups; and*
    - 7. *Hold office in political groups and carry out the mandates of that group.*
- (6) (a) *The chief in the district shall attend all sessions of the board, except executive sessions, and shall execute all the orders of the board. Whenever "chief" is used in Sections 1 to 14 of this Act, it shall include the assistant chief when the chief is not on duty.*
  - (b) *The regular members of the district, except volunteer members, shall have the same powers of arrest as now given by law to sheriffs of this Commonwealth and they are hereby expressly declared conservators of the public peace whose duties, in addition to their other prescribed duties, are to conserve the peace, enforce all laws and preserve order, and they shall have and are hereby expressly given the same right and the same power to arrest, search, and seize as is now given by law to sheriffs of this Commonwealth, and they shall be at all times subject to the orders of the county judge/executive in which the district lies while enforcing this section. Provided, however, that members of these fire departments shall not have the power to serve subpoenas, summonses, and notices in civil cases and they shall receive no fees for performing any of the duties prescribed in this section as pertains to powers of law enforcement. The members shall constitute a law enforcement agency in addition to the patrol and investigation functions of the sheriff and his deputies under KRS 75.150 to 75.170.*

- (7) (a) *Each member of the district shall, before entering upon the discharge of his or her various duties, take an oath before the county judge/executive of the county or a notary public, to faithfully discharge his duties, and the oath shall be subscribed by the person taking it and filed in the minute book kept by the secretary of the board.*
- (b) *Each member of the district shall give such bond as the board may designate and with a surety as required by the board conditioned upon faithful performance of the member's duties.*
- (8) (a) *The chief, assistant chief, or highest officer present at the fires answered by his or department shall investigate their causes. He or she may examine witnesses, compel the testimony of witnesses, administer oaths, compel production of evidence, and make arrests as provided in KRS 75.160. He or she may enter any building at all reasonable times for the purpose of examining the building if, in his or her opinion the building is in danger of fire. He shall report his or her findings, when requested, to the board, Kentucky Inspection Bureau, and state fire marshal.*
- (b) *The chief of the district shall direct and control the operation of the district and the control of the members in the discharge of their duties. He or she, and members of the district, shall have access to and the use of all cisterns, fireplugs, the waters of the waterworks of private persons and cisterns of private persons for the purpose of extinguishing fires and shall have the power to examine these water supplies at all reasonable times to see that they are in condition for use in case of fire. The chief shall have control of all hoses, buildings, engines, and other emergency equipment provided for the district under direction of the board, or those authorized by the board to exercise this direction, and shall perform such other duties prescribed by the board not inconsistent with law. Upon application within ten (10) days to the board, any owner of property where water is used for firefighting or the provision of other emergency services shall be reimbursed in a reasonable amount by the board for water used.*
- (9) *The secretary of the board shall keep a minute book, appropriately bound and marked, in which the minutes of each meeting of the board shall be kept, together with all resolutions, tax levies, and other important material the board may designate. A copy of all material required to be kept by the secretary, shall be kept on file in the office of the clerk of the county containing the district. The public shall have the right to inspect the book and its contents at all times.*
- (10) (a) *The board may, in its discretion, employ or retain a regularly licensed attorney to advise them on all matters pertaining to their duties and shall have the discretion to delegate this authority to the attorney. This attorney shall attend all meetings of the board, except executive sessions when the board does not desire his or her presence, whenever the board shall request him or her to attend and shall advise the board on all legal matters on which he or she is requested to give advice.*
- (b) *In addition to the attorney provided for in this subsection, the county attorney in the county in which the district lies shall advise and represent the board in all matters and on the occasions chosen by the board whenever the board so requests.*
- (c) *The board may fix the salary or compensation of the attorney provided for in subsection (1) of this section, in their discretion.*
- (11) *With respect to audits and financial reports, the board of the district shall follow the procedures of KRS 65.065.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

*The method for dissolving a consolidated emergency services district shall be in accordance with the following:*

- (1) (a) *Persons desiring to dissolve a consolidated emergency services district shall present a petition to the fiscal court clerk and to each member of the fiscal court, meeting the criteria of KRS 65.184, and signed by a number of registered voters equal to or greater than twenty-five percent (25%) of an average of the voters living in the proposed taxing district and voting in the last four (4) general elections. At the time of its submission to fiscal court, each petition shall be a form showing justification or information as set out in this paragraph:*
1. *Justification for the dissolution of a consolidated emergency services district, including but not limited to the location of nearby governmental and nongovernmental providers of like services; and*



2. *Any additional information, which bears on the necessity of dissolution of a consolidated emergency services district.*
  - (b) *A majority of the members of a fiscal court may vote to dissolve a consolidated emergency services district.*
- (2) *The fiscal court clerk shall notify all planning commissions, cities, and area development districts within whose jurisdiction the consolidated emergency services district is located and any state agencies required by law to be notified of the proposal to dissolve the consolidated emergency services district.*
- (3) *The fiscal court clerk shall schedule a hearing on the proposal for no earlier than thirty (30) nor later than ninety (90) days following receipt of the petition, and shall, in accordance with KRS Chapter 424, publish notice of the time and place of the public hearing.*
- (4) *At the public hearing, the fiscal court shall take testimony of interested parties and solicit the recommendations of any planning commission, area development district, or state agency meeting the criteria of subsection (2) of this section.*
- (5) *The fiscal court may extend the hearing, from time-to-time, for ninety (90) days from the date of the initial hearing and shall render a decision within thirty (30) days of the final adjournment of the hearing.*
- (6) *Following the hearing, the fiscal court shall set forth its written findings of fact and shall approve or disapprove the dissolution of the consolidated emergency services district.*
- (7) *The dissolution of the consolidated emergency services district shall be of legal effect only upon the adoption of an ordinance, in accordance with KRS 67.075 and 67.077, dissolving the consolidated emergency services district, and compliance with the requirements of KRS 65.005.*
- (8) *A certified copy of the ordinance dissolving the emergency services district shall be filed with the county clerk.*
- (9) *The territory of the former consolidated emergency services district shall become special taxing districts until the indebtedness has been relieved.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 75A IS CREATED TO READ AS FOLLOWS:

- (1) *If a majority of the entities that entered into a consolidated emergency service district were participating employers in the County Employees Retirement System, then the district shall apply to become a participating member in the County Employees Retirement System in accordance with KRS 78.530.*
- (2) *If the district is not required to apply to participate in the County Employees Retirement System as provided for by subsection (1) of this section or does not voluntarily apply to participate in the County Employees Retirement System as provided by KRS 78.530, the following shall apply:*
  - (a) *Any employee who was participating in the County Employees Retirement System through an entity that is entering into or petitioning to join in a consolidated emergency services district, shall, provided the employee participating in the system through the entity immediately prior to the entity joining the district, remain a participating employee in the County Employees Retirement System in the existing classification of retirement tier and hazardous duty classification for the remainder of his or her employment with the district as provided by KRS 78.510 to 78.852; and*
  - (b) *For the purposes of this subsection, the district shall be considered a participating employer of the County Employees Retirement System, but only for those employees described by paragraph (a) of this subsection.*

➔Section 15. KRS 65.180 is amended to read as follows:

As used in KRS 65.182 to 65.190, unless the context otherwise requires, the word "taxing district" shall mean, and the provisions of KRS 65.182 to 65.190 shall apply to, any special district authorized by statute to levy ad valorem taxes within the meaning of Section 157 of the Constitution of Kentucky or to levy ad valorem taxes under the provisions of KRS 68.602 and governed by the following statutes: KRS 65.182, 75.010 to 75.260, *Sections 1 to 14 of this Act*, 107.310 to 107.500, 108.080 to 108.180, 109.115 to 109.190, 173.450 to 173.650, 173.710 to 173.800, 179.700 to 179.990, 212.720 to 212.755, 216.310 to 216.360, 266.010 to 266.990, and 268.010 to 268.990.

➔Section 16. KRS 75.020 is amended to read as follows:

- (1) (a) The territorial limits of an established fire protection district, or a volunteer fire department district, as established under KRS 75.010 to 75.080, may be enlarged or diminished in the following way: The

trustees of the fire protection district or of the volunteer fire department district shall file a petition in the county clerk's office of the county in which that district and the territory to be annexed or stricken off, or the greater part thereof, is located, describing the territory to be annexed or stricken and setting out the reasons therefor. Notice of the filing of such petition shall be given by publication as provided for in KRS Chapter 424. On the day fixed in the notice, the county judge/executive shall, if the proper notice has been given, and the publication made, and no written objection or remonstrance is interposed enter an order annexing or striking off the territory described in the petition. Fifty-one percent (51%) or more of the freeholders of the territory sought to be annexed or stricken off may, at any time before the date fixed in the notice, remonstrate in writing, filed in the clerk's office, to the action proposed. If such written remonstrance is filed, the clerk shall promptly give notice to the trustees of the fire protection district, or of the volunteer fire department district, and the county judge/executive shall hear and determine the same. If upon such hearing, the county judge/executive finds from the evidence that a failure to annex or strike off such territory will materially retard the functioning of the fire protection district or the volunteer fire department district and materially affect adversely the owners and the inhabitants of the territory sought to be annexed or stricken off, he or she shall enter an order, granting the annexation or striking off the territory. In the latter event, no new petition to annex or strike off all or any part of the same territory shall be entertained for a period of two (2) years. Any aggrieved person may bring an action in Circuit Court to contest the decision of the county judge/executive.

- (b) In addition to the provisions of paragraph (a) of this subsection, if the trustees of a fire protection district or a volunteer fire department district, as established under KRS 75.010 to 75.080, are seeking to expand territory into an area served by a fire department created under KRS Chapter 273 and certified under KRS 75.400 to 75.460 or an area that is not contained within the boundaries of the city, but is being served by a city government, then the trustees shall, prior to executing the provisions of paragraph (a) of this subsection, enter into a written agreement with the fire chief and the board of the fire department created under KRS Chapter 273 or with the city government providing fire protection services to the area proposed to be annexed. The agreement shall establish the proposed new boundary as it applies to the fire department created under KRS Chapter 273 or to the area being served by the city fire department. On the day the agreement is finalized, the trustees of the district shall send by certified mail, return receipt requested, or have personally delivered a copy of the agreement to the county judge/executive of the county containing the territory subject to the expansion. The notice required in paragraph (a) of this subsection shall, in lieu of the applicable publication requirements set out in KRS Chapter 424, be published at least once a week, for a minimum of two (2) weeks. The last publication shall occur no less than seven (7) days before the date fixed in the notice.
  - (c) If the trustees approach the fire chief and board of the fire department created under KRS Chapter 273 or the city government in the manner authorized in paragraph (b) of this subsection and are unable to reach an agreement within thirty (30) days, the trustees, or any real property holder of the territory subject to the annexation, may directly seek permission from the real property holders of that territory to continue with the annexation procedure set out in paragraphs (a) and (b) of this subsection by circulating a petition and securing the signatures of at least fifty-one percent (51%) of the real property holders within that territory. The petition shall include the residential address of the signer and the date of the signature. The petition shall be certified by the county clerk if the clerk finds the petition sufficient in form and requisite amount of signatures.
- (2) The property in any territory annexed to a fire protection district or to a volunteer fire department district shall not be liable to taxation for the purpose of paying any indebtedness incurred by the fire protection district or the volunteer fire department district prior to the date of the annexation of such territory, except such indebtedness as represents the balance owing on the purchase price of firefighting equipment. The property in any territory stricken off from a fire protection district or a volunteer fire department district by the incorporation of or annexation by a city of this Commonwealth shall not be relieved of liability of such taxes as may be necessary to pay its proportionate share of the indebtedness incurred while such territory was a part of that district. Territories stricken by action of the county judge/executive under the provisions of subsection (1) shall be relieved of liability for all indebtedness incurred by the fire protection district or the volunteer fire department district.
  - (3) Any city that maintains a "regular fire department," and has either by incorporation or annexation caused property to be stricken from a fire protection district or a volunteer fire department district, shall comply with KRS 75.022(3).
  - (4) A fire protection district or volunteer fire department district established pursuant to KRS 75.010 to 75.080 shall not expand its service boundaries or annex territory contained in another fire protection district or

volunteer fire department district established pursuant to KRS 75.010 to 75.080. However, the territorial limits of two (2) or more fire protection districts, or volunteer fire department districts, as established by KRS 75.010 to 75.080, may be merged into one (1) fire protection district or volunteer fire department district as follows:

- (a) The trustees of each fire protection district or volunteer fire department district shall file a joint petition in the county clerk's office of the county in which all of the districts and the territory to be merged into one (1) district, or the greater part of the district, is located, describing the territory to be merged into the district and setting out the reasons for the merger;
  - (b) Notice of the filing of the petition shall be given by publication as provided in KRS Chapter 424 for public notices;
  - (c) On the day fixed in the notice, the county judge/executive shall, if proper notice by publication has been given, and no written objection or remonstrance has been made, enter an order merging the fire protection districts or volunteer fire department districts described in the petition;
  - (d) Fifty-one percent (51%) or more of the property owners of the territory sought to be merged into one (1) district may, at any time before the date fixed in the notice, remonstrate by written petition to the county clerk regarding their objection to the merger of the districts. If a petition is filed, the county clerk shall give prompt notice to the trustees of the fire protection districts or the volunteer fire protection districts and the county judge/executive;
  - (e) The county judge/executive shall schedule a hearing regarding the petition and shall give public notice as to the date, time, and place of the hearing. If after the hearing, the county judge/executive finds from the evidence that a failure to merge the territory will materially retard the functioning of the fire protection districts or volunteer fire department districts and materially affect adversely the owners and the inhabitants of the territory sought to be merged, he or she shall enter an order granting the merger of the districts into one (1) fire protection district or volunteer fire department district; and
  - (f) Any aggrieved person may bring an action in Circuit Court to contest the decision of the county judge/executive regarding the merger fire protection districts or volunteer fire department districts.
- (5) ***In addition to the merger provisions of subsection (4) of this section, fire protection districts established pursuant to KRS 75.010 to 75.080 may also merge pursuant to Sections 1 to 14 of this Act.***
- (6) The property in any fire protection district or volunteer fire department district which is merged with another fire protection district or volunteer fire department district shall not be liable to taxation for the purpose of paying any indebtedness incurred by the other fire protection district or volunteer fire department district prior to the date of the merger into one (1) fire protection district, except indebtedness which represents a balance owed on the purchase price of firefighting equipment from the other fire protection district or volunteer fire department district.
- ~~(7)(6)~~ Fire protection districts or volunteer fire department districts that modify service area boundaries by taking any action authorized under this section shall update their service area boundary maps and file them in the manner required by KRS 75.420.

➔Section 17. KRS 78.530 (Effective April 1, 2021) 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 or her employees or the county clerk and his or her employees do, the sheriff or the clerk shall retain the order in his or her 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

~~any~~ agencies entering into the merger or interlocal agreement had an initial participation date with the system prior to April 9, 2002; *and*

**3. Any consolidated emergency services district.**

- (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(1)(b) and (c), 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 (6) 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 (6) 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 or her creditable compensation from the participation date of the county to the date he or she 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 or her creditable compensation from the participation date of the county to the date he or she 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.
  - (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 or her creditable compensation from the participation date of the county to the date he or she 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.
  - (g) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, this subsection shall not apply to members who begin participating in the system on or after January 1, 2014, and no county that elects to participate in the system on or after January 1, 2014, shall be eligible to participate under the alternate participation plan.
- (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)
    - (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 system 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.

- (7) 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 18. KRS 95A.500 is amended to read as follows:

- (1) If two (2) or more volunteer fire departments merge under the provisions of KRS 95A.500 to 95A.560 after January 1, 2000, and each is qualified to receive the volunteer fire department aid under KRS 95A.262(2) at the time of merger, then the volunteer fire department aid shall be disbursed according to the provisions of KRS 95A.500 to 95A.560 as long as the resulting district remains qualified to receive the volunteer fire department aid.
- (2) ***The provisions of KRS 95A.500 to 95A.560 shall apply to any volunteer fire departments formed under KRS Chapter 75 or 273 which merge into a consolidated emergency services district pursuant to Sections 1 to 14 of this Act. The consolidated emergency services district shall receive the qualified shares as if it were a volunteer fire district.***

➔Section 19. KRS 134.119 is amended to read as follows:

- (1) (a) The sheriff shall be the collector of all state, county, county school district, and other taxing district property taxes unless the payment is directed by law to be made to some other person. The sheriff may contract to collect taxes on behalf of cities, independent school districts, or any other governmental unit with the authority to levy a property tax, if the enabling legislation authorizing imposition of the tax permits the governmental unit to contract for the performance of tax collection duties.
- (b) The provisions of this chapter relating to the collection of property taxes shall apply to other property tax collectors to the extent that the governing body of the city, school district, or taxing district appointing the tax collector has not adopted alternative tax collection processes and procedures.
- (2) Payment to the sheriff may be provided by any commercially acceptable means. The sheriff may limit the acceptable methods of payment to those that ensure that payment cannot be reversed or nullified due to insufficient funds.
- (3) (a) 1. The sheriff shall accept payment from the day on which the tax bills are mailed by the sheriff to the taxpayer as provided in KRS 133.220 and 133.230, through the day on which the sheriff files the uncollected tax claims with the county clerk pursuant to KRS 134.122. During this time period, the sheriff may accept full or partial payment for any outstanding taxes or tax claims.
2. a. Any payments received by the sheriff by mail that:
- i. Are received after the day on which uncollected tax claims are filed with the county clerk pursuant to KRS 134.122; and
  - ii. Have a postmark that reflects a date on or before the day the uncollected tax claims are filed with the county clerk;
- shall be accepted and processed, and the amount due shall be the amount due immediately before the transfer of the uncollected tax claims by the sheriff to the county clerk.
- b. Payments described in this subparagraph may be processed as agreed by the sheriff and county clerk.
- c. Absent an agreement between the sheriff and the county clerk, the payment shall be accepted and processed by the sheriff.

- d. If the sheriff accepts and processes the payment, the sheriff shall notify the county clerk, and the county clerk shall update his or her records to reflect payment of the certificate of delinquency.
  - e. The sheriff and the county clerk shall reconcile all transactions addressed by this subparagraph by preparation of an addendum to the original reconciliation provided by the sheriff to the county clerk at the time of transfer. The addendum shall be prepared thirty (30) days after the original transfer, and shall be filed by the county clerk in the clerk's order book.
- (b) All payments received by the sheriff shall be entered immediately by the sheriff on his or her books. Partial payments shall be credited against the total amount due and shall be apportioned by the sheriff among the entities included on the tax bill in the same proportion the amount due to each bears to the amount paid.
  - (c) The acceptance of any payment before the taxpayer's tax liability has been finally determined shall not imply that the payment was the correct amount due and shall not preclude the assessment and collection of additional taxes due or the refund of any part of the amount paid that is in excess of the amount determined to be due.
  - (d) The sheriff may accept payment of any tax or tax claim from any other person on behalf of the taxpayer. Any person making a payment on behalf of a taxpayer may, upon the written notarized request of the taxpayer, be treated as a transferee as provided in KRS 134.121.
  - (e) The sheriff may accept payment of any amount due on a delinquent tax claim from any of the persons described in subparagraphs 1., 2., and 3. of this paragraph without permission of the taxpayer. The person seeking to make the payment shall provide sufficient proof to the sheriff that he or she meets the requirements to pay under this paragraph. The sheriff shall be held harmless if he or she relies upon information provided and accepts payment from a person not qualified to pay under this paragraph. Any person listed in subparagraph 1., 2., or 3. of this paragraph who makes full payment, may, upon written request to the sheriff, be treated as a transferee under KRS 134.121:
    - 1. Any person holding a legal or equitable estate in the real or personal property upon which the delinquent taxes are due, other than a person whose only interest in the property is a lien resulting from ownership of a prior year certificate of delinquency;
    - 2. A tenant or lawful occupant of real property, or a bailee or person in possession of any personal property upon which the delinquent taxes are due; or
    - 3. Any person having a mortgage on real property or a security interest in real or personal property upon which the delinquent taxes are due.
- (4) If, upon expiration of the five percent (5%) penalty period established by KRS 134.015(2)(c), the real property tax delinquencies of a sheriff exceed fifteen percent (15%) of the amount charged to the sheriff for collection, the department may require the sheriff to make additional reasonable collection efforts. If the sheriff fails to initiate additional reasonable collection efforts within fifteen (15) business days following notification from the department that such efforts shall be made, the department may assume responsibility for collecting the delinquent taxes. If the department assumes the responsibility for collecting delinquent taxes, the department shall receive the amounts that would otherwise be paid to the sheriff as fees or commissions for the collection of tax bills.
  - (5) In collecting delinquent taxes, the sheriff:
    - (a) May distraint and sell personal property owned by a delinquent taxpayer in the amount necessary to satisfy the delinquent tax claim. The sale shall be made under execution for cash. If the personal property of the delinquent taxpayer within the county is not sufficient to satisfy the delinquent tax claim, the sheriff may sell so much of the personal property as is available; and
    - (b) Shall retain any amounts that come into his or her possession payable to a delinquent taxpayer, other than claims allowed for attendance as a witness, and shall apply such amounts to the amount due on the delinquent tax claim.
  - (6) (a) As compensation for collecting property taxes the sheriff shall be paid the following amounts, regardless of whether the amounts are collected by the sheriff prior to filing the tax claims with the

county clerk, or by the county clerk after the tax claims become certificates of delinquency or personal property certificates of delinquency:

1. From the Commonwealth the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the Commonwealth;
  2. From counties the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the counties;
  3. The sheriff shall be compensated as provided by law or as negotiated if negotiation is permitted by law, for collecting taxes on behalf of any taxing district;
  4. The sheriff shall be compensated as provided in KRS 160.500 for collecting school district taxes;~~{and}~~
  5. The sheriff shall be compensated as provided in KRS 91A.070 for collecting taxes on behalf of any city; *and*
  6. ***The sheriff shall be compensated as provided in Section 5 of this Act for collecting taxes on behalf of any consolidated emergency services district.***
- (b) The sheriff shall include the amounts he or she is entitled to under the provisions of paragraph (a) of this subsection as part of the delinquent tax claims filed with the county clerk. The amount so included shall become a part of the certificate of delinquency, and shall be paid by the person paying the certificate of delinquency rather than the taxing jurisdiction for which the taxes were collected.
- (7) As additional compensation for the collection of delinquent taxes, the sheriff shall be entitled to an amount equal to ten percent (10%) of the total taxes due plus ten percent (10%) of the ten percent (10%) penalty for all delinquent taxes. This fee shall be added to the total amount due, and shall be paid by the person paying the tax claim if payment is made to the sheriff, or the certificate of delinquency or personal property certificate of delinquency if payment is made after the tax claim has been filed with the county clerk.
- (8) If, in the process of collecting property taxes, the sheriff becomes aware of a new address for a taxpayer, the sheriff shall provide, on a form provided by the department, the information relating to the new address to the property valuation administrator, who shall update his or her records to reflect the new address.

**Signed by Governor March 25, 2021.**

## CHAPTER 117

### ( HB 155 )

AN ACT relating to abandoned infants.

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

➔Section 1. KRS 405.075 is amended to read as follows:

- (1) As used in this section:
- (a) "Newborn infant" means an infant who is medically determined to be less than thirty (30) days old;~~{and}~~
  - (b) ***"Newborn safety device" means a device:***
    1. ***Designed to permit a parent to anonymously place a newborn infant in the device with the intent to leave the newborn and for an emergency medical services provider to remove the newborn from the device and take custody of the newborn infant;***
    2. ***Installed with an adequate dual alarm system connected to the physical location where the device is physically installed. The dual alarm system shall be:***
      - a. ***Tested at least one (1) time per month to ensure the alarm system is in working order;***  
***and***



- b. *Visually checked at least two (2) times per day to ensure the alarm system is in working order;*
    - 3. *Approved by and physically located inside a participating staffed police station, staffed fire station, or staffed hospital that:*
      - a. *Is licensed or otherwise legally operating in this state; and*
      - b. *Is staffed continuously on a twenty-four (24) hour basis every day by a licensed emergency medical services provider; and*
    - 4. *Located in an area that is conspicuous and visible to police station, fire station, or hospital staff; and*
  - (c) "Participating place of worship" means a recognized place of religious worship that has voluntarily agreed to perform the duty granted in this section and display signage prominently on its premises regarding its participation in this section and its operating hours during which staff will be present.
- (2) A parent *shall have the right to remain anonymous, shall not be pursued, and shall not be considered to have abandoned or endangered a newborn infant under KRS Chapters 508 and 530 if the parent* ~~who~~:
  - (a) Places a newborn infant:
    - 1. With an emergency medical services provider;
    - 2. ~~At~~At a staffed police station, fire station, *or* hospital;
    - 3. *At a*~~or~~ participating place of worship; *or*
    - 4. *Inside a newborn safety device that meets the requirements of subsection (1) of this section;* and
  - (b) Expresses no intent to return for the *newborn* infant ~~shall have the right to remain anonymous and not be pursued and shall not be considered to have abandoned or endangered the newborn infant under KRS Chapters 508 and 530.~~
- (3)
  - (a) Any emergency medical services provider, police officer, or firefighter who accepts physical custody of a newborn infant, *or who physically retrieves a newborn infant from a newborn safety device that meets the requirements of subsection (1) of this section,* in accordance with this section shall immediately arrange for the infant to be taken to the nearest hospital emergency room and shall have implied consent to any and all appropriate medical treatment.
  - (b) Any staff member at a participating place of worship who accepts physical custody of a newborn infant in accordance with this section shall immediately contact the 911 emergency telephone service as set forth in KRS 65.750 to 65.760, wireless enhanced 911 system as set forth in KRS 65.7621 to 65.7643, or emergency medical services as set forth in KRS Chapter 311A for transportation to the nearest hospital emergency room.
- (4) By placing a newborn infant in the manner described in this section, the parent:
  - (a) Waives the right to notification required by subsequent court proceedings conducted under KRS Chapter 620 until such time as a claim of parental rights is made; and
  - (b) Waives legal standing to make a claim of action against any person who accepts physical custody of the newborn infant.
- (5) A staffed police station, fire station, hospital, emergency medical facility, or participating place of worship may post a sign easily seen by the public stating that: "This facility is a safe and legal place to surrender a newborn infant who is less than 30 days old. A parent who places a newborn infant at this facility and expresses no intent to return for the infant shall have the right to remain anonymous and not be pursued and shall not be considered to have abandoned or endangered their newborn infant under KRS Chapters 508 and 530."
- (6) Actions taken by an emergency medical services provider, police officer, firefighter, or staff member at a participating place of worship in conformity with the duty granted in this section shall be immune from criminal or civil liability. Nothing in this subsection shall limit liability for negligence.
- (7) The provisions of subsection (2) of this section shall not apply when indicators of child physical abuse or child neglect are present.

- (8) KRS 211.951, 216B.190, 405.075, 620.350, and 620.355 shall be known as "The Representative Thomas J. Burch Safe Infants Act."

**Signed by Governor March 25, 2021.**

## CHAPTER 118

### ( HB 194 )

AN ACT making appropriations for the operations, maintenance, and support of the Legislative Branch of the Commonwealth of Kentucky.

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

➔Section 1. The Legislative Branch Budget is as follows:

#### PART I

#### OPERATING BUDGET

**Funds Appropriations:** Funds are appropriated to the Legislative Research Commission for the Legislative Branch of government out of the General Fund and Restricted Funds accounts for the fiscal year beginning July 1, 2020, and ending June 30, 2021, and for the fiscal year beginning July 1, 2021, and ending June 30, 2022, in the following discrete sums, or so much thereof as may be necessary. Each appropriation is made by the source of respective fund or funds accounts to be used for the purposes of the Legislative Branch of government of the Commonwealth of Kentucky.

	2020-21	2021-22
<b>1. General Assembly</b>		
General Fund	19,020,700	21,677,100
Restricted Funds	75,000	175,000
TOTAL	19,095,700	21,852,100

(1) **Legislators Compensation:** Notwithstanding KRS 6.190 and 6.213, the daily compensation provided by KRS 6.190 and the interim expense allowance provided by KRS 6.213 for members of the General Assembly shall remain at the January 1, 2020, level.

(2) **Kentucky Legislative Ethics Commission:** Included in the above General Fund appropriation is \$567,700 in each fiscal year for the Kentucky Legislative Ethics Commission. Included in the above Restricted Funds appropriation is \$75,000 in each fiscal year for the Kentucky Legislative Ethics Commission.

(3) **Kentucky Long-Term Policy Research Center:** Notwithstanding KRS 7B.010 to 7B.090, operation of the Kentucky Long-Term Policy Research Center and its governing board shall continue to be suspended effective July 1, 2020, and shall remain suspended for the 2020-2022 fiscal biennium or until funding is restored. No funds are appropriated for the Kentucky Long-Term Policy Research Center for fiscal year 2020-2021 and fiscal year 2021-2022.

(4) **Pension Benefit Increase:** Notwithstanding KRS 6.521(3), no pension benefit increase shall be granted to recipients of a retirement allowance under KRS 6.500 to 6.577 on July 1, 2020.

	2020-21	2021-22
<b>2. Legislative Research Commission</b>		
General Fund	52,965,700	57,976,200

(1) **Permanent Full-time Employees:** The total number of permanent full-time employees hired by the Legislative Research Commission with the above appropriation, and not assigned specifically to the House and Senate members of the Legislative Research Commission, shall not exceed 232 in fiscal year 2020-2021 and 232 in fiscal year 2021-2022. In addition to this number, the total number of permanent full-time employees assigned specifically to the House members of the Legislative Research Commission shall not exceed 19 and the permanent

full-time employees assigned specifically to the Senate members of the Legislative Research Commission shall not exceed 10.

(2) **Legislative Record:** Notwithstanding KRS 7.105, distribution of the final issue of the Legislative Record and the interim Legislative Record shall be suspended effective July 1, 2020.

(3) **Renovation Assessment:** Included in the above General Fund appropriation is \$182,000 in fiscal year 2020-2021 and \$364,000 in fiscal year 2021-2022 to be transferred to the Finance and Administration Cabinet to support debt service on bonds authorized in 2021 Regular Session HB 192, Part II, F., 1., 007. for the Fourth Floor Capitol Renovation project.

(4) **Full-time Work Schedule:** Included in the above General Fund appropriation is \$2,900,000 in fiscal year 2021-2022 to implement a 40-hour work week for the employees of the Legislative Research Commission beginning July 1, 2021.

**TOTAL - OPERATING BUDGET**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	71,986,400	79,653,300
Restricted Funds	75,000	175,000
<b>TOTAL</b>	<b>72,061,400</b>	<b>79,828,300</b>

**Unexpended Balance:** Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2019-2020 shall not lapse but shall continue into fiscal year 2020-2021, and any unexpended balance in any succeeding fiscal year shall not lapse but shall continue into the following fiscal year.

**TOTAL - LEGISLATIVE BRANCH BUDGET**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	71,986,400	79,653,300
Restricted Funds	75,000	175,000
<b>TOTAL</b>	<b>72,061,400</b>	<b>79,828,300</b>

**PART II**

**GENERAL PROVISIONS**

1. **Expenditure Authority:** The Director of the Legislative Research Commission, under the supervision of the Legislative Research Commission, may expend any of the funds appropriated for legislative operation and administration in any lawful manner and for any legal purpose consistent with the policies and practices of the Commission. No executive agency or statute governing the executive agencies of state government shall have the power to restrict or limit the actions of, or the expenditure of funds appropriated to, the Legislative Research Commission for the Legislative Branch of government.

2. **Capitol and Capitol Annex Capital Construction Expenditures:** Any expenditure authorized by the Director of the Legislative Research Commission, under the supervision of the Legislative Research Commission, relating to implementation of KRS 56.463(4)(b), or relating to the Capitol Building, and funded by previous or current appropriations to the Legislative Research Commission for the Legislative Branch of government shall not be governed by KRS 7A.010, 7A.120, 45.750 to 45.810, 48.010(16), 48.020, and 48.110.

3. **Severability of Budget Provisions:** Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provision thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

4. **Duplicate Appropriation:** Any appropriation item and sum in this Act and in an appropriation provision in another Act of the 2020 Regular Session and 2021 Regular Session of the General Assembly which constitutes a duplicate appropriation shall be governed by KRS 48.312.

5. **Priority of Individual Appropriations:** KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

6. **Appropriations Revisions:** Notwithstanding KRS 48.630(10), no revisions for unbudgeted Restricted Funds appropriations for expenditure shall be allotted or expended that have not been appropriated in any enacted branch budget bill or without the express authority of the General Assembly.

**7. Allowance in Lieu of Stationery:** Notwithstanding KRS 6.220, in lieu of stationery, there shall be allowed to each member of the House of Representatives the sum of \$250 and to each member of the Senate the sum of \$500. This allowance shall be paid out of the State Treasury at the beginning of each legislative session.

**8. Issuance of Employee Paychecks:** Notwithstanding 101 KAR 2:095, Section 10, the state payroll that would normally be scheduled to be paid on June 30, 2020, and June 30, 2021, shall not be issued prior to July 1, 2020, and July 1, 2021, respectively.

**9. Salary Adjustments:** In each fiscal year, employees of the Legislative Research Commission shall receive a salary adjustment in accordance with the salary adjustment provided to state employees in the state/executive branch budget.

**10. Administrative Expenses:** Pursuant to KRS 21.540, administrative expenses shall be paid out of an administrative account which shall be funded by transfers of the necessary moneys, in appropriate ratio, from the funds provided for in KRS 21.550 and 21.560.

**11. Employee Layoffs, Furloughs, and Reduced Hours:** Notwithstanding any statute to the contrary, the following process and procedure is established for July 1, 2020, through June 30, 2022, in the event that the Legislative Research Commission (LRC) determines that it is desirable for the Director of the LRC to layoff, furlough, or reduce hours of employees:

(1) For the purposes of this section:

(a) "Appointing authority" means the Director of the LRC, in his or her capacity as provided in KRS 27A.010, or any agent whom he or she has delegated to act on his or her behalf with respect to employee appointments, position establishments, payroll documents, reemployment requests, waiver requests, requests for certification, or other position actions for the LRC;

(b) "Furlough" or "reduction in hours" means the temporary reduction of hours an employee is scheduled to work by the appointing authority within a pay period;

(c) "Layoff" means discharge of employment subject to the rights contained in this section; and

(d) "Employees" includes all persons employed by the LRC;

(2) Upon an order by the LRC, the appointing authority has the authority to layoff or furlough employees or reduce hours of employment for any of the following reasons:

(a) Lack of funds or budgetary constraints;

(b) A reduction in the agency's spending authorization;

(c) Lack of work;

(d) Abolishment of a position; or

(e) Other material change in duties or organization;

(3) The appointing authority shall determine the job classifications affected and the number of employees laid-off in each classification to which a layoff applies. In the same department or office and job classification, interim and probationary employees shall be laid-off before any full-time or part-time employees are laid-off. For purposes of layoff, "probationary employee" does not include an employee serving a promotional probation;

(4) The Director of the LRC shall approve and implement all actions taken under subsection (2) of this section and no such layoff, furlough, or reduction of hours may begin until such approval has been granted. The Director of the LRC has the authority to determine the extent, effective dates, and length of any action taken under subsection (2) of this section;

(5) In determining the employees to be laid-off, the appointing authority shall consider all employees under the same appointing authority and within the job classification affected. Consideration shall be given to the following relevant factors:

(a) Job performance evaluations;

(b) Seniority;

(c) Education, training, and experience; and

(d) Disciplinary record;

(6) Any employee whose position is subject to layoff, furlough, or reduction of hours shall be provided written notice containing the reason for the action as set forth in subsection (2) of this section at least 15 days in advance of the effective date of the action;

(7) Any employee who is laid-off shall be eligible to apply as a reemployment applicant for positions with the same job classification in the LRC. For a period of two years, a reemployment applicant shall be hired before any applicant except another reemployment applicant with greater seniority who is on the same reemployment list. When a reemployment applicant is removed from a reemployment list, he or she shall be notified in writing. A reemployment applicant who accepts another LRC position, or who retires, shall cease to have eligibility rights as a reemployment applicant;

(8) The appointing authority may place employees subject to a reduction in force;

(9) Furloughs or reduction of hours during a pay period shall not result in the loss of eligibility for any benefit otherwise due the employee;

(10) The appointing authority shall have the authority to promulgate comprehensive administrative regulations governing this section; and

(11) A layoff, furlough, or reduction of hours implemented in accordance with this section shall not be considered a penalization of the employee.

**12. Employer Retirement Contributions:** Notwithstanding any provisions of KRS 61.565 or 61.702 to the contrary, the actuarially accrued liability employer contribution rate from July 1, 2021, through June 30, 2022, for nonhazardous employees in the Legislative Branch departments shall be paid in installments as determined by the Director of the Legislative Research Commission. In addition to these installments, the normal cost contribution of 10.10 percent shall be applied to creditable compensation. The installments and rates in this section apply to wages and salaries earned for work performed during the described period regardless of when the employee is paid for the time worked.

### PART III

#### BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The Legislative Branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with KRS Chapter 48, except that obligations essential to the constitutional duties of the Legislative Branch shall be exempt from any Budget Reduction Plan. The level of participation in a Budget Reduction Plan shall be at the discretion of the Director and shall not exceed the actual percentage of revenue shortfall.

**Signed by Governor March 25, 2021.**

### CHAPTER 119

#### ( HB 202 )

AN ACT relating to nursing.

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

➔Section 1. KRS 314.021 is amended to read as follows:

- (1) It is the declared policy of the General Assembly of Kentucky that the practice of nursing, *and the practices of licensed certified professional midwives and dialysis technicians*, should be regulated and controlled as provided herein and by regulations of the board in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.
- (2) All individuals licensed or privileged under provisions of this chapter *and administrative regulations of the board* shall be responsible and accountable for making decisions that are based upon the individuals' educational preparation and experience ~~in nursing~~ and shall practice ~~nursing~~ with reasonable skill and safety.

➔Section 2. KRS 314.042 is amended to read as follows:

- (1) An applicant for licensure to practice as an advanced practice registered nurse shall file with the board a written application for licensure and submit evidence, verified by oath, that the applicant:
  - (a) Has completed an education program that prepares the registered nurse for one (1) of four (4) APRN roles that has been accredited by a national nursing accrediting body recognized by the United States Department of Education;
  - (b) Is certified by a nationally established organization or agency recognized by the board to certify registered nurses for advanced practice registered nursing;
  - (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 in subsection (12) of this section.
- (2) The board may issue a license to practice advanced practice registered nursing to an applicant who holds a current active registered nurse license issued by the board or holds the privilege to practice as a registered nurse in this state and meets the qualifications of subsection (1) of this section. An advanced practice registered nurse shall be:
  - (a) Designated by the board as a certified registered nurse anesthetist, certified nurse midwife, certified nurse practitioner, or clinical nurse specialist; and
  - (b) Certified in at least one (1) population focus.
- (3) The applicant for licensure or renewal thereof to practice as an advanced practice registered nurse shall pay a fee to the board as set forth in regulation by the board.
- (4) An advanced practice registered nurse shall maintain a current active registered nurse license issued by the board or hold the privilege to practice as a registered nurse in this state and maintain current certification by the appropriate national organization or agency recognized by the board.
- (5) Any person who holds a license to practice as an advanced practice registered nurse in this state shall have the right to use the title "advanced practice registered nurse" and the abbreviation "APRN." 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 an advanced practice registered nurse. No person shall practice as an advanced practice registered nurse unless licensed under this section.
- (6) Any person heretofore licensed as an advanced practice registered nurse under the provisions of this chapter who has allowed the license to lapse may be reinstated on payment of the current fee and by meeting the provisions of this chapter and regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A.
- (7) The board may authorize a person to practice as an advanced practice registered nurse temporarily and pursuant to applicable regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A if the person is awaiting~~[ the results of the national certifying examination for the first time or is awaiting]~~ licensure by endorsement.~~[ A person awaiting the results of the national certifying examination shall use the title "APRN Applicant" or "APRN App."]~~
- (8)
  - (a) Except as authorized by ~~[KRS 314.196 and]~~ subsection (9) of this section, before an advanced practice registered nurse engages in the prescribing or dispensing of nonscheduled legend drugs as authorized by KRS 314.011(8), the advanced practice registered nurse shall enter into a written "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" (CAPA-NS) with a physician licensed in Kentucky that defines the scope of the prescriptive authority for nonscheduled legend drugs.
  - (b) The advanced practice registered nurse shall notify the Kentucky Board of Nursing of the existence of the CAPA-NS and the name of the collaborating physician and shall, upon request, furnish to the board or its staff a copy of the completed CAPA-NS. The Kentucky Board of Nursing shall notify the Kentucky Board of Medical Licensure that a CAPA-NS exists and furnish the collaborating physician's name.
  - (c) The CAPA-NS shall be in writing and signed by both the advanced practice registered nurse and the collaborating physician. A copy of the completed collaborative agreement shall be available at each site where the advanced practice registered nurse is providing patient care.

- (d) The CAPA-NS shall describe the arrangement for collaboration and communication between the advanced practice registered nurse and the collaborating physician regarding the prescribing of nonscheduled legend drugs by the advanced practice registered nurse.
  - (e) The advanced practice registered nurse who is prescribing nonscheduled legend drugs and the collaborating physician shall be qualified in the same or a similar specialty.
  - (f) The CAPA-NS is not intended to be a substitute for the exercise of professional judgment by the advanced practice registered nurse or by the collaborating physician.
  - (g) The CAPA-NS shall be reviewed and signed by both the advanced practice registered nurse and the collaborating physician and may be rescinded by either party upon written notice ~~via registered mail~~ to the other party **and** ~~the Kentucky Board of Nursing, and the Kentucky Board of Medical Licensure.~~
- (9) (a) Before an advanced practice registered nurse may discontinue or be exempt from a CAPA-NS required under subsection (8) of this section, the advanced practice registered nurse shall have completed four (4) years of prescribing as a nurse practitioner, clinical nurse specialist, nurse midwife, or as a nurse anesthetist. For nurse practitioners and clinical nurse specialists, the four (4) years of prescribing shall be in a population focus as defined in KRS 314.011.
- (b) After four (4) years of prescribing with a CAPA-NS in collaboration with a physician:
- 1. An advanced practice registered nurse whose license is in good standing at that time with the Kentucky Board of Nursing and who will be prescribing nonscheduled legend drugs without a CAPA-NS shall notify that board that the four (4) year requirement has been met and that he or she will be prescribing nonscheduled legend drugs without a CAPA-NS;
  - 2. The advanced practice registered nurse will no longer be required to maintain a CAPA-NS and shall not be compelled to maintain a CAPA-NS as a condition to prescribe after the four (4) years have expired, but an advanced practice registered nurse may choose to maintain a CAPA-NS indefinitely after the four (4) years have expired; and
  - 3. If the advanced practice registered nurse's license is not in good standing, the CAPA-NS requirement shall not be removed until the license is restored to good standing.
- (c) An advanced practice registered nurse wishing to practice in Kentucky through licensure by endorsement is exempt from the CAPA-NS requirement if the advanced practice registered nurse:
- 1. Has met the prescribing requirements in a state that grants independent prescribing to advanced practice registered nurses; and
  - 2. Has been prescribing for at least four (4) years.
- (d) An advanced practice registered nurse wishing to practice in Kentucky through licensure by endorsement who had a collaborative prescribing agreement with a physician in another state for at least four (4) years is exempt from the CAPA-NS requirement.
- ~~[(e) 1. An advanced practice registered nurse whose license is in good standing at that time with the Kentucky Board of Nursing and who will be prescribing nonscheduled legend drugs without a CAPA-NS shall notify that board that the four (4) year requirement has been met and that he or she will be prescribing nonscheduled legend drugs without a CAPA-NS.~~
- ~~2. An advanced practice registered nurse who has maintained a CAPA-NS for four (4) years or more will no longer be required to maintain a CAPA-NS and shall not be compelled to maintain a CAPA-NS as a condition to prescribe after the four (4) years have expired, but an advanced practice registered nurse may choose to maintain a CAPA-NS indefinitely after the four (4) years have expired.~~
- ~~3. An advanced practice registered nurse who has maintained a CAPA-NS for less than four (4) years shall be required to continue to maintain a CAPA-NS until the four (4) year period is completed, after which the CAPA-NS will no longer be required.]~~
- (10) (a) Before an advanced practice registered nurse engages in the prescribing of Schedules II through V controlled substances as authorized by KRS 314.011(8), the advanced practice registered nurse shall enter into a written "Collaborative Agreement for the Advanced Practice Registered Nurse's

Prescriptive Authority for Controlled Substances" (CAPA-CS) with a physician licensed in Kentucky that defines the scope of the prescriptive authority for controlled substances.

- (b) The advanced practice registered nurse shall notify the Kentucky Board of Nursing of the existence of the CAPA-CS and the name of the collaborating physician and shall, upon request, furnish to the board or its staff a copy of the completed CAPA-CS. The Kentucky Board of Nursing shall notify the Kentucky Board of Medical Licensure that a CAPA-CS exists and furnish the collaborating physician's name.
  - (c) The CAPA-CS shall be in writing and signed by both the advanced practice registered nurse and the collaborating physician. A copy of the completed collaborative agreement shall be available at each site where the advanced practice registered nurse is providing patient care.
  - (d) The CAPA-CS shall describe the arrangement for collaboration and communication between the advanced practice registered nurse and the collaborating physician regarding the prescribing of controlled substances by the advanced practice registered nurse.
  - (e) The advanced practice registered nurse who is prescribing controlled substances and the collaborating physician shall be qualified in the same or a similar specialty.
  - (f) The CAPA-CS is not intended to be a substitute for the exercise of professional judgment by the advanced practice registered nurse or by the collaborating physician.
  - (g) Before engaging in the prescribing of controlled substances, the advanced practice registered nurse shall:
    1. Have been licensed to practice as an advanced practice registered nurse for one (1) year with the Kentucky Board of Nursing; or
    2. Be nationally certified as an advanced practice registered nurse and be registered, certified, or licensed in good standing as an advanced practice registered nurse in another state for one (1) year prior to applying for licensure by endorsement in Kentucky.
  - (h) Prior to prescribing controlled substances, the advanced practice registered nurse shall obtain a Controlled Substance Registration Certificate through the U.S. Drug Enforcement Agency.
  - (i) The CAPA-CS shall be reviewed and signed by both the advanced practice registered nurse and the collaborating physician and may be rescinded by either party upon written notice to the other party and the Kentucky Board of Nursing.
  - (j) The CAPA-CS shall state the limits on controlled substances which may be prescribed by the advanced practice registered nurse, as agreed to by the advanced practice registered nurse and the collaborating physician. The limits so imposed may be more stringent than either the schedule limits on controlled substances established in KRS 314.011(8) or the limits imposed in regulations promulgated by the Kentucky Board of Nursing thereunder.
  - (k) ***Within thirty (30) days of obtaining a Controlled Substance Registration Certificate from the United States Drug Enforcement Administration, and prior to prescribing controlled substances, the advanced practice registered nurse shall register with the electronic system for monitoring controlled substances established by KRS 218A.202 and shall provide a copy of the registration certificate to the board.***
- (11) Nothing in this chapter shall be construed as requiring an advanced practice registered nurse designated by the board as a certified registered nurse anesthetist to enter into a collaborative agreement with a physician, pursuant to this chapter or any other provision of law, in order to deliver anesthesia care.
- (12) 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 advanced practice registered nursing in this Commonwealth. The board shall promulgate administrative regulations in accordance with KRS Chapter 13A, establishing the provisions to meet this requirement.

➔Section 3. KRS 314.107 is amended to read as follows:

Any person licensed by the board shall maintain a current mailing address ***and an electronic mailing address*** with the board and immediately notify the board in writing of a change of mailing address ***or electronic mailing address***. As a condition of holding a license from the board, a licensee is deemed to have consented to service of notices or



orders of the board at the mailing address on file with the board, and any notice or order of the board mailed or delivered to the mailing address on file with the board constitutes valid service of the notice or order.

➔Section 4. KRS 314.131 is amended to read as follows:

- (1) The board shall meet at least annually and shall elect from its members a president and any other officers that it deems necessary. Nine members of the board including one (1) officer shall constitute a quorum at any meeting. The board is authorized to promulgate administrative regulations not inconsistent with the law and subject to the provisions of KRS Chapter 13A, as may be necessary to enable it to carry into effect the provisions of this chapter. *The board may require, by administrative regulation, that licensees and applicants utilize a specific method of submission of documents or information that is required to be provided to the board under this chapter and the administrative regulations of the board, including electronic submission.*
- (2) The board shall approve programs of nursing and shall monitor compliance with standards for nurse competency under this chapter. It shall examine, license, and renew the license of duly-qualified applicants; determine notice of place and time of licensure examinations; approve providers of continuing education; administer continuing education requirements; issue advisory opinions or declaratory rulings dealing with the practice of nursing; register and designate those persons qualified to engage in advanced nursing practice; and it shall conduct administrative hearings in accordance with KRS Chapter 13B upon charges calling for discipline of a licensee and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor.
- (3) The board shall develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by a nurse licensed by the board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a nurse is falsely accused.
- (4) The board and investigators hired by the board shall receive training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders.
- (5) The board shall employ a qualified person to serve as executive director to the board, and shall fix the compensation and define the duties of the executive director. It may employ other persons as may be necessary to carry on the work of the board.
- (6) The executive director shall have at least the qualifications for board members, and a master's degree in nursing or equivalent and shall have had at least two (2) years of experience in nursing administration immediately preceding the time of appointment.
- (7) Each member of the board shall receive, in addition to traveling, hotel, and other necessary expenses, one hundred fifty dollars (\$150) for each day the member is actually engaged in the discharge of official duties.
- (8) The board may, in its discretion, purchase liability insurance for board and staff members against acts performed in good faith discharge of duties.
- (9) The board may, by administrative regulation issued pursuant to the provisions of KRS Chapter 13A, determine which disciplinary action records may be expunged. Any records which are expunged shall be exempt from disclosure under the Kentucky Open Records Law, KRS 61.870 to 61.884. The board shall not report its disciplinary actions for any purpose other than statistical.
- (10) The board may reimburse any person appointed by direction of the board to any committee, subcommittee, or task force created by the board for his or her travel and subsistence expenses as established through the promulgation of administrative regulations in accordance with KRS Chapter 13A.

➔Section 5. The following KRS section is repealed:

314.196 Collaborative Prescribing Agreement Joint Advisory Committee -- Members -- Purposes -- Assistance provided -- Complaints -- Jurisdiction --Meetings.

**Signed by Governor March 25, 2021.**

**CHAPTER 120****( HB 207 )**

AN ACT relating to energy source availability.

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) *Except as provided in subsection (2) of this section, no law, ordinance, policy, resolution, code, or other form of executive, administrative, or legislative action shall be enacted, adopted, or enforced that has the purpose or effect of prohibiting, discriminating against, restricting, limiting, or impairing, based upon the energy source, a consumer's ability to use:*
  - (a) *The utility services that are described in KRS 278.010(3)(a), (b), or (c) and that are provided by a utility that is regulated by the Public Service Commission under KRS Chapter 278 or is otherwise incorporated under KRS Chapter 279; or*
  - (b) *Liquefied petroleum gas as defined in KRS 234.100.*
- (2) *Nothing in this section shall be interpreted or construed to prohibit or alter the powers and authority of the Public Service Commission under KRS Chapter 278, or the ability of a local government to act in any manner under the laws of the Commonwealth in all matters other than those enumerated in subsection (1) of this section, including but not limited to the power to act:*
  - (a) *Pursuant to authority granted under KRS Chapter 100;*
  - (b) *Pursuant to authority granted under Sections 163 and 164 of the Kentucky Constitution and any law enacted pursuant to those sections; and*
  - (c) *Through the local government or its utilities to provide any lawful utility service to its customers pursuant to state law.*
- (3) *As used in this section, "local government" means any city, county, urban-county government, consolidated local government, unified local government, or charter county government.*

**Signed by Governor March 25, 2021.**

**CHAPTER 121****( HB 212 )**

AN ACT relating to child and maternal fatalities in the Commonwealth.

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

➔Section 1. KRS 211.684 is amended to read as follows:

- (1) For the purposes of KRS Chapter 211:
  - (a) "Child fatality" means the death of a person under the age of eighteen (18) years;
  - (b) "Local child and maternal fatality response team" and "local team" means a community team composed of representatives of agencies, offices, and institutions that investigate child and maternal deaths, including but not limited to, coroners, social service workers, medical professionals, law enforcement officials, and Commonwealth's and county attorneys; and
  - (c) "Maternal fatality" means the death of a woman within one (1) year of giving birth.
- (2) The Department for Public Health may establish a state child and maternal fatality review team. The state team may include representatives of public health, social services, law enforcement, prosecution, coroners, health-care providers, and other agencies or professions deemed appropriate by the commissioner of the department.
- (3) If a state team is created, the duties of the state team may include the following:

- (a) Develop and distribute a model protocol for local child and maternal fatality response teams for the investigation of child and maternal fatalities;
  - (b) Facilitate the development of local child and maternal fatality response teams which may include, but is not limited to, providing joint training opportunities and, upon request, providing technical assistance;
  - (c) Review and approve local protocols prepared and submitted by local teams;
  - (d) Receive data and information on child and maternal fatalities and analyze the information to identify trends, patterns, and risk factors;
  - (e) Evaluate the effectiveness of prevention and intervention strategies adopted; and
  - (f) Recommend changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate strategies for prevention and reduce the number of child and maternal fatalities.
- (4) The department shall prepare an annual report to be submitted no later than November 1 of each year to the Governor, the Child Welfare Oversight and Advisory Committee established in KRS 6.943, *the Interim Joint Committee on Health, Welfare, and Family Services*, the Chief Justice of the Kentucky Supreme Court, and to be made available to the citizens of the Commonwealth. The report shall include a statistical analysis, *that include the demographics of race, income, and geography*, of the incidence and causes of child and maternal fatalities in the Commonwealth during the past fiscal year and recommendations for action. The report shall not include any information which would identify specific child and maternal fatality cases.

**Signed by Governor March 25, 2021.**

## CHAPTER 122

### ( HB 230 )

AN ACT relating to the taxation of the commercial mining of cryptocurrency.

WHEREAS, the increased use of blockchain technology in a variety of applications and processes has led to significant innovation, developments, and modernization in multiple industries throughout the world; and

WHEREAS, access to cost-effective energy is critical to the development and growth of blockchain technology, particularly in the commercial mining of cryptocurrency which requires a substantial and constant supply of energy; and

WHEREAS, the General Assembly has actively encouraged the use and growth of blockchain technology in the Commonwealth as evidenced by 2019 House Resolution 171 authorizing a comprehensive study on the growing use of blockchain technology and its economic development potential for a variety of businesses and industries, as well as the passage of 2020 Senate Bill 55 which enacted KRS 42.747 and created a Blockchain Technology Working Group to study the use of blockchain in various sectors; and

WHEREAS, the Commonwealth has an opportunity to become a national leader in the emerging industry of the commercial mining of cryptocurrency given its abundant supply of electricity that can be provided at lower rates than most states, and its established infrastructure to provide such energy through the Tennessee Valley Authority and other electricity providers; and

WHEREAS, it is necessary to clarify the General Assembly's original intention that Kentucky's tax code must and does recognize that the continuing development of new and advanced manufacturing and industrial processing technologies has led to new industrial processes, such as blockchain used for commercial mining of cryptocurrency, which should and must be taxed in a manner similar to historical forms of manufacturing or industrial processing, in order to continue to encourage the location and expansion of such operations in the Commonwealth, rather than in other states likewise competing for such businesses;

NOW, THEREFORE,

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO READ AS FOLLOWS:

(I) *As used in this section:*

- (a) *"Blockchain technology" means shared or distributed data structures or digital ledgers governed by consensus protocols and maintained by peer-to-peer networks that:*
    - 1. *Store digital transactions; and*
    - 2. *Verify and secure transactions cryptographically;*
  - (b) *"Colocation facility" means a facility which houses tangible personal property that functions as a computing system node or nodes, or hosts such node or nodes, in the commercial mining of cryptocurrency and which the computing system node or nodes of the facility consume no less than two hundred thousand (200,000) kilowatt hours of electricity per month;*
  - (c) *"Commercial mining of cryptocurrency" means the process through which blockchain technology is used to mine cryptocurrency at a colocation facility;*
  - (d) *"Consensus protocol" means a set of rules and procedures that control how and when blockchain transactions are verified, validated, recorded, and recognized;*
  - (e) *"Cryptocurrency" means a type of virtual currency that utilizes blockchain technology and that:*
    - 1. *Can be digitally traded between users; or*
    - 2. *Can be converted or exchanged for legal tender;*
  - (f) *"Mine" means the process through which blockchain transactions are verified and accepted by adding the transactions to a blockchain ledger, which involves solving complex mathematical cryptographic problems associated with a block containing transaction data; and*
  - (g) *"Peer-to-peer networks" has the same meaning as in KRS 42.747.*
- (2) (a) *The tax imposed by KRS 139.200 or 139.310 shall not apply to the sale or purchase of electricity that is used or consumed in the commercial mining of cryptocurrency.*
  - (b) *Applications for the exemption shall be made on or after July 1, 2021, and on or before June 30, 2025.*
  - (b) *The exemption shall apply to electricity sold or purchased on or after the effective date of application and before July 1, 2030.*
- (3) (a) *To qualify for the exemption provided in subsection (2) of this section, each person seeking the exemption shall file an application for each location when the commercial mining of cryptocurrency takes place in this state.*
  - (b) *The application shall be in the form prescribed by the department and shall include:*
    - 1. *The name and mailing address of the person seeking the exemption;*
    - 2. *A description of the person's business activities;*
    - 3. *The business location where the operations will be located, including the street address, city, and county; and*
    - 4. *Any other information the department may require.*
- (4) *If the application is approved by the department:*
    - (a) *The department shall issue a certificate which shall be effective as of the date of the application. The effective date of the application shall be:*
      - 1. *The postmark date, if a paper application is filed;*
      - 2. *The date received at the department's office, if an application is delivered in person; or*
      - 3. *The electronic time stamp, if the application is filed electronically; and*
    - (b) *The approved applicant shall report the amounts of the tax exemption claimed in subsection (2) of this section from the date of application to September 1, 2021, on or before November 1, 2021, and for each fiscal year thereafter on or before each November 1, as long as the exemption applies.*

(5) ***On or before January 1, 2022, and on or before each January 1 thereafter as long as the exemption applies, the department shall report to the Interim Joint Committee on Appropriations and Revenue:***

- (a) ***The total amount of tax exemption that has been claimed for the immediately preceding fiscal year; and***
- (b) ***The total cumulative amount of the exemption claimed.***

➔Section 2. KRS 160.613 is amended to read as follows:

(1) There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the district, of utility services, except that "gross receipts" shall not include ***amounts received for furnishing***:

- (a) ~~[Amounts received for furnishing]~~Energy or energy-producing fuels to a person engaged in manufacturing or industrial processing ***as provided in subsection (3) or (4) of this section***, if that person provides the utility services provider with a copy of its utility gross receipts license tax energy direct pay authorization, as provided in subsection (3) of this section, and the utility service provider retains a copy of the authorization in its records; ~~[or]~~
- (b) ~~[Amounts received for furnishing]~~Utility services which are to be resold; ***or***
- (c) ***Notwithstanding subsection (2) of this section, electricity used or consumed at a colocation facility in commercial mining of cryptocurrency:***
  - 1. ***If the facility operator provides the utility services provider with a copy of its utility gross receipts license tax exemption certificate, as authorized by subsection (6) of this section, and the utility service provider retains a copy of the exemption certificate in its records; or***
  - 2. ***If the utility service provider is a governmental agency, the facility operator shall retain the exemption certificate in its records.***

(2) If any user of utility services purchases the utility services directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax, then the user of the utility services, if the tax has been levied in the user's school district, shall be liable for the tax and shall register with and pay directly to the department, in accordance with the provisions of KRS 160.615, a utility gross receipts license tax for schools computed by multiplying the gross cost of all utility services received by the tax rate levied under the provisions of this section.

(3) A person engaged in manufacturing or industrial processing whose cost of energy or energy-producing fuels used in the course of manufacturing or industrial processing exceeds an amount equal to three percent (3%) of the cost of production may apply to the department for a utility gross receipts license tax energy direct pay authorization. Cost of production shall be computed on the basis of a plant facility, which shall include all operations within the continuous, unbroken, integrated manufacturing or processing production process that ends with a product packaged and ready for sale. If the person receives confirmation of eligibility from the department, the person shall:

- (a) Provide the utility services provider with a copy of the utility gross receipts license tax energy direct pay authorization issued by the department for all purchases of energy and energy-producing fuels; and
- (b) Report and pay directly to the department, in accordance with the provisions of KRS 160.615, the utility gross receipts license tax due.

(4) A person who performs a manufacturing or industrial processing activity for a fee and does not take ownership of the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity is a toller. For periods on or after July 1, 2018, the costs of the tangible personal property shall be excluded from the toller's cost of production at a plant facility with tolling operations in place as of July 1, 2018.

(5) For plant facilities that begin tolling operations after July 1, 2018, the costs of tangible personal property shall be excluded from the toller's cost of production if the toller:

- (a) Maintains a binding contract for periods after July 1, 2018, that governs the terms, conditions, and responsibilities with a separate legal entity, which holds title to the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity;

- (b) Maintains accounting records that show the expenses it incurs to fulfill the binding contract that include but are not limited to energy or energy-producing fuels, materials, labor, procurement, depreciation, maintenance, taxes, administration, and office expenses;
  - (c) Maintains separate payroll, bank accounts, tax returns, and other records that demonstrate its independent operations in the performance of its tolling responsibilities;
  - (d) Demonstrates one (1) or more substantial business purposes for the tolling operations germane to the overall manufacturing, industrial processing activities, or corporate structure at the plant facility. A business purpose is a purpose other than the reduction of utility gross receipts license tax liability for the purchases of energy and energy-producing fuels; and
  - (e) Provides information to the department upon request that documents fulfillment of the requirements in paragraphs (a) to (d) of this subsection and gives an overview of its tolling operations with an explanation of how the tolling operations relate and connect with all other manufacturing or industrial processing activities occurring at the plant facility.
- (6) (a) ***The operator of a colocation facility primarily engaged in the commercial mining of cryptocurrency may apply to the department for a utility gross receipts license tax exemption certificate. If the operator receives confirmation of eligibility from the department, it:***
- 1. ***Shall provide the utility services provider with a copy of the utility gross receipts license tax exemption certificate issued by the department for all purchases of electricity; or***
  - 2. ***Keep the certificate on file if the utility service provider is a governmental agency.***
- (b) ***The utility gross receipts license tax exemption shall be effective from the date of confirmation of eligibility until June 30, 2030.***

➔Section 3. KRS 160.6131 is amended to read as follows:

As used in KRS 160.613 to 160.617:

- (1) "Department" means the Department of Revenue;
- (2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.
  - (a) "Communications service" includes but is not limited to:
    - 1. Local and long-distance telephone services;
    - 2. Telegraph and teletypewriter services;
    - 3. Postpaid calling services;
    - 4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
    - 5. Channel services involving a path of communications between two (2) or more points;
    - 6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
    - 7. Caller ID services, ring tones, voice mail, and other electronic messaging services;
    - 8. Mobile wireless telecommunications service and fixed wireless service as defined in KRS 139.195; and
    - 9. Voice over Internet Protocol (VOIP).
  - (b) "Communications service" does not include any of the following if the charges are separately itemized on the bill provided to the purchaser:
    - 1. Information services;
    - 2. Internet access as defined in 47 U.S.C. sec. 151;

3. Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;
  4. The sale of directory and other advertising and listing services;
  5. Billing and collection services provided to another communications service provider;
  6. Cable service, satellite broadcast, satellite master antenna television, wireless cable service, including direct-to-home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996, and Internet protocol television provided through wireline facilities without regard to delivery technology;
  7. The sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale, including:
    - a. Carrier access charges, excluding user access fees;
    - b. Right of access charges;
    - c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;
    - d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and
    - e. Charges for use of facilities for providing or receiving communications service;
  8. The sale of communications services provided to the public by means of a pay phone;
  9. Prepaid calling services and prepaid wireless calling service;
  10. Interstate telephone service, if the interstate charge is separately itemized for each call; and
  11. If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records;
- (3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased;
  - (4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services;
  - (5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas;
  - (6) "Cable service" has the same meaning as in KRS 136.602;
  - (7) "Satellite broadcast and wireless cable service" has the same meaning as in KRS 136.602;
  - (8) "Ring tones" has the same meaning as in KRS 136.602;
  - (9) "Multichannel video programming service" has the same meaning as in KRS 136.602;
  - (10) "Industrial processing" has the same meaning as in KRS 139.010;
  - (11) "Manufacturing" has the same meaning as in KRS 139.010; ~~and~~
  - (12) "Plant facility" has the same meaning as in KRS 139.010;
  - (13) ***"Commercial mining of cryptocurrency" has the same meaning as in Section 1 of this Act; and***
  - (14) ***"Colocation facility" has the same meaning as in Section 1 of this Act.***

➔Section 4. KRS 131.190 is amended to read as follows:

- (1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any

information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

- (2) The prohibition established by subsection (1) of this section shall not extend to:
- (a) Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;
  - (b) Any matter properly entered upon any assessment record, or in any way made a matter of public record;
  - (c) Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
  - (d) Testimony provided by the commissioner or any employee of the department in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;
  - (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820, or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820, that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;
  - (f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10);
  - (g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;
  - (h) Statistics of gasoline and special fuels gallonage reported to the department under KRS 138.210 to 138.448;
  - (i) Providing any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on a confidential basis;
  - (j) Providing documents, data, or other information to a third party pursuant to an order issued by a court of competent jurisdiction; or
  - (k) Providing information to the Legislative Research Commission under:
    1. ***Section 1 of this Act for the purposes of the sales and use tax exemption on the commercial mining of cryptocurrency;***
    - 2.~~1.~~ KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
    - 3.~~2.~~ KRS 141.436 for purposes of the energy efficiency products credits;
    - 4.~~3.~~ KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;
    - 5.~~4.~~ KRS 148.544 for purposes of the film industry incentives;
    - 6.~~5.~~ KRS 154.26-095 for purposes of the Kentucky industrial revitalization tax credits and the job assessment fees;
    - 7.~~6.~~ KRS 141.068 for purposes of the Kentucky investment fund;
    - 8.~~7.~~ KRS 141.396 for purposes of the angel investor tax credit;
    - 9.~~8.~~ KRS 141.389 for purposes of the distilled spirits credit;
    - 10.~~9.~~ KRS 141.408 for purposes of the inventory credit;



- ~~11.110~~ KRS 141.390 for purposes of the recycling and composting credit;
- ~~12.111~~ KRS 141.3841 for purposes of the selling farmer tax credit; and
- ~~13.112~~ KRS 141.4231 for purposes of the renewable chemical production tax credit.

- (3) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
- (4) Access to and inspection of information received from the Internal Revenue Service is for department use only, and is restricted to tax administration purposes. Information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department, or any other person.
- (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Department of Revenue under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Energy and Environment Cabinet, Department for Natural Resources.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

➔Section 5. This Act takes effect July 1, 2021.

**Signed by Governor March 25, 2021.**

## CHAPTER 123

### ( HB 307 )

AN ACT relating to cannabinoid products.

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

➔Section 1. 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 classified as Schedule III controlled substances pursuant to KRS 218A.020 but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Carfentanil" means any substance containing any quantity of carfentanil, or any of its salts, isomers, or salts of isomers;
- (5) "Certified community based palliative care program" means a palliative care program which has received certification from the Joint Commission;

- (6) "Child" means any person under the age of majority as specified in KRS 2.015;
- (7) "Cocaine" means a substance containing any quantity of cocaine, its salts, optical and geometric isomers, and salts of isomers;
- (8) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (9) (a) "Controlled substance analogue," except as provided in paragraph (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;
- (10) "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;
- (11) "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;
- (12) "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;
- (13) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (14) "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;
- (15) "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;
- (16) "Fentanyl" means a substance containing any quantity of fentanyl, or any of its salts, isomers, or salts of isomers;

- (17) "Fentanyl derivative" means a substance containing any quantity of any chemical compound, except compounds specifically scheduled as controlled substances by statute or by administrative regulation pursuant to this chapter, which is structurally derived from 1-ethyl-4-(N-phenylamido) piperidine:
- (a) By substitution:
    1. At the 2-position of the 1-ethyl group with a phenyl, furan, thiophene, or ethyloxotetrazole ring system; and
    2. Of the terminal amido hydrogen atom with an alkyl, alkoxy, cycloalkyl, or furanyl group; and
  - (b) Which may be further modified in one (1) or more of the following ways:
    1. By substitution on the N-phenyl ring to any extent with alkyl, alkoxy, haloalkyl, hydroxyl, or halide substituents;
    2. By substitution on the piperidine ring to any extent with alkyl, allyl, alkoxy, hydroxy, or halide substituents at the 2-, 3-, 5-, and/or 6- positions;
    3. By substitution on the piperidine ring to any extent with a phenyl, alkoxy, or carboxylate ester substituent at the 4- position; or
    4. By substitution on the 1-ethyl group to any extent with alkyl, alkoxy, or hydroxy substituents;
- (18) "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;
- (19) "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;
- (20) "Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;
- (21) "Hydrocodone combination product" means a drug with:
- (a) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium; or
  - (b) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (22) "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;
- (23) "Industrial hemp" has the same meaning as in KRS 260.850;
- (24) "Industrial hemp products" has the same meaning as in KRS 260.850;
- (25) "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;
- (26) "Isomer" means the optical isomer, except the Cabinet for Health and Family Services may include the optical, positional, or geometric isomer to classify any substance pursuant to KRS 218A.020;

- (27) "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;
- (28) "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. The term "marijuana" does not include:
- (a) Industrial hemp that is in the possession, custody, or control of a person who holds a license issued by the Department of Agriculture permitting that person to cultivate, handle, or process industrial hemp;
  - (b) Industrial hemp products that do not include any living plants, viable seeds, leaf materials, or floral materials;
  - (c) The substance cannabidiol, when transferred, dispensed, or administered pursuant to the written order of a physician practicing at a hospital or associated clinic affiliated with a Kentucky public university having a college or school of medicine;
  - (d) For persons participating in a clinical trial or in an expanded access program, a drug or substance approved for the use of those participants by the United States Food and Drug Administration;
  - (e) A cannabidiol product derived from industrial hemp, as defined in KRS 260.850; ~~or~~
  - (f) ***For the purpose of conducting scientific research, a cannabinoid product derived from industrial hemp, as defined in KRS 260.850; or***
  - (g) A ~~cannabidiol~~ ***cannabinoid*** product approved as a prescription medication by the United States Food and Drug Administration;
- (29) "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;
- (30) "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;
- (31) "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;
- (32) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (33) "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;
- (34) "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.020, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (35) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (36) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (37) "Physical injury" has the same meaning it has in KRS 500.080;
- (38) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (39) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (40) "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, physician assistant as authorized under KRS 311.858, 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;
- (41) "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;
- (42) "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;
- (43) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (44) "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;
- (45) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (46) "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;
- (47) "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*;

- (48) "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;
- (49) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (50) "Serious physical injury" has the same meaning it has in KRS 500.080;
- (51) "Synthetic cannabinoids or piperazines" means any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law, that contains Benzylpiperazine (BZP); Trifluoromethylphenylpiperazine (TFMPP); 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210); 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol (HU-211); or any compound in the following structural classes:
- Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM-2201;
  - Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to JWH-167, JWH-250, JWH-251, and RCS-8;
  - Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;
  - Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include but are not limited to CP 47,497 and its C8 homologue (cannabicyclohexanol);
  - Naphthylmethylindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-175, JWH-184, and JWH-185;
  - Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-030, JWH-145, JWH-146, JWH-307, and JWH-368;

- (g) Naphthylmethylenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-176;
  - (h) Tetramethylcyclopropanoylindoles: Any compound containing a 3-(1-tetramethylcyclopropoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not further substituted in the tetramethylcyclopropyl ring to any extent. Examples of this structural class include but are not limited to UR-144 and XLR-11;
  - (i) Adamantoylindoles: Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring system to any extent. Examples of this structural class include but are not limited to AB-001 and AM-1248; or
  - (j) Any other synthetic cannabinoid or piperazine which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law;
- (52) "Synthetic cathinones" means any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law (not including bupropion or compounds listed under a different schedule) structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in one (1) or more of the following ways:
- (a) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents. Examples of this class include but are not limited to 3,4-Methylenedioxycathinone (bk-MDA);
  - (b) By substitution at the 3-position with an acyclic alkyl substituent. Examples of this class include but are not limited to 2-methylamino-1-phenylbutan-1-one (buphedrone);
  - (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure. Examples of this class include but are not limited to Dimethylcathinone, Ethcathinone, and  $\alpha$ -Pyrrolidinopropiophenone ( $\alpha$ -PPP); or
  - (d) Any other synthetic cathinone which is not approved by the United States Food and Drug Administration or, if approved, is not dispensed or possessed in accordance with state or federal law;
- (53) "Synthetic drugs" means any synthetic cannabinoids or piperazines or any synthetic cathinones;
- (54) "Telehealth" has the same meaning it has in KRS 311.550;
- (55) "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:
- (a) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
  - (b) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
  - (c) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (56) "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;
- (57) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- (58) "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.

Signed by Governor March 25, 2021.

## CHAPTER 124

### ( HB 349 )

AN ACT relating to legislative committees.

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

➔Section 1. KRS 11.202 is amended to read as follows:

- (1) The duties of the Commission on Small Business Advocacy shall include ~~but~~ 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, **Small Business, and Information Technology** 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 KRS 14.250 may be improved to make the business portal more user friendly for businesses.

➔Section 2. KRS 304.13-340 is amended to read as follows:

The Workers' Compensation Insurance Plan (KWCIP), a workers' compensation residual market mechanism, in existence by virtue of this subtitle, shall not write new policies or renew policies after September 1, 1995. The board of directors of the Employers' Mutual Insurance Authority, the commissioner of the Department of Workers' Claims, and the commissioner of the Department of Insurance shall develop a plan, which shall be reviewed by the **Economic Development and Workforce Investment** ~~Labor and Industry~~ Committee and the Banking and Insurance Committee



of the General Assembly, for the orderly and equitable phase-out of the KWCIP. All claims on workers' compensation assigned risk policies in effect or issued prior to September 1, 1995, shall be paid by the KWCIP. The plan developed shall include procedures for application and transfer of the insureds in the KWCIP to the authority, who shall be subject to the qualifications and conditions of coverage required in KRS 342.801 to 342.843 and this section. The authority shall not be liable for any liabilities or deficits incurred on assigned risk policies in effect or issued prior to September 1, 1995.

→Section 3. KRS 304.50-160 is amended to read as follows:

Annually on or before the fifteenth day of December, the commissioner shall make a report to the Governor and the Interim Joint Committees of Banking and Insurance and *Economic Development and Workforce Investment* [~~Labor and Industry~~] on the status of workers' compensation self-insured groups.

→Section 4. KRS 341.240 is amended to read as follows:

- (1) There is hereby created in the State Treasury a special fund to be known as the unemployment compensation administration fund. All money deposited or paid into this fund is hereby appropriated and shall be continuously available to the secretary for expenditure consistent with this chapter, and shall not lapse at any time. A general statement that all continuing appropriations are repealed shall not be construed as repealing this section.
- (2) All money in the unemployment compensation administration fund shall be expended solely to defray the cost of the administration of this chapter.
- (3)
  - (a) The unemployment compensation administration fund shall consist of all money appropriated by this state and all money received from the United States, or any agency thereof or from any other source, for the administration of this chapter.
  - (b) The secretary is authorized to obtain funding through any commercially reasonable means for the benefit of the unemployment compensation administration fund, including reasonable expenses, so long as the debt, note, security, or obligations are payable solely from the surcharge proceeds, revenues, or funds and accounts specifically authorized for such purpose under this chapter. The State Treasurer shall maintain a separate record of all money received for the unemployment compensation administration fund under this paragraph. The secretary is authorized to pledge the surcharge proceeds under this chapter as security for financing obtained pursuant to this section.
  - (c) Any obligation incurred under this subsection shall not constitute a debt, liability, obligation, or pledge of the credit or taxing power of this Commonwealth. Any debt or obligation incurred as a result of this subsection shall be payable solely from the surcharge proceeds, revenues, or funds and accounts pledged or available for such purpose under this chapter.
  - (d) On or before July 1, 2012, and quarterly thereafter, the secretary shall report to the Legislative Research Commission, for referral to the Appropriations and Revenue Committee and the *Economic Development and Workforce Investment* [~~Labor and Industry~~] Committee, on the financing authorized in this section for the payment of interest on advances under Title XII of the Social Security Act, the status of the trust fund, and efforts to obtain a cap on the federal unemployment tax credit reduction.
- (4) In order to establish and maintain free employment offices, the secretary may enter into agreements with the Railroad Retirement Board or any other agency charged with the administration of an unemployment insurance law, with any cities or other political subdivisions of this state or with any private nonprofit organization. As a party to any such agreement, the secretary may accept money, service or quarters as a contribution to the unemployment compensation administration fund.

→Section 5. KRS 342.035 is amended to read as follows:

- (1) Periodically, the commissioner shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what fees are reasonable, the commissioner may also consider the increased security of payment afforded by this chapter. On or before November 1, 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in administrative regulations promulgated pursuant to this section shall be reviewed and updated, if appropriate. Within ten (10) days of April 4, 1994, the commissioner shall execute a contract with an appropriately qualified consultant pursuant to which each of the following elements within the workers' compensation system are evaluated; the methods of health care delivery; quality

assurance and utilization mechanisms; type, frequency, and intensity of services; risk management programs; and the schedule of fees contained in administrative regulation. The consultant shall present recommendations based on its review to the commissioner not later than sixty (60) days following execution of the contract. The commissioner shall consider these recommendations and, not later than thirty (30) days after their receipt, promulgate a regulation which shall be effective on an emergency basis, to effect a twenty-five percent (25%) reduction in the total medical costs within the program.

- (2) No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in KRS 342.990 for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.
- (3) Where these requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his or her death is caused, or if and insofar as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.
- (4) The commissioner shall, by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer. The workers' compensation medical fee schedule for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the commissioner, whichever occurs first, it being determined that this administrative regulation is within the statutory grant of authority, meets legislative intent, and is not in conflict with the provisions of this chapter. The medical fee schedule and amendments shall be fair, current, and reasonable and otherwise comply with this section.
- (5)
  - (a) To ensure compliance with subsections (1) and (4) of this section, the commissioner shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, self-insured group, and self-insured employer to certify to the commissioner the program or plan it has adopted to ensure compliance.
  - (b) In addition, the commissioner shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired by the commissioner, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this section are being met. The independent person, firm, company, or other entity selected by the commissioner to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the commissioner, and shall use the information for no other purpose than the audit required by this paragraph.
  - (c) The commissioner shall promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to this chapter. Utilization review required under administrative regulations may be waived if the insurance carrier, self-insured group, or self-insured employer agrees that the recommended medical treatment is medically necessary and appropriate or if the injured employee elects not to proceed with the recommended medical treatment.
  - (d) Periodically, or upon request, the commissioner shall report to the Interim Joint Committee on ***Economic Development and Workforce Investment*** ~~Labor and Industry~~ of the Legislative Research Commission or to the corresponding standing committees of the General Assembly, as appropriate, the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.
  - (e) The cost of implementing and carrying out the requirements of this subsection shall be paid from funds collected pursuant to KRS 342.122.

- (6) The commissioner may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
- (7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents (\$0.50) per page. However, a medical provider shall not charge a fee when the initial copy of medical records is provided to the injured worker or his or her attorney in response to a written request pursuant to KRS 422.317. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.
- (8)
  - (a) The commissioner shall develop or adopt practice parameters or evidence-based treatment guidelines for medical treatment for use by medical providers under this chapter, including but not limited to chronic pain management treatment and opioid use, and promulgate administrative regulations in order to implement the developed or adopted practice parameters or evidenced-based treatment guidelines on or before December 31, 2019. The commissioner may adopt any parameters for medical treatment as developed and updated by the federal Agency for Health Care Policy Research, or the commissioner may adopt other parameters for medical treatment which are developed by qualified bodies, as determined by the commissioner, with periodic updating based on data collected during the application of the parameters.
  - (b) The commissioner shall develop or adopt a pharmaceutical formulary for medications prescribed for the cure of and relief from the effects of a work injury or occupational disease and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary on or before December 31, 2018.
  - (c) Any provider of medical services under this chapter who has followed the practice parameters or treatment guidelines or formularies developed or adopted and implemented pursuant to this subsection shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered.
- (9)
  - (a) Notwithstanding any other provision of law to the contrary, the medical fee schedule adopted under subsection (4) of this section shall require all worker's compensation insurance carriers, worker's compensation self-insured groups, and worker's compensation self-insured employers to provide coverage and payment for surgical first assisting services to registered nurse first assistants as defined in KRS 216B.015.
  - (b) The provisions of this subsection apply only if reimbursement for an assisting physician would be covered and a registered nurse first assistant who performed the services is used as a substitute for the assisting physician. The reimbursement shall be made directly to the registered nurse first assistant if the claim is submitted by a registered nurse first assistant who is not an employee of the hospital or the surgeon performing the services.

➔Section 6. KRS 342.1223 is amended to read as follows:

- (1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.
- (2) The commission shall:
  - (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;
  - (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in equity securities;
  - (c) Report to the General Assembly at each even-numbered-year regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;

- (d) Recommend to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;
  - (e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, a proposed budget for the biennium beginning July 1 following the even-numbered-year regular session of the General Assembly;
  - (f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;
  - (g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Department of Revenue, of all entities subject to the assessments imposed in this chapter; and
  - (h) Report monthly to the Committees on Appropriations and Revenue and on ***Economic Development and Workforce Investment***~~[Labor and Industry]~~ its monthly expenditures of restricted agency funds and the nature of the expenditures.
- (3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:
- (a) To sue and be sued, complain, or defend, in its name;
  - (b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly. Notwithstanding any provision of KRS Chapter 18A to the contrary, officers and employees of the funding commission may be exempted from the classified service;
  - (c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;
  - (d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;
  - (e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and
  - (f) To make and promulgate administrative regulations.
- (4) The Kentucky Workers' Compensation Funding Commission may utilize the investment expertise and advice of the Office of Financial Management within the Finance and Administration Cabinet. The Kentucky Workers' Compensation Funding Commission may procure one (1) or more consulting firms and enter into a personal service contract with such consulting firms to provide investment advisory, investment counseling, or investment management services. The Office of Financial Management shall participate in the selection of any firms for investment services provided, however, the Kentucky Workers' Compensation Funding Commission shall have the right to make the final decision on the selection of any firms. Notwithstanding any provisions of this section to the contrary, all contracts for investment advisory, investment counseling, or investment management services or for the management of assets shall be subject to KRS Chapter 45A. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.
- (5) The commission shall be attached to the Labor Cabinet for administrative purposes only.
- ➔Section 7. KRS 342.230 is amended to read as follows:
- (1) The commissioner with the assistance of the board shall train and instruct the administrative law judges on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board and the administrative law judges; annually report the activities of the board and the administrative law judges to the Governor; and devote his or her full time to the duties of his or her office. The commissioner shall be paid a salary not less than the salary of a member of the board.
  - (2) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than nineteen (19) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, and extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge. Each administrative law judge shall be exempt from the classified service, and his or her support staff

may be exempt from the classified service. Each administrative law judge may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate ***Economic Development and Workforce Investment***~~Labor and Industry~~ Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.

- (3) To ensure that the administrative law judges perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.
- (4) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge. A member of the board or an administrative law judge may be removed for good cause, including violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.
- (5) Any vacancy in the term of an administrative law judge, which occurs prior to the expiration of the term, shall be filled if necessary by appointment of the Governor in accordance with subsection (2) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.
- (6)
  - (a) On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
  - (b) On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
- (7) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those of other administrative law judges. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, and providing educational opportunities for the administrative law judges. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional three thousand dollars (\$3,000) per year. At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

➔Section 8. KRS 342.342 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 342.340, KRS 342.350, or any administrative regulations promulgated pursuant to those provisions, the commissioner shall annually review the adequacy of the financial or other security requirements contained in administrative regulations, promulgated pursuant to the individual self-insurance provisions in this chapter. The commissioner shall report the results of the review to the ***Economic Development and Workforce Investment***~~Labor and Industry~~ Committee of the General Assembly and any recommendations for proposed changes to insure the financial soundness of the individual self-insurers authorized pursuant to this chapter. In addition, the commissioner shall report not less often than annually a summary report on the financial soundness of the individual self-insurers.
- (2) The ***Economic Development and Workforce Investment***~~Labor and Industry~~ Committee of the General Assembly shall annually review the administrative regulations promulgated pursuant to the individual provisions under this chapter.
- (3) On July 1, 1994, the Division of Security and Compliance of the Department of Workers' Claims in the Labor Cabinet shall be expanded by five (5) employees. These additional employees shall be employed for the

purpose of conducting financial audits, examinations, and reviews and other activities necessary to ensure and monitor the financial soundness of the individual self-insured employers authorized pursuant to KRS 342.340.

➔Section 9. KRS 342.765 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS Chapter 342 to the contrary, the office of the Attorney General shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund. Funds to reimburse the Attorney General's office for expenses incurred in litigation and administration in defense of the uninsured employers' fund shall be transferred upon request of the Attorney General's office and approval by the secretary of the Labor Cabinet.
- (2) The office of the Attorney General shall report monthly to the Interim Joint Committee on Appropriations and Revenue, the Interim Joint Committee on *Economic Development and Workforce Investment* ~~Labor and Industry~~, and the commissioner the amount of the agency fund expenditures in each month for the uninsured employers' fund and the nature of these expenditures. In addition, the Office of the Attorney General shall report quarterly to the commissioner on the amount of funds recouped from uninsured employers.

➔Section 10. KRS 342.817 is amended to read as follows:

- (1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks for the authority.
- (2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the market of last resort and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority. The rates for the voluntary market and the market of last resort shall be filed individually with the commissioner of the Department of Insurance on forms prescribed by the commissioner by the promulgation of administrative regulations.
- (3) Multitiered premium or rating plans may be developed to provide workers' compensation coverage to insureds in the Commonwealth.
- (4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a market of last resort.
- (5) The rates established by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.
- (6) Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the commissioner of insurance in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.
- (7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for eighty-four (84) months, unless modified by the General Assembly. In addition to other reporting requirements in KRS 342.809 and 342.821, the authority shall report to the *Economic Development and Workforce Investment* ~~Labor and Industry~~ Committee of the General Assembly, no later than October 31 of each year, on the status of its efforts to build and maintain a surplus as required by KRS Chapter 304.

**Signed by Governor March 25, 2021.**

## CHAPTER 125

( HB 429 )

AN ACT relating to administrative regulations.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO BE NUMBERED AS KRS 13A.215 AND TO READ AS FOLLOWS:

- (1) *An administrative body may use an administrative regulation management application developed and maintained by the Legislative Research Commission, if available, to satisfy the following requirements of this chapter:*
  - (a) *Paper-based filing requirements; and*
  - (b) *Notifications to the regulations compiler.*
- (2) *If the filing and notification requirements of this chapter are not available in the administrative regulation management application, the administrative body shall use the paper-based process established by this chapter.*
- (3) *Paper-based shall include any procedure in this chapter that requires an administrative body to file or submit a hard copy to the compiler.*

➔Section 2. KRS 13A.040 is amended to read as follows:

The director of the Legislative Research Commission shall appoint an administrative regulations compiler who shall:

- (1) Receive administrative regulations, and other documents required to be filed by the provisions of this chapter, tendered for filing;
- (2) Stamp administrative regulations tendered for filing with the time and date of receipt;
- (3) Provide administrative and support services to the subcommittee;
- (4) Maintain a file of administrative regulations and other documents required to be filed by this chapter, for public inspection, with suitable indexes;
- (5) Maintain a file of ineffective administrative regulations;
- (6) Maintain a file of material incorporated by reference, including superseded or ineffective material incorporated by reference;
- (7) Prepare the Kentucky Administrative Regulations Service;
- (8) Upon request, certify copies of administrative regulations and other documents that have been filed with the regulations compiler;
- (9) Correct errors that do not change the substance of an administrative regulation, including, but not limited to, typographical errors, errors in format, and grammatical errors;
- (10) (a) Change *the following* items in an administrative regulation in response to a specific written request for a technical amendment submitted by the administrative body if the regulations compiler determines that the requested changes do not affect the substance of the administrative regulation:
  1. *The administrative body's identifying information, including address, phone number, fax number, Web site address, and e-mail address;*
  2. *Typographical errors, errors in format, and grammatical errors;*
  3. ~~[Examples of technical amendments include the address of the administrative body,]~~ Citations to statutes or other administrative regulations if a format change within that statute or administrative regulation has changed the numbering or lettering of parts;~~];~~ or
  4. Other changes in accordance with KRS 13A.312; and
- (b) Notify the administrative body within thirty (30) business days of receipt of a technical amendment letter the status of the request, including:
  1. Any requested changes that are accepted as technical amendments; and
  2. Any requested changes that are not accepted as technical amendments;
- (11) Refuse to accept for filing administrative regulations, and other documents required to be filed by this chapter, that do not conform to the drafting, formatting, or filing requirements established by the provisions of KRS

13A.190(4) to (10), 13A.220, 13A.222(1), (2), and (3), 13A.230, and 13A.280, and notify the administrative body in writing of the reasons for refusing to accept an administrative regulation for filing;

- (12) Maintain a list of all administrative regulation numbers and the corresponding last effective date, based on the information included in the history line of each administrative regulation; and
- (13) Perform other duties required by the Commission or by a subcommittee.

➔Section 3. KRS 13A.3104 is amended to read as follows:

- (1) If an administrative body does not want an administrative regulation to expire under KRS 13A.3102, the administrative body shall, ***in the twelve (12) months prior to the expiration date***:
- (a) Review the administrative regulation in its entirety for compliance with current law governing the subject matter of the administrative regulation;
- (b) ~~Prior to the expiration date,~~ File a certification letter with the regulations compiler stating whether the administrative regulation:
1. Shall be amended ***because it is not in compliance with current governing law or otherwise needs amendment;***~~or~~
  2. ***Shall*** remain in effect without amendment ***because it is in compliance with current governing law; or***
  3. ***Is in need of amendment and a proposed amendment has already been filed;*** and
- (c) Not be required to consider KRS Chapter 13A drafting and formatting requirements as part of its review.
- (2) The certification letter shall be on the administrative body's official letterhead, in the format prescribed by the regulations compiler, and include the following information:
- (a) The name of the administrative body;
- (b) The number of the administrative regulation;
- (c) The title of the administrative regulation;
- (d) ~~The~~***[A]*** statement ***required by subsection (1)(b) of this section***~~that:~~
1. ~~The administrative body shall be amending the administrative regulation; or~~
  2. ~~The administrative regulation shall remain in effect without amendment];~~~~and~~
- (e) A brief statement in support of the decision; ***and***
- (f) ***The authorizing signature of the administrative body.***
- (3) (a) If the certification letter was filed pursuant to subsection (1)(b)1. of this section, stating that the administrative regulation shall be amended, the administrative body shall file an amendment to the administrative regulation in accordance with KRS Chapter 13A within eighteen (18) months of the date the certification letter was filed.
- (b) If the amendment was filed in accordance with paragraph (a) of this subsection:
1. The administrative regulation shall not expire if ***the amendment***~~is~~ continuing through the administrative regulations process; or
  2. The administrative regulation shall expire on the date the amendment is withdrawn or otherwise ceases going through the administrative regulations process.
- (c) Once the amendment is effective, the regulations compiler shall update the last effective date for that administrative regulation to reflect the amendment's effective date.
- (d) ***If the amendment was not filed in accordance with paragraph (a) of this subsection, the administrative regulation shall expire at the end of the eighteen (18) month period.***
- (4) If the certification letter was filed pursuant to subsection (1)(b)2. of this section, stating that the administrative regulation shall remain in effect without amendment, the regulations compiler shall:
- (a) Update the administrative regulation's history line to state that a certification letter was received; and



- (b) Change the last effective date of the administrative regulation to the date the certification letter was received.
- (5) (a) ***If the certification letter was filed pursuant to subsection (1)(b)3. of this section, stating that a proposed amendment has already been filed:***
  - 1. ***The administrative regulation shall not expire if the amendment is continuing through the administrative regulations process; or***
  - 2. ***The administrative regulation shall expire on the date the amendment is withdrawn or otherwise ceases going through the administrative regulations process.***
- (b) ***Once the amendment is effective, the regulations compiler shall update the last effective date for that administrative regulation to reflect the amendment's effective date.***
- (6) If filed by the deadline established in KRS 13A.050(3), the regulations compiler shall publish in the Administrative Register of Kentucky each certification letter received:
  - (a) In summary format; or
  - (b) In its entirety.

➔Section 4. KRS 158.6471 is amended to read as follows:

- (1) ***When reviewing an administrative regulation pursuant to KRS 158.647, the Education Assessment and Accountability Review Subcommittee shall have the same powers and use the same process and procedures as the Administrative Regulation Review Subcommittee under KRS Chapter 13A, except as otherwise authorized by subsection (2) of this section.***
- (2) (a) ***If the subcommittee places an administrative regulation on its agenda for review, and at that meeting the subcommittee fails to achieve a quorum to conduct the review, the administrative regulation shall be deferred for up to forty-five (45) days and shall be placed on the agenda for review at the subcommittee's next meeting.***
- (b) ***If at the next meeting the subcommittee fails to achieve a quorum, then the administrative regulation shall be considered reviewed by the subcommittee and shall proceed in accordance with the process outlined under KRS Chapter 13A.***
- (3) ***The subcommittee may request the same professional and clerical support as is provided to the Administrative Regulation Review Subcommittee in reviewing administrative regulations.***

~~[Within forty five (45) days after publication of an administrative regulation in "The Administrative Register" or within sixty (60) days of the receipt of a statement of consideration, the Education Assessment and Accountability Review Subcommittee shall meet to review the administrative regulation.~~

- ~~(2) The meetings shall be open to the public.~~
- ~~(3) Public notice of the time, date, and place of the subcommittee meeting shall be given in The Administrative Register.]~~
- ~~(4) A representative of the Department of Education shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the Department of Education is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.~~
- ~~(5) Following the meeting and before the next regularly scheduled meeting of the Legislative Research Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy shall be sent to the Department of Education. The subcommittee's findings shall be published in The Administrative Register.~~
- ~~(6) (a) After review by the subcommittee, the Commission shall at its next regularly scheduled meeting assign a filed administrative regulation [the matter] as appropriate to the Interim Joint Committee on Education, the Senate standing Education Committee, the House standing Education Committee, or the Senate and the House standing committees meeting jointly.~~

- (5) *When reviewing an administrative regulation, the Education Committee shall have the same powers and use the same process and procedures as other interim joint committees or standing committees with subject matter jurisdiction under KRS Chapter 13A*
- ~~[(b) Upon notification of the assignment by the Commission, the Education Committee shall notify the regulations compiler:~~
- ~~1. Of the date, time, and place of the meeting at which it will consider the matter; or~~
  - ~~2. That it will not meet to consider the matter.~~
- ~~(7) Within thirty (30) days of the assignment, the Education Committee, when it plans to consider an administrative regulation, shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The committee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2), (3), and (4). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.~~
- ~~(8) The Department of Education shall comply with subsection (4) of this section.~~
- ~~(9) The Education Committee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee.~~
- ~~(10) (a) Upon adjournment of the meeting at which the Education Committee has considered an administrative regulation pursuant to subsection (7) of this section, the committee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.~~
- ~~(b) Following the meeting and before the next regularly scheduled meeting of the Commission, the committee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy shall be sent to the Department of Education. The committee's findings shall be published in The Administrative Register.~~

Signed by Governor March 25, 2021.

## CHAPTER 126

( HB 439 )

AN ACT relating to vision testing for motor vehicle operators and making an appropriation therefor.

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

➔Section 1. KRS 186.577 is amended to read as follows:

- (1) (a) *The following persons shall submit to a test of visual acuity and visual field at the time of application or renewal:*
1. All persons applying for an initial *or renewal* operator's license;
  2. *All persons applying for*~~for~~ an initial *or renewal* instruction permit; *and*
  3. *Any person required to complete an examination under KRS 186.635* ~~[shall submit to a test of visual acuity and visual field at the time of application].~~
- (2) *Vision testing under this section shall be administered to any person:*
- (a) *Applying for an initial operator's license, an initial instruction permit, or reinstatement of a license when vision must be tested as required in Section 2 of this Act:*
1. *Prior to the time of application under subsection (5) of this section; or*
  2. *By Kentucky State Police at the time of application;*
- (b) *Applying for operator's license renewal or instruction permit renewal:*
1. *Prior to the time of application under subsection (5) of this section; or*

2. *By the Transportation Cabinet at the time of application; or*
- (c) *Identified in Kentucky administrative regulations promulgated by the Transportation Cabinet or the Kentucky State Police as being required to undergo the exam required by Section 2 of this Act.*
- ~~(3)(2)~~ (a) Persons whose visual acuity is 20/40 or better *and who meet or exceed the visual field standard established by the Transportation Cabinet* without corrective lenses shall not have a restriction placed on their driving privileges.
- (b) Persons whose visual acuity is 20/40 or better *and who meet or exceed the visual field standard established by the Transportation Cabinet* with corrective lenses shall have their driving privileges restricted to mandate the use of the corrective lenses.
- (c) If a person fails to meet a 20/40 visual acuity standard *or the visual field standard established by the cabinet*, ~~[the Department of Kentucky State Police shall refer]~~ the person *shall be referred* to a vision specialist for examination.
- ~~(4)(3)~~ A person referred to a vision specialist ~~[by the Department of Kentucky State Police]~~ under subsection ~~(3)(2)~~ of this section whose visual acuity is 20/60 or better *and who meets or exceeds the visual field standard established by the cabinet* shall be eligible to test for an instruction permit or operator's license, *or shall be eligible for operator's license renewal*. If corrective lenses were prescribed by the vision specialist, the person's driving privileges shall be restricted to mandate the use of the corrective lenses.
- (5) *Vision tests administered under subsection (2)(a) of this section shall be deemed to meet the testing provisions outlined in subsection (3) or (4) of this section, if the person submits a driver vision testing form that complies with the provisions of subsection (6) of this section and the form has been completed by:*
- (a) *A vision specialist; or*
- (b) *An osteopath, physician, or advanced practice registered nurse who is credentialed by the cabinet to perform vision testing under this section.*
- (6) *All driver vision testing forms completed under subsection (5) of this section shall:*
- (a) *Attest that the applicant meets or exceeds the visual acuity standard and visual field standard established by the cabinet;*
- (b) *Only be valid if the vision specialist or the credentialed osteopath, credentialed physician, or credentialed advanced practice registered nurse signed and completed the vision testing form less than twelve (12) months prior to the date of application or renewal;*
- (c) *State whether the driving privileges of the applicant shall be restricted to mandate the use of corrective lenses; and*
- (d) *Clearly indicate that the vision testing under this section is a screening for minimum vision standards established in this section and is not a complete eye examination.*
- (7) *Any person seeking application or permit under subsection (1) of this section shall attest that he or she has submitted to and passed the visual acuity and visual field tests required under this section.*
- (8) *Any person renewing an operator's license under KRS 186.416 shall be exempt from the vision testing requirements outlined in this section.*
- ~~(9)(4)~~ Persons who meet the requirements of KRS 186.578 and are issued operator's licenses under KRS 186.579 shall:
- (a) Have their driving privileges restricted to the use of a bioptic telescopic device; *and*
- (b) *Be exempt from this section.*
- (10) *The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section, including but not limited to establishing visual field standards, the creation of a driver vision testing form, and establishing a credentialing process for osteopaths, physicians, and advanced practice registered nurses to conduct vision testing under this section.*
- (11) *The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to:*
- (a) *Implement a system for electronic transmission of driver vision testing forms and accompanying documentation; and*

- (b) *Assess a fee to an applicant to cover the administrative costs of performing on-site vision testing. Any funds received from this fee shall be deposited into the photo license account established in Section 3 of this Act.*

➔Section 2. KRS 186.480 is amended to read as follows:

- (1) The Department of Kentucky State Police shall examine every applicant for an operator's license as identified in KRS 186.635, except as otherwise provided in this section. The examination shall be held in the county where the applicant resides unless:
  - (a) The applicant is granted written permission by the Transportation Cabinet to take the examination in another county~~], and the Department of Kentucky State Police agree to arrange for the examination in the other county];~~ or
  - (b) The applicant is tested using a bioptic telescopic device.
- (2) The examination shall include a test of the applicant's eyesight to ensure compliance with the visual acuity *and visual field* standards set forth in *Section 1 of this Act*~~[KRS 186.577]. *The vision testing outlined in this subsection shall be administered under the provisions established in Section 1 of this Act at, or prior to, the time of application.*~~ The examination shall also include a test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, the applicant's knowledge of traffic laws, and an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle. An applicant for a motorcycle operator's license shall be required to show his or her ability to operate a motorcycle, in addition to other requirements of this section. The provisions of this subsection shall not apply to an applicant who:
  - (a) At the time of application, holds a valid operator's license from another state, provided that state affords a reciprocal exemption to a Kentucky resident; or
  - (b) Is a citizen of the Commonwealth who has been serving in the United States military and has allowed his or her operator's license to expire.
- (3) Any person whose intermediate license or operator's license is denied, suspended, or revoked for cause shall apply for reinstatement at the termination of the period for which the license was denied, suspended, or revoked by submitting to the examination. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated.
- (4) An applicant shall not use an autocycle for road skills testing administered under the provisions of this section.

➔Section 3. KRS 174.056 is amended to read as follows:

- (1) The KYTC photo license account is created within the road fund, to be administered by the Transportation Cabinet. The account shall consist of the portion of fees directed to the account under KRS 186.531, *Section 1 of this Act*, and any other proceeds from grants, contributions, appropriations, or other moneys made available for the purposes of the account.
- (2) Notwithstanding KRS 45.229, any moneys remaining in the account 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 of the account shall become a part of the account and shall not lapse.
- (4) Moneys in the account shall be used for the purposes of verifying, creating, and distributing secure photo instruction permits, operator's licenses, and personal identification cards and are hereby appropriated for these purposes.

➔Section 4. This Act takes effect July 1, 2024.

**Signed by Governor March 25, 2021.**

AN ACT relating to sheriffs fees.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 70 IS CREATED TO READ AS FOLLOWS:

*If the governing body of a city, county, urban-county government, consolidated local government, charter county, or unified local government levies or imposes a special tax, license, fee, or other charge to be collected as part of a tax bill by the sheriff, the sheriff shall negotiate a collection fee with the governing body. The local government then shall set the negotiated collection fee, and the sheriff shall retain an amount not to exceed four and one-fourth percent (4.25%) of the special tax, license, fee, or other charge collected, if no other compensation is otherwise authorized.*

**Signed by Governor March 25, 2021.**

## CHAPTER 128

( HJR 57 )

A JOINT RESOLUTION directing the Cabinet for Health and Family Services to establish a work group to assess the feasibility of implementing a bridge insurance program, to review current Temporary Assistance for Needy Families expenditures, and to consider opportunities for public-private partnerships to better meet the needs of public assistance beneficiaries.

WHEREAS, Kentucky has expanded Medicaid eligibility to individuals earning up to 138 percent of the federal poverty level; and

WHEREAS, individuals with incomes very close to the Medicaid eligibility cutoff frequently experience changes in income that result in them churning from Medicaid to qualified health plans sold on the Health Insurance Marketplace from one year to the next; and

WHEREAS, this churn creates fluctuating healthcare costs and increased administrative work for the insureds, qualified health plan providers, and the state's Medicaid program; and

WHEREAS, the cost of purchasing coverage through the Health Insurance Marketplace can deter some low-income individuals from obtaining health insurance coverage; and

WHEREAS, Section 1331 of the Affordable Care Act gives states the option to create a Basic Health Program, or bridge insurance program; and

WHEREAS, a bridge insurance program offers health coverage to low-income individuals who would otherwise be eligible to purchase insurance through the Health Insurance Marketplace; and

WHEREAS, through a bridge insurance program, Kentucky could provide coverage to individuals who do not qualify for Medicaid or the Children's Health Insurance Program and who have an income between 133 percent and 200 percent of the federal poverty level; and

WHEREAS, a bridge insurance program may offer an opportunity for Kentucky to provide more affordable coverage for these low-income individuals and improve continuity of care; and

WHEREAS, a bridge insurance program can prevent eligible individuals from suffering a disruption in care for persistent and chronic health issues due to changes in insurance plans and eligibility; and

WHEREAS, states have the option to implement bridge insurance programs that contract with Medicaid managed care organizations and jointly administer the bridge insurance program and Medicaid, effectively creating seamless coverage for everyone under 200 percent of the federal poverty level with continuity of benefits and providers; and

WHEREAS, states that implement a bridge insurance program are eligible for federal funds equal to 95 percent of the amount of the premium tax credits and the cost-sharing subsidies that would have otherwise been provided to eligible individuals if those individuals had purchased coverage through the Health Insurance Marketplace; and

WHEREAS, the Public Assistance Reform Task Force, established by the Legislative Research Commission during the 2019 Interim, found that the allocation of funds, including federal Temporary Assistance for Needy Families (TANF) block grant funds, through the Kentucky Transitional Assistance Program (K-TAP) does not prioritize assisting recipients in transitioning off of public assistance by finding and maintaining stable employment; and

WHEREAS, as of 2019, Kentucky had accumulated nearly 50 million dollars in unspent, or unobligated, TANF block grant funds, approximately 27 percent of that state's annual block grant amount; and

WHEREAS, in state fiscal years 2017, 2018, and 2019, an average of less than 10 percent of all K-TAP expenditures supported programs and services to assist recipients in securing employment or gaining the skills necessary to secure employment; and

WHEREAS, in state fiscal years 2017, 2018, and 2019, payments to private residential foster care agencies, kinship care payments, and family care initiatives for permanency and protection accounted for nearly two-thirds of all K-TAP expenditures; and

WHEREAS, in 2019, the Public Assistance Reform Task Force recommended that the Cabinet for Health and Family Services study alternative sources of funding for child welfare programs and services currently funded by federal TANF block grant dollars, including strategies for securing additional Title IV-E funds, so that future K-TAP expenditures could be allocated in a manner that better prioritized assisting recipients in transitioning off of public assistance by finding and maintaining stable employment;

NOW, THEREFORE,

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

➔Section 1. The Cabinet for Health and Family Services is hereby directed to establish a work group to assess the feasibility of implementing a bridge insurance program, to review current Temporary Assistance for Needy Families expenditures, and to consider opportunities for public-private partnerships to better meet the needs of public assistance beneficiaries. The work group shall be attached to the cabinet for administrative staffing purposes and shall be composed of at least the following members:

- (1) The secretary of the Cabinet for Health and Family Services, or his or her designee;
- (2) The secretary of Education and Workforce Development Cabinet, or his or her designee;
- (3) The executive director the of the Kentucky Workforce Innovation Board, or his or her designee;
- (4) The executive director of the Kentucky Association of Health Plans, or his or her designee;
- (5) The commissioner of the Department of Insurance, or his or her designee;
- (6) The commissioner of the Department for Community Based Services, or his or her designee;
- (7) The commissioner of the Department for Medicaid Services, or his or her designee;
- (8) The president of the Kentucky Retail Federation, or his or her designee;
- (9) The president of the Kentucky Chamber of Commerce, or his or her designee;
- (10) Two members of the Kentucky House of Representatives selected by the secretary of the Cabinet for Health and Family Services from a list of three members submitted by the Speaker of the House of Representatives; and
- (11) Two members of the Kentucky Senate selected by the secretary of the Cabinet of Health and Family Services from a list of three members submitted by the President of the Senate.

➔Section 2. The duties and responsibilities of the work group shall include:

- (1) Assessing the feasibility of implementing a bridge insurance program in Kentucky, including operational considerations such as technology requirements, eligibility guidelines, the number of individuals who may be eligible, and the potential impact on the state's health exchange market;
- (2) Assessing the fiscal impact of implementing a bridge insurance program in Kentucky, including the amount of federal funds that could be secured through such a program;
- (3) Determining if special federal authorization in the form of a Medicaid waiver or Medicaid State Plan amendment would be necessary prior to implementing a bridge insurance program in Kentucky;

- (4) Reviewing all current K-TAP expenditures, including an evaluation of all unspent, or unobligated, federal TANF block grant funds;
- (5) Requesting federal technical assistance and guidance related to unspent, or unobligated, federal TANF block grant funds;
- (6) Examining alternative sources of funding for child welfare programs and services currently funded by federal TANF block grant dollars, including strategies for securing additional Title IV-E funds; and
- (7) Exploring opportunities for public-private partnerships to better meet the needs of public assistance beneficiaries.

➔Section 3. The work group shall meet at least monthly beginning in July 2021, and shall submit findings and recommendations to the Governor, the Legislative Research Commission, the Interim Joint Committee on Health, Welfare, and Family Services, and the Interim Joint Committee on Banking and Insurance by December 31, 2021. After December 31, 2021, the work group shall no longer exist.

**Signed by Governor March 25, 2021.**

## CHAPTER 129

### ( SB 6 )

AN ACT relating to executive branch ethics.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 11A IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Agency" means any department, program cabinet, division, institution, board, commission, office, or agency of state government;*
- (b) *"Nonpublic information" means information relating to state government that a transition team member obtains as part of his or her participation on the transition team that such member knows or reasonably should know has not been made available to the general public, or is otherwise not available for public inspection under KRS 61.870 to 61.884;*
- (c) *"Transition team" means a team created by a person newly elected to any office listed in KRS 11A.010(9)(a) to (g) to promote the orderly transfer of executive power and ensure continuity in the conduct of the affairs of state government in connection with the expiration of the term of office for any person elected to the offices listed under KRS 11A.010(9)(a) to (g) and the election and inauguration of another person to serve in any of the offices listed in KRS 11A.010(9)(a) to (g); and*
- (d) *"Transition team member" means any person designated to serve on a transition team.*

(2) *A person newly elected to any office listed in KRS 11A.010(9)(a) to (g) may create a transition team for the purpose of promoting an orderly transfer of executive power and ensuring continuity in the conduct of affairs of state government by requesting and utilizing information provided by the administration of the outgoing official that had been elected to any office listed in KRS 11A.010(9)(a) to (g) prior to the expiration of his or her term of office.*

(3) *The commission shall establish by administrative regulation promulgated under KRS Chapter 13A standards of ethical conduct for transition team members. The standards of ethical conduct for transition team members shall include ethics requirements that:*

- (a) *Apply to all transition team members;*
- (b) *Address the role of transition team members who are:*
  - 1. *Registered lobbyists under KRS 6.801 to 6.829 and KRS 11A.201 to 11A.246; or*
  - 2. *Former lobbyists who were registered under KRS 6.801 to 6.829 and KRS 11A.201 to 11A.246 during the twelve (12) month period prior to becoming a transition team member.*

- (4) *Each person elected to an office listed in KRS 11A.010(9)(a) to (g) shall designate a person or persons to lead his or her transition team or transition teams. Persons designated as transition team leaders shall, on a form prescribed by the commission by administrative regulation promulgated under KRS Chapter 13A, submit to the commission:*
- (a) *A list of all transition team members;*
  - (b) *A description of how transition team members will comply with the provisions contained within this section; and*
  - (c) *Any additions to or departures from the list of transition team members as necessary to provide an accurate and up-to-date list.*
- (5) *A transition team member shall:*
- (a) *Seek authorization from the transition team leader designated by the person elected to the office listed in KRS 11A.010(9)(a) to (g) to oversee the transition team to which the transition team member is assigned before seeking access to any nonpublic information as part of the transition process;*
  - (b) *Keep confidential any nonpublic information provided in the course of the duties of the transition team member with the transition team and exclusively use such information for the purposes of the transition; and*
  - (c) *Not use any nonpublic information provided in the course of transition duties, in any manner, for personal or private gain of the transition team member or any other party at any time during or after the transition.*
- (6) *A transition team member shall not receive nonpublic information regarding matters that financially impact:*
- (a) *The transition team member or his or her spouse;*
  - (b) *The transition team member's employer or his or her spouse's employer;*
  - (c) *The transition team member's lobbying clients;*
  - (d) *Any business in which the transition team member or his or her spouse is a board member;*
  - (e) *Any business in which the transition team member or his or her spouse is an officer;*
  - (f) *Any business in which the transition team member or his or her spouse is an owner of five percent (5%) or more of the business; or*
  - (g) *Any provider of non-state sources of funds received by the transition team member related to his or her transition team duties.*
- (7) *Every transition team member shall disclose prior to serving on the transition team, and update as necessary during service on the transition team on a form prescribed by the commission by administrative regulation promulgated under KRS Chapter 13A:*
- (a) *His or her current employer and the current employer of his or her spouse;*
  - (b) *Any business in which a transition team member or his or her spouse is a board member, an officer, or an owner of five percent (5%) or more of the business during the twelve (12) month period prior to becoming a transition team member;*
  - (c) *Any non-state sources of funds received for his or her services related to transition team duties;*
  - (d) *All positions the transition team member has held outside of state government for the twelve (12) month period prior to becoming a transition team member, including both paid and unpaid positions;*
  - (e) *Any contracts that the transition team member or his or her spouse has sought or received with state government during the twelve (12) month period prior to becoming a transition team member and affirmation that the transition team member and his or her spouse will not seek a contract with a state agency for which he or she received nonpublic information during the tenure of the administration;*
  - (f) *Whether the transition team member or his or her spouse has accepted any gift or payment exceeding twenty-five dollars (\$25) or has accepted future employment from any party interested in seeking*



*influence in state government during the twelve (12) month period prior to becoming a transition team member, or during service as a transition team member;*

- (g) *A description of the transition team member's role in the transition, including a list of any policy issues on which the transition team member is expected to work, and a list of agencies with which the transition team member is expected to interact while serving on the transition team;*
  - (h) *Any issues from which each transition team member shall be recused while serving as a member of the transition team; and*
  - (i) *An affirmation that each transition team member does not have a financial conflict of interest that precludes transition team members from working on specified issues to which he or she has been assigned.*
- (8) *The commission shall make the standards of ethical conduct for transition team members available to the public on its Web site.*

➔Section 2. KRS 11A.050 is amended to read as follows:

- (1) Each officer, each public servant listed in KRS 11A.010(9)(a) to (g), and each candidate shall file a statement of financial disclosure with the commission, as follows:
  - (a) Each officer shall file the statement within thirty (30) days of employment as an officer, and each officer who occupies his or her position during any portion of a calendar year shall file the statement for that portion of the calendar year he or she occupied the position on or before April 15 of the following year, whether or not he or she remains an officer;††
  - (b) Each public servant listed in KRS 11A.010(9)(a) to (g) who occupies his or her position during any portion of a calendar year shall file the statement for that portion of the calendar year he or she occupied the position on or before April 15 of the following year, whether or not he or she remains a public servant as listed in KRS 11A.010(9)(a) to (g);††
  - (c) Each officer and public servant listed in KRS 11A.010(9)(a) to (g) who does not remain an officer or public servant listed in KRS 11A.010(9)(a) to (g) for the entire calendar year shall file the statement for the portion of the calendar year that the person served as an officer or public servant listed in KRS 11A.010(9)(a) to (g). The statement shall be filed with the commission within thirty (30) days after the date the person no longer serves as an officer or public servant listed in KRS 11A.010(9)(a) to (g);††
  - (d) A candidate shall file the statement reflecting the previous calendar year with the commission no later than February 15; *and*
  - (e) *Each candidate elected to serve as a public servant in a position listed in KRS 11A.010(9)(a) to (g) shall, within ten (10) days of taking the oath of office for the position to which he or she was elected, file a statement of financial disclosure with the commission for the calendar year in which the election was held.*
- (2) The statement of financial disclosure shall be filed on a form prescribed by the commission. The commission shall provide copies of the form upon request without charge.
- (3) The statement shall include the following information for the preceding calendar year:
  - (a) Name and entire residential and business address of filer;
  - (b) Title of position or office whereby filing is required;
  - (c) Any other occupations of filer and spouse;
  - (d) Positions held by the filer or his or her spouse in any business, and the name and address of the business;
  - (e) Name and address of any employer by whom the filer was employed for the one (1) year period immediately prior to becoming an officer, not including those listed in paragraph (d) of this subsection;
  - (f) Names and addresses of all businesses in which the filer, his or her spouse, or dependent children has or had an interest of ten thousand dollars (\$10,000) at fair market value or five percent (5%) ownership interest or more;

- (g) The name and address of any source of gross income exceeding one thousand dollars (\$1,000) from any one (1) source to the filer, his or her spouse, or dependent child, as well as information concerning the nature of the business, and the form of the income;
- (h) Any representation or intervention for compensation by the filer or his or her spouse for any person or business before a state agency for which the filer works or supervises or before any entity of state government for which the filer would serve in a decision-making capacity, including the name and address of the person or business;
- (i) All positions of a fiduciary nature held by the filer or his or her spouse in a business, including the name and address of the business;
- (j) Information, including a street address or location, regarding any real property in which there is an interest of ten thousand dollars (\$10,000) or more held by the filer, his or her spouse, or dependent children;
- (k) Sources, including each source's name and address, of gifts of money or property with a retail value of more than two hundred dollars (\$200) from any one (1) source to the filer, his or her spouse, or dependent children, except those from a member of the filer's family;
- (l) Identity, including an address, of creditors owed more than ten thousand dollars (\$10,000), except debts arising from the purchase of consumer goods; and
- (m) Names and addresses of family members of the filer or persons with whom the filer was engaged in a business who are registered as legislative agents under KRS 6.807 or executive agency lobbyists under KRS 11A.211.

Paragraphs (a) to (m) of this subsection shall not require disclosure of specific dollar amounts or of privileged information.

**Signed by Governor March 25, 2021.**

## CHAPTER 130

### ( SB 16 )

AN ACT relating to colon cancer screening and prevention and making an appropriation therefor.

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

➔Section 1. KRS 214.540 is amended to read as follows:

- (1) As used in KRS 214.540 to 214.544:
  - (a) "Department" means the Department for Public Health in the Cabinet for Health and Family Services; and
  - (b) "Program" means the Colon Cancer Screening *and Prevention* Program.
- (2) The Colon Cancer Screening *and Prevention* Program is hereby established for the purposes of:
  - (a) Increasing colon cancer screening;
  - (b) Reducing morbidity and mortality from colon cancer; and
  - (c) Reducing the cost of treating colon cancer among citizens of the Commonwealth.
- (3) The provisions of KRS 214.540 to 214.544 shall be limited to the amount of appropriations to the department for the Colon Cancer Screening *and Prevention* Program.

➔Section 2. KRS 214.543 is amended to read as follows:

- (1) (a) There is hereby created a restricted fund to be known as the Kentucky Colon Cancer Screening *and Prevention* Program fund.
- (b) The fund shall be administered by the Finance and Administration Cabinet.

- (c) The fund shall include moneys:
1. Appropriated by the General Assembly for the purpose of the Colon Cancer Screening *and Prevention* Program; ~~and moneys~~
  2. Collected under KRS 214.542; *and*
  3. *Distributed by the Transportation Cabinet from sales of special colon cancer prevention license plates.*

- (2) Moneys in the fund shall be used by the department to administer KRS 214.540 to 214.544.
- (3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used *solely for the purposes established in* ~~accordance with~~ subsection (2) of this section.
- (4) Interest earned on any moneys in the fund shall accrue to the fund.
- (5) Moneys in the fund are hereby appropriated *solely* for the purposes set forth in KRS 214.540 to 214.544.

➔Section 3. KRS 214.544 is amended to read as follows:

- (1) A Colon Cancer Screening *and Prevention* Advisory Committee shall be established ~~within the Kentucky Cancer Consortium~~. The advisory committee shall include:
- (a) One (1) *member of the House of Representatives who shall be* ~~appointed~~ appointed by the Speaker of the House;
  - (b) One (1) *member of the Senate who shall be* ~~appointed~~ appointed by the President of the Senate;
  - (c) The deputy commissioner of the Department for Public Health;
  - (d) *The commissioner of the Department of Insurance, or his or her designee;*
  - (e) *The commissioner of the Department for Medicaid Services, or his or her designee;*
  - (f) Two (2) at-large members *who shall be* appointed by the Governor;
  - (g)~~(e)~~ *One (1) member who shall be appointed by the Governor from a list of three (3) names provided by* ~~The director of health initiatives for the mid south division of~~ the American Cancer Society;
  - (h)~~(f)~~ The director of the Kentucky Cancer Program at the University of Kentucky;
  - (i)~~(g)~~ The director of the Kentucky Cancer Program at the University of Louisville;
  - (j)~~(h)~~ The director of the Kentucky Cancer Registry;
  - (k)~~(i)~~ The director of the Colon Cancer Prevention Project;
  - (l)~~(j)~~ The chair of Kentucky African Americans Against Cancer; and
  - (m)~~(k)~~ The director of the Kentucky Cancer Consortium.

Members of the advisory committee shall be appointed for a term of four (4) years.

- (2) (a) Members appointed under subsection (1)(a) to (g)~~(d)~~ of this section shall be appointed as follows:
1. Members shall be appointed for a term of four (4) years, except as provided in subparagraph 2. of this paragraph;
  2. The initial appointments shall be for a period of two (2) years; thereafter, the appointments shall be for a term of four (4) years; and
  3. Members shall not serve more than two (2) terms of four (4) years.
- (b) Members serving under subsection (1)(h)~~(e)~~ to (m)~~(k)~~ of this section shall serve by virtue of their positions and shall not be subject to term limits.
- (3) The chair of the advisory committee shall be elected from the membership of the advisory committee to serve for a two (2) year term. A member of the advisory committee may designate an alternate to attend meetings in his or her place.
- (4) The advisory committee may add members from other organizations as deemed appropriate.

- (5) The advisory committee shall provide recommendations for the overall implementation and conduct of the Colon Cancer Screening *and Prevention* Program.
- (6) The advisory committee shall establish and provide oversight for a colon cancer screening public awareness campaign. The Cabinet for Health and Family Services shall contract with the Kentucky Cancer Consortium at the University of Kentucky to provide the required support. The amount of the contract shall not be included in the base budget of the university as used by the Council on Postsecondary Education in determining the funding formula for the university.
- (7) The Colon Cancer Screening *and Prevention* Advisory Committee shall provide an annual report on implementation and outcomes from the Colon Cancer Screening *and Prevention* Program and recommendations to the Legislative Research Commission, the Interim Joint Committee on Health, *Welfare, and Family Services* [~~and Welfare~~], the Interim Joint Committee on Appropriations and Revenue, the Governor, the secretary of the Cabinet for Health and Family Services, and the commissioner of the Department for Public Health.
- (8) The Kentucky Cancer Program, jointly administered by the University of Kentucky and the University of Louisville, shall establish a colon cancer screening, education, and outreach program in each of the state area development districts. The colon cancer screening, education, and outreach program shall focus on individuals who lack access to colon cancer screening. The Cabinet for Health and Family Services shall contract with the University of Louisville and the University of Kentucky to provide the required support. The amount of the contract shall not be included in the base budgets of the universities as used by the Council on Postsecondary Education in determining the funding formula for the universities.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

*The Department for Medicaid Services shall present statistics on cancer services related to colorectal cancer among Medicaid recipients to the Colon Cancer Screening and Prevention Advisory Committee annually and upon request.*

Signed by Governor March 25, 2021.

## CHAPTER 131

### ( SB 29 )

AN ACT relating to indemnification of prosecutors.

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

➔Section 1. KRS 15.753 is amended to read as follows:

- (1) This section shall apply to:
  - (a) The Attorney General and his *or her* staff;
  - (b) A county attorney and his *or her* staff; and
  - (c) A Commonwealth's attorney and his *or her* staff.
- (2) A person named in subsection (1) of this section who is sued for any act or omission in the course of his *or her* duties and who ~~has a judgment for monetary damages rendered against him and who personally~~ suffers actual financial loss, unreimbursed from any source, ~~by the enforcement and satisfaction of the judgment,~~ including any costs or attorney's fees awarded *as a result of the action* ~~pursuant thereto~~, *or any costs or reasonable attorney's fees incurred in defending the action*, shall be indemnified by the Commonwealth from funds appropriated to the Finance and Administration Cabinet for the payment of judgments, to the extent of his *or her* actual financial loss.
- (3) The indemnification shall be contingent upon an express determination by the Prosecutor's Advisory Council that the act or omission which resulted in liability *or financial loss* was within the scope and course of the officer's employment and occurred during the performance of duty and was committed or omitted in the good faith belief that the act or omission was lawful and proper.

- (4) If the officer seeking indemnification is the Attorney General, the determination referred to in subsection (3) of this section shall be made by the Governor.
- (5) The indemnification shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available to the person claiming indemnification and shall not constitute a waiver of any privilege, immunity, or matter of defense including the sovereign immunity of the Commonwealth.
- (6) The indemnification shall not be the subject of comment, directly or indirectly, before any jury hearing any cause of action in which the Attorney General, a county or Commonwealth's attorney, or a member of their staff is a party, and any comment before the jury shall result in an immediate mistrial.

**Signed by Governor March 25, 2021.**

## CHAPTER 132

( SB 32 )

AN ACT relating to children.

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

➔Section 1. KRS 403.270 is amended to read as follows:

- (1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who *within the last two (2) years* has resided with the person for *an aggregate* ~~of a~~ period of six (6) months or more if the child is under three (3) years of age and for *an aggregate* ~~of a~~ period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
- (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and 405.020.
- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. Subject to KRS 403.315, there shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare. The court shall consider all relevant factors including:
  - (a) The wishes of the child's parent or parents, and any de facto custodian, as to his or her custody;
  - (b) The wishes of the child as to his or her custodian, with due consideration given to the influence a parent or de facto custodian may have over the child's wishes;
  - (c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
  - (d) The motivation of the adults participating in the custody proceeding;
  - (e) The child's adjustment and continuing proximity to his or her home, school, and community;
  - (f) The mental and physical health of all individuals involved;
  - (g) A finding by the court that domestic violence and abuse, as defined in KRS 403.720, has been committed by one (1) of the parties against a child of the parties or against another party. The court shall determine the extent to which the domestic violence and abuse has affected the child and the

child's relationship to each party, with due consideration given to efforts made by a party toward the completion of any domestic violence treatment, counseling, or program;

- (h) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
  - (i) The intent of the parent or parents in placing the child with a de facto custodian;
  - (j) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school; and
  - (k) The likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent or de facto custodian, except that the court shall not consider this likelihood if there is a finding that the other parent or de facto custodian engaged in domestic violence and abuse, as defined in KRS 403.720, against the party or a child and that a continuing relationship with the other parent will endanger the health or safety of either that party or the child.
- (3) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (4) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

➔Section 2. KRS 635.020 is amended to read as follows:

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (4) ~~[Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding,]~~ If a child charged with a felony in which a firearm, whether functional or not, was used *by the child* in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, ***the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of Section 3 of this Act*** ~~[he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court, he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a facility or program for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he is released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be returned to the sentencing Circuit Court for proceedings consistent with KRS 640.030(2)].~~
- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

- (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

➔Section 3. KRS 640.010 is amended to read as follows:

- (1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2) ~~to [(3), (5), (6), (7), or]~~ (8), the court shall at arraignment *ensure* ~~assure~~ that the child's rights as specified in KRS 610.060 have been explained and followed.

- (2) (a) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020(2) ~~to [(3), (5), (6), (7), or]~~ (8), the District Court shall, upon motion by the county attorney to proceed under this chapter, and after the county attorney has consulted with the Commonwealth's attorney, conduct a preliminary hearing to determine if the child should be transferred to Circuit Court as a youthful offender. The preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure.

~~(b)~~(a) At the preliminary hearing, the court shall determine if there is probable cause to believe that an offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.

~~(c)~~(b) If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court:

1. The seriousness of the alleged offense;
2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
3. The maturity of the child as determined by his environment;
4. The child's prior record;
5. The best interest of the child and community;
6. The prospects of adequate protection of the public;
7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; ~~and~~
8. Evidence of a child's participation in a gang;
9. ***Whether the child is a defendant with a serious intellectual disability in accordance with KRS 532.130; and***
10. ***Whether the child used a firearm in the commission of the offense.***

~~(d)~~(c) If, following the completion of the preliminary hearing, the District Court finds, after considering the factors enumerated in paragraph (b) of this subsection, that two (2) or more of the factors specified in paragraph (b) of this subsection are determined to favor transfer, the child may be transferred to Circuit Court, and if the child is transferred the District Court shall issue an order transferring the child as a youthful offender and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter.

- (e)~~(d)~~ If, following completion of the preliminary hearing, the District Court is of the opinion, after considering the factors enumerated in paragraph (b) of this subsection, that the child shall not be transferred to the Circuit Court, the case shall be dealt with as provided in KRS Chapter 635.
- (3) If the child is transferred to Circuit Court under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2) ~~to (3), (5), (6), (7), and (8)~~, but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender in Circuit Court but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

**Signed by Governor March 25, 2021.**

### CHAPTER 133

( SB 44 )

AN ACT relating to access to health care.

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) *As used in this section, "cost sharing" means the cost to an individual insured under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan.*
- (2) *Except as provided in subsection (4) of this section, all health benefit plans issued or renewed on or after the effective date of this Act shall accept, and count towards the insured's contributions to any applicable premium or cost-sharing requirement, premium and cost-sharing payments made on behalf of an insured from the following:*
- (a) *A state or federal government program, including payments made by programs operating in accordance with Title XXVI of the federal Public Health Service Act, 42 U.S.C. secs. 300ff et. seq., as amended;*
- (b) *An Indian tribe, tribal organization, or urban Indian organization; and*
- (c) *A program conducted by an organization that certifies that the organization is:*
1. *Exempt from taxation under 26 U.S.C. sec. 501(a), as amended;*
  2. *Described in 26 U.S.C. sec. 170(b)(1)(A)(i) or (vi); and*
  3. *Operating in compliance with applicable federal laws, including the False Claims Act, 31 U.S.C. secs. 3729 to 3733.*
- (3) *To the extent permitted under federal law, all health benefit plans may accept, and count towards the insured's contributions to any applicable premium or cost-sharing requirement, premium and cost-sharing payments made on behalf of an insured by any person not referenced in subsection (2) of this section.*
- (4) (a) *If the application of the requirements of subsection (2) of this section would be the sole cause of a health benefit plan's failure to qualify as a Health Savings Account-qualified High Deductible Health Plan under 26 U.S.C. sec. 223, as amended, then the requirements of subsection (2) of this section shall not apply to that health benefit plan until the minimum deductible under 26 U.S.C. sec. 223, as amended, is satisfied.*
- (b) *Subsection (2)(c) of this section shall not apply to payments made by, or on behalf of, any organization that receives funding in any form from a health care provider, as defined in KRS 304.17A-005.*
- (5) *Nothing in this section shall be construed to imply that the insured is not responsible for the timely payment of premiums in accordance with the terms of the health benefit plan contract between the insurer and the*



*insured, even if the payment is made on behalf of the insured by a person referenced in subsection (2) of this section.*

➔Section 2. KRS 214.555 is amended to read as follows:

- (1) Physicians are encouraged to recommend digital mammography including breast tomosynthesis when writing orders for mammograms. The term "breast tomosynthesis" means a radiologic procedure that involves the acquisition of projection images over the stationary breast to produce cross-sectional digital three-dimensional images of the breast.
- (2) If a patient's X-ray mammogram demonstrates dense breast tissue, a person who provided the X-ray mammography services in the Commonwealth shall provide notification to the patient that includes but is not limited to the following information in the summary of the written report of the results sent directly to a patient:

"Your X-ray mammogram shows that your breast tissue is dense. Dense breast tissue is common among women and is not abnormal. However, women with dense breast tissue may have a slightly increased risk for developing breast cancer. Dense breast tissue may also make it more difficult to detect an early breast cancer on your X-ray mammogram. At this time, there are no specific recommendations for additional screening or other measures related to having dense breast tissue. However, you may want to talk to your doctor about other ways that you might be able to reduce your risk of breast cancer. A report of your results was sent to your ordering physician. If you are self-referred, a report of your results was sent to you in addition to this summary."

- (3) As used in this section, "dense breast tissue" means heterogeneously or extremely dense breast tissue as defined in nationally recognized guidelines or systems for breast imaging reporting of mammography screening, including but not limited to the breast imaging reporting and data system established by the American College of Radiology. If, after June 29, 2017, new terms are defined in revised guidelines or systems for breast imaging reporting of mammography screening and the Department for Public Health determines that those new terms are more appropriate for the purposes of the information required to be provided under this section, the Department for Public Health may update the definition of dense breast tissue under this subsection to use those new terms by administrative regulation.
- (4) Recognizing the continuous improvements in patient outcomes that are reflective of ongoing advances in evidence-based medical practices, expansive and emerging medical research, and evolving innovations in medical technology, subsection (2) of this section shall be in effect until January 1, ~~2025~~<sup>2024</sup>, unless the General Assembly takes action to extend this expiration date.

➔Section 3. Section 1 of this Act takes effect on January 1, 2022.

**Signed by Governor March 25, 2021.**

## CHAPTER 134

( SB 45 )

AN ACT relating to prescription drugs.

WHEREAS, citizens of Kentucky frequently rely on state-regulated insurers to secure access to the prescription medications needed to protect their health; and

WHEREAS, commercial insurance plans increasingly require patients to bear significant out-of-pocket costs for their prescription medications; and

WHEREAS, high out-of-pocket costs for prescription medications impact the ability of patients to start new and necessary treatments and to stay adherent with current medications; and

WHEREAS, high or unpredictable cost-sharing requirements are a main driver of elevated out-of-pocket costs and allow insurers to capture discounts and price concessions that are intended to benefit patients at the pharmacy counter; and

WHEREAS, insurers unfairly increase cost-sharing burdens on patients by refusing to count third-party assistance toward patients' cost-sharing contributions, and the burdens of high or unpredictable cost-sharing requirements are borne disproportionately by patients with chronic or debilitating conditions; and

WHEREAS, restrictions are needed on the ability of insurers and their intermediaries to use unfair cost-sharing designs to retain rebates and price concessions that instead should be directly passed on to the patient as cost savings; and

WHEREAS, patients need equitable and accessible health coverage that does not impose unfair cost-sharing burdens upon them;

NOW, THEREFORE,

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

➔Section 1. KRS 304.17A-164 is amended to read as follows:

(1) As used in this section:

(a) "Cost sharing" means the cost to an individual insured under a health ~~benefit~~ plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan, ***which may be subject to annual limitations on cost sharing, including those imposed under 42 U.S.C. secs. 18022(c) and 300gg-6(b), in order for an individual to receive a specific health care service covered by the plan;***

(b) "***Generic alternative***" means a drug that is designated to be therapeutically equivalent by the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, except that a drug shall not be considered a generic alternative until the drug is nationally available;

(c) "***Health plan***":

1. ***Means a policy, contract, certificate, or agreement offered or issued by an insurer to provide, deliver, arrange for, pay for, or reimburse any of the cost of health care services; and***

2. ***Includes a health benefit plan as defined in KRS 304.17A-005;***

(d) "***Insured***" means any individual who is enrolled in a health plan and on whose behalf the insurer is obligated to pay for or provide health care services;

(e) "Insurer" includes:

1. An insurer offering a health ~~benefit~~ plan providing coverage for pharmacy benefits; or

2. Any other administrator of pharmacy benefits under a health ~~benefit~~ plan;

(f) "***Person***" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, government, or governmental subdivision or agency;

~~(g)(e)~~ "Pharmacy" includes:

1. A pharmacy, as defined in KRS Chapter 315;

2. A pharmacist, as defined in KRS Chapter 315; or

3. Any employee of a pharmacy or pharmacist; and

~~(h)(d)~~ "Pharmacy benefit manager" has the same meaning as in KRS 304.17A-161.

(2) ***To the extent permitted under federal law***, an insurer issuing or renewing a health ~~benefit~~ plan on or after ***the effective date of this Act*** ~~(January 1, 2019)~~, or a pharmacy benefit manager, shall not:

(a) Require an insured purchasing a prescription drug to pay a cost-sharing amount greater than the amount the insured would pay for the drug if he or she were to purchase the drug without coverage ~~under a health benefit plan~~;

(b) ***Exclude any cost-sharing amounts paid by an insured or on behalf of an insured by another person for a prescription drug, including any amount paid under paragraph (a) of this subsection, when calculating an insured's contribution to any applicable cost-sharing requirement. The requirements of this paragraph shall not apply in the case of a prescription drug for which there is a generic***

*alternative, unless the insured has obtained access to the brand prescription drug through prior authorization, a step therapy protocol, or the insurer's exceptions and appeals process;*

- (c) Prohibit a pharmacy from discussing any information under subsection (3) of this section; ~~or~~ ~~and~~  
 (d) ~~(c)~~ Impose a penalty on a pharmacy for complying with this section.

- (3) A pharmacist shall have the right to provide an insured information regarding the applicable limitations on his or her cost-sharing pursuant to this section for a prescription drug.
- (4) *Subsection (2)(b) of this section shall not apply to any fully insured health benefit plan or self-insured plan provided to an employee under KRS 18A.225* ~~[Any amount paid by an insured under subsection (2)(a) of this section shall be attributable toward any annual out-of-pocket maximums under the insured's health benefit plan].~~

➔Section 2. The Department of Insurance may promulgate administrative regulations necessary to carry out Section 1 of this Act.

➔Section 3. This Act takes effect January 1, 2022.

**Signed by Governor March 25, 2021.**

## CHAPTER 135

### ( SB 52 )

AN ACT relating to sexual offenses by peace officers.

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

➔Section 1. KRS 510.060 is amended to read as follows:

- (1) A person is guilty of rape in the third degree when:
- (a) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
  - (b) Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of sexual intercourse, he or she engages in sexual intercourse with the person;
  - (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
  - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; ~~or~~
  - (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse; *or*
  - (f) *Being a peace officer, while serving in his or her official capacity, he or she subjects a person who the officer:*
    1. *Arrested, held in custody, or investigated for commission of a traffic or criminal offense; or*
    2. *Knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense;**to sexual intercourse.*
- (2) Rape in the third degree is a Class D felony.

➔Section 2. KRS 510.090 is amended to read as follows:

- (1) A person is guilty of sodomy in the third degree when:
- (a) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old;
  - (b) Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of deviate sexual intercourse, he or she engages in deviate sexual intercourse with the person;
  - (c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
  - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than eighteen (18) years old with whom he or she comes into contact as a result of that position; ~~or~~
  - (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse; *or*
  - (f) *Being a peace officer, while serving in his or her official capacity, he or she subjects a person who the officer:*
    1. *Arrested, held in custody, or investigated for commission of a traffic or criminal offense; or*
    2. *Knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense;**to deviate sexual intercourse.*
- (2) Sodomy in the third degree is a Class D felony.

➔Section 3. KRS 510.120 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the second degree when:
- (a) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; ~~or~~
  - (b) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact; *or*
  - (c) *Being a peace officer, while serving in his or her official capacity, he or she subjects a person who the officer:*
    1. *Arrested, held in custody, or investigated for commission of a traffic or criminal offense; or*
    2. *Knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense;**to sexual contact.*
- (2) In any prosecution under subsection (1)(a) of this section, it is a defense that:
- (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
  - (b) The other person was at least fourteen (14) years old; and
  - (c) The actor was less than five (5) years older than the other person.
- (3) Sexual abuse in the second degree is a Class A misdemeanor.

Signed by Governor March 25, 2021.

**CHAPTER 136****( SB 62 )**

AN ACT relating to commercial quadricycles.

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

➔Section 1. KRS 241.010 is amended to read as follows:

As used in KRS Chapters 241 to 244, unless the context requires otherwise:

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced;
- (2) "Alcoholic beverage" means every liquid, solid, powder, or crystal, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
  - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
  - (b) Patented, patent, and proprietary medicines;
  - (c) Toilet, medicinal, and antiseptic preparations and solutions;
  - (d) Flavoring extracts and syrups;
  - (e) Denatured alcohol or denatured rum;
  - (f) Vinegar and preserved sweet cider;
  - (g) Wine for sacramental purposes; and
  - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use;
- (3)
  - (a) "Alcohol vaporizing device" or "AWOL device" means any device, machine, or process that mixes liquor, spirits, or any other alcohol product with pure oxygen or by any other means produces a vaporized alcoholic product used for human consumption;
  - (b) "Alcohol vaporizing device" or "AWOL device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication or a device installed and used by a licensee under this chapter to demonstrate the aroma of an alcoholic beverage;
- (4) "Automobile race track" means a facility primarily used for vehicle racing that has a seating capacity of at least thirty thousand (30,000) people;
- (5) "Bed and breakfast" means a one (1) family dwelling unit that:
  - (a) Has guest rooms or suites used, rented, or hired out for occupancy or that are occupied for sleeping purposes by persons not members of the single-family unit;
  - (b) Holds a permit under KRS Chapter 219; and
  - (c) Has an innkeeper who resides on the premises or property adjacent to the premises during periods of occupancy;
- (6) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030;
- (7) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail;

- (8) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either alone or through an agent;
- (9) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept;
- (10) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership;
- (11) "Caterer" means a person operating a food service business that prepares food in a licensed and inspected commissary, transports the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to an agreed location, and serves the food and alcoholic beverages pursuant to an agreement with another person;
- (12) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes;
- (13) "Cider" means any fermented fruit-based beverage containing seven percent (7%) or more alcohol by volume and includes hard cider and perry cider;
- (14) "City administrator" means city alcoholic beverage control administrator;
- (15) "Commercial airport" means an airport through which more than five hundred thousand (500,000) passengers arrive or depart annually;
- (16) (a) "Commercial quadricycle" means a vehicle equipped with a minimum of ten (10) pairs of fully operative pedals for propulsion by means of human muscular power ~~exclusively~~ and which:
1. ~~(a)~~ Has four (4) wheels;
  2. ~~(b)~~ Is operated in a manner similar to that of a bicycle;
  3. ~~(c)~~ Is equipped with a minimum of thirteen (13) seats for passengers;
  4. ~~(d)~~ Has a unibody design;
  5. ~~(e)~~ Is equipped with a minimum of four (4) hydraulically operated brakes;
  6. ~~(f)~~ Is used for commercial tour purposes; ~~and~~
  7. ~~(g)~~ Is operated by the vehicle owner or an employee of the owner; **and**
  8. ***Has an electrical assist system that shall only be used when traveling to or from its storage location while not carrying passengers.***
- (b) ***A "commercial quadricycle" is not a motor vehicle as defined in KRS 186.010 or 189.010;***
- (17) "Commissioner" means the commissioner of the Department of Alcoholic Beverage Control;
- (18) "Consumer" means a person who purchases alcoholic beverages and who:
- (a) Does not hold a license or permit issued by the department;
  - (b) Purchases the alcoholic beverages for personal consumption only and not for resale;
  - (c) Is of lawful drinking age;
  - (d) Receives the alcoholic beverages at a location other than a licensed premises; and
  - (e) Receives the alcoholic beverages in territory where the alcoholic beverages may be lawfully sold or received;

- (19) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions;
- (20) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment;
- (21) "County administrator" means county alcoholic beverage control administrator;
- (22) "Department" means the Department of Alcoholic Beverage Control;
- (23) "Dining car" means a railroad passenger car that serves meals to consumers on any railroad or Pullman car company;
- (24) "Discount in the usual course of business" means price reductions, rebates, refunds, and discounts given by wholesalers to distilled spirits and wine retailers pursuant to an agreement made at the time of the sale of the merchandise involved and are considered a part of the sales transaction, constituting reductions in price pursuant to the terms of the sale, irrespective of whether the quantity discount was:
  - (a) Prorated and allowed on each delivery;
  - (b) Given in a lump sum after the entire quantity of merchandise purchased had been delivered; or
  - (c) Based on dollar volume or on the quantity of merchandise purchased;
- (25) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages;
- (26) "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky;
- (27) "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse;
- (28) "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail;
- (29) "Dry" means a territory in which a majority of the electorate voted to prohibit all forms of retail alcohol sales through a local option election held under KRS Chapter 242;
- (30) "Election" means:
  - (a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or
  - (b) Any other election not pertaining to alcohol;
- (31) "Horse racetrack" means a facility licensed to conduct a horse race meeting under KRS Chapter 230;
- (32) "Hotel" means a hotel, motel, or inn for accommodation of the traveling public, designed primarily to serve transient patrons;
- (33) "Investigator" means any employee or agent of the department who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting licensees, and any employee or agent of the department who is assigned, temporarily or permanently, by the commissioner to duty outside the main office of the department at Frankfort, in connection with the administration of alcoholic beverage statutes;
- (34) "License" means any license issued pursuant to KRS Chapters 241 to 244;
- (35) "Licensee" means any person to whom a license has been issued, pursuant to KRS Chapters 241 to 244;
- (36) "Limited restaurant" means:
  - (a) A facility where the usual and customary business is the preparation and serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its food and alcoholic beverage receipts from the sale of food, which maintains a minimum seating capacity of fifty (50) persons for dining, which has no open bar, which requires that alcoholic beverages be sold in

- conjunction with the sale of a meal, and which is located in a wet or moist territory under KRS 242.1244; or
- (b) A facility where the usual and customary business is the preparation and serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its food and alcoholic beverage receipts from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons of dining, and which is located in a wet or moist territory under KRS 242.1244;
- (37) "Local administrator" means a city alcoholic beverage administrator, county alcoholic beverage administrator, or urban-county alcoholic beverage control administrator;
- (38) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and includes weak cider;
- (39) "Manufacture" means distill, rectify, brew, bottle, and operate a winery;
- (40) "Manufacturer" means a winery, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages;
- (41) "Minor" means any person who is not twenty-one (21) years of age or older;
- (42) "Moist" means a territory in which a majority of the electorate voted to permit limited alcohol sales by any one (1) or a combination of special limited local option elections authorized by KRS Chapter 242;
- (43) "Population" means the population figures established by the federal decennial census for a census year or the current yearly population estimates prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, for all other years;
- (44) "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998, shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license;
- (45) "Primary source of supply" or "supplier" means the distiller, winery, brewer, producer, owner of the commodity at the time it becomes a marketable product, bottler, or authorized agent of the brand owner. In the case of imported products, the primary source of supply means either the foreign producer, owner, bottler, or agent of the prime importer from, or the exclusive agent in, the United States of the foreign distiller, producer, bottler, or owner;
- (46) "Private club" means a nonprofit social, fraternal, military, or political organization, club, or nonprofit or for-profit entity maintaining or operating a club room, club rooms, or premises from which the general public is excluded;
- (47) "Public nuisance" means a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by a community or neighborhood or by any considerable number of persons;
- (48) "Qualified historic site" means:
- (a) A contributing property with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served within a commercial district listed in the National Register of Historic Places;
- (b) A site that is listed as a National Historic Landmark or in the National Register of Historic Places with dining facilities for at least fifty (50) persons at tables, booths, or bars where food may be served;
- (c) A distillery which is listed as a National Historic Landmark and which conducts souvenir retail package sales under KRS 243.0305; or
- (d) A not-for-profit or nonprofit facility listed on the National Register of Historic Places;
- (49) "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or



compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name;

- (50) "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made;
- (51) "Restaurant" means a facility where the usual and customary business is the preparation and serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its food and alcoholic beverage receipts from the sale of food at the premises;
- (52) "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery or shipment to the consumer or not;
- (53) "Retail sale" means any sale of alcoholic beverages to a consumer, including those transactions taking place in person, electronically, online, by mail, or by telephone;
- (54) "Retailer" means any licensee who sells and delivers any alcoholic beverage to consumers, except for manufacturers with limited retail sale privileges and direct shipper licensees;
- (55) "Riverboat" means any boat or vessel with a regular place of mooring in this state that is licensed by the United States Coast Guard to carry one hundred (100) or more passengers for hire on navigable waters in or adjacent to this state;
- (56) "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage;
- (57) "Service bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar;
- (58) "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage;
- (59) "Small farm winery" means a winery whose wine production is not less than two hundred fifty (250) gallons and not greater than five hundred thousand (500,000) gallons in a calendar year;
- (60) "Souvenir package" means a special package of distilled spirits available from a licensed retailer that is:
  - (a) Available for retail sale at a licensed Kentucky distillery where the distilled spirits were produced or bottled; or
  - (b) Available for retail sale at a licensed Kentucky distillery but produced or bottled at another of that distiller's licensed distilleries in Kentucky;
- (61) "State administrator" or "administrator" means the distilled spirits administrator or the malt beverages administrator, or both, as the context requires;
- (62) "State park" means a state park that has a:
  - (a) Nine (9) or eighteen (18) hole golf course; or
  - (b) Full-service lodge and dining room;
- (63) "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar;
- (64) "Territory" means a county, city, district, or precinct;
- (65) "Urban-county administrator" means an urban-county alcoholic beverage control administrator;
- (66) "Valid identification document" means an unexpired, government-issued form of identification that contains the photograph and date of birth of the individual to whom it is issued;
- (67) "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages;
- (68) "Vintage distilled spirit" means a package or packages of distilled spirits that:
  - (a) Are in their original manufacturer's unopened container;

- (b) Are not owned by a distillery; and
  - (c) Are not otherwise available for purchase from a licensed wholesaler within the Commonwealth;
- (69) "Warehouse" means any place in which alcoholic beverages are housed or stored;
- (70) "Weak cider" means any fermented fruit-based beverage containing more than one percent (1%) but less than seven percent (7%) alcohol by volume;
- (71) "Wet" means a territory in which a majority of the electorate voted to permit all forms of retail alcohol sales by a local option election under KRS 242.050 or 242.125 on the following question: "Are you in favor of the sale of alcoholic beverages in (name of territory)?";
- (72) "Wholesale sale" means a sale to any person for the purpose of resale;
- (73) "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet;
- (74) "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. It includes sake, cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It does not include weak cider; and
- (75) "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded, except a place or premises that manufactures wine for sacramental purposes exclusively.

**Signed by Governor March 25, 2021.**

## CHAPTER 137

### ( SB 86 )

AN ACT relating to solid waste and making an appropriation therefor.

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

➔Section 1. KRS 30A.190 is amended to read as follows:

All fees, fines, forfeitures, and costs in any District Court or Circuit Court case shall be collected and accounted for by the Circuit Court clerk and paid into the State Treasury, except that:

- (1) Sixty percent (60%) of any fines imposed for the violation of KRS Chapter 150 or KRS Chapter 235 shall when collected be paid into the fish and game fund;~~;~~
- (2) Sixty percent (60%) of any fines imposed for the violation of KRS 433.753, 433.757, or 512.070 shall when collected be paid to the county in which the violation occurred;~~;~~~~and~~
- (3) Forty percent (40%) of any fines imposed for the violation of KRS 433.753, 433.757, or 512.070 shall, when collected, be paid to the agency issuing the citation; **and**
- (4) ***One hundred percent (100%) of any fines imposed for the violation of subsection (5) of Section 3 of this Act and subsection (10) of Section 4 of this Act shall, when collected, be transferred to the treasurer of the county in which the violation occurred.***

➔Section 2. KRS 65.8808 is amended to read as follows:

- (1) The legislative body of a local government may, by ordinance, create a code enforcement board which shall have the power to issue remedial orders and impose civil fines as a method of enforcing a local government ordinance when a violation of the ordinance has been classified as a civil offense in accordance with this section. Any local government may expand its code enforcement board to include additional cities or counties within its jurisdiction for performing the function for which the code enforcement board was organized.

- (2) Subject to the limitations set forth in subsection (3) of this section, the legislative body of a local government may utilize a code enforcement board to enforce any ordinance of the local government, including but not limited to ~~the~~ **littering, open dumping of solid waste, or** any zoning or nuisance ordinance. Each ordinance to be enforced by a code enforcement board, by its express terms, shall provide that each violation of the ordinance shall constitute a civil offense. The ordinance shall provide either:
- (a) A specific civil fine or fines that may be imposed for each violation of the ordinance; or
  - (b) Two (2) separate civil fines as follows:
    1. A maximum civil fine that may be imposed for each offense if the citation is contested under KRS 65.8825(6); and
    2. A specific civil fine of less than the maximum civil fine that will be imposed for each offense if the person who has committed the offense does not contest the citation.

- (3) ***With the exceptions of criminal littering under KRS 433.753 and littering of public waters under KRS 433.757, no legislative body of a local government shall classify the violation of an ordinance as a civil offense if the same conduct that is regulated by the ordinance would also, under any provision of the Kentucky Revised Statutes, constitute a criminal offense or a moving motor vehicle offense.***

➔Section 3. KRS 224.40-100 is amended to read as follows:

- (1) No person shall transport to or dispose of waste at any site or facility other than a site or facility for which a permit for waste disposal has been issued by the cabinet. Upon request, any transporter of waste shall receive from the cabinet a current list of permitted waste disposal sites or facilities and shall be subsequently notified of any new permits or changes in the status of permits for waste disposal sites and facilities in the Commonwealth.
- (2) The use of open dumps is prohibited except in the case of an open dump which is under a timetable or schedule for compliance approved by the cabinet. The cabinet may enjoin the operation of any open dump which does not have a timetable or schedule of compliance approved by the cabinet.
- (3) The cabinet may require any person who violates this section or KRS 224.40-305 to take appropriate response actions to close and reclaim or upgrade open dumps to comply with applicable administrative regulations adopted by the cabinet. If a demand for response action is not implemented within a time period specified in a demand or timetable or schedule for compliance issued or approved by the cabinet, the cabinet may enjoin the operation of the open dump and restore the site.
- (4) Except as provided in KRS 224.43-020, the cabinet may assess any person who violates this section by failing to take appropriate actions to close and reclaim or upgrade open dumps, damages in an amount equal to the cost of closure as estimated by the cabinet. The money collected shall be placed in the agency account established under KRS 224.40-650(4) to be used for the site closure and restoration. Any money remaining after site closure and restoration from the amount assessed shall be returned to the person against whom any assessment was made.
- (5) ***A legislative body of a local government, as defined in KRS 65.8805, that has not adopted the procedures provided for in KRS 65.8801 to 65.8840 may adopt ordinances against open dumping and impose a civil fine of not less than two hundred fifty dollars (\$250) and not more than five hundred dollars (\$500) on any person who violates subsection (1) of this section. Penalties shall be imposed by the District Court in the county where the offense occurred and shall be collected by the Circuit Court clerk and transferred to the treasurer in the county where the offense occurred for the abatement, cleanup, and restoration of the open dump site. Nothing contained in this subsection shall limit the cabinet's authority to:***
  - (a) ***Regulate the transport, permitting, or disposal of solid waste; or***
  - (b) ***Prohibit open dumping, impose fines and penalties, or impose any other requirements on solid waste disposal.***
- (6) ***The District Court shall not enforce any provision of this section relating to improper disposal of solid waste against an owner, occupant, or person having control or management of any land if the owner, occupant, or person is:***
  - (a) ***Not the generator of the solid waste or is not disposing or knowingly allowing the disposal of solid waste and has made reasonable efforts to prevent the disposal of solid waste by other persons onto the property; or***

**(b) A solid waste management facility operating in compliance with its solid waste management permit.**

➔Section 4. KRS 224.99-010 is amended to read as follows:

- (1) Any person who violates KRS 224.10-110(2) or (3), 224.70-110, 224.73-120, 224.20-050, 224.20-110, 224.46-580, 224.1-400, or who fails to perform any duties imposed by these sections, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars (\$25,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.
- (2) Any person who violates KRS 224.10-110(4) or (5), or KRS 224.40-100, 224.40-305, or any provision of this chapter relating to noise, or who fails to perform any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of five thousand dollars (\$5,000) for said violation and an additional civil penalty not to exceed five thousand dollars (\$5,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.
- (3)
  - (a) Any person who shall knowingly violate any of the provisions of this chapter relating to noise or any determination or order of the cabinet promulgated pursuant to those sections which have become final shall be guilty of a Class A misdemeanor. Each day upon which the violation occurs shall constitute a separate violation.
  - (b) For offenses by motor vehicles, a person shall be guilty of a violation.
- (4) Any person who knowingly violates KRS 224.70-110, 224.73-120, 224.40-100, 224.20-110, 224.20-050, 224.40-305, or 224.10-110(2) or (3), or any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant to those sections which have become final, or who knowingly provides false information in any document filed or required to be maintained under this chapter, or who knowingly renders inaccurate any monitoring device or method, or who tampers with a water supply, water purification plant, or water distribution system so as to knowingly endanger human life, shall be guilty of a Class D felony, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.
- (5) If any person engages in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of the hazardous waste management provisions of this chapter or contrary to a permit, order, or rule issued or promulgated under this chapter, or fails to provide information or to meet reporting requirements required by terms and conditions of a permit or administrative regulations promulgated pursuant to this chapter, the secretary may issue an order requiring compliance within a specified time period or may commence a civil action in a court of appropriate jurisdiction. The violator shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars (\$25,000) for each day during which the violation continues, and in addition, may be enjoined from any violations in a court of appropriate jurisdiction.
- (6) Any person who knowingly is engaged in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of this chapter or contrary to a permit, order, or administrative regulation issued or promulgated under this chapter, or knowingly makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, shall be guilty of a Class D felony, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.
- (7) Nothing contained in subsections (4) or (5) of this section shall abridge the right of any person to recover actual compensatory damages resulting from any violation.
- (8) Any person who violates any provision of this chapter to which no express penalty provision applies, except as provided in KRS 211.995, or who fails to perform any duties imposed by those sections, or who violates any determination or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of one thousand dollars (\$1,000) for said violation and an additional civil penalty not to exceed one thousand dollars (\$1,000) for each day during which the violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.

- (9) The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil, criminal, and injunctive actions instituted by the cabinet or by the Attorney General on its behalf for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.
- (10) Any person who deposits leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with permission of the owner of the receptacle, or who places litter into a receptacle in such a manner that the litter may be carried away or deposited by the elements upon any property or water not owned by him is guilty of a Class B misdemeanor. ***Penalties imposed under this subsection shall be, when collected, transferred to the county treasurer where the offense occurred and placed into a fund for solid waste cleanup. This subsection shall not be construed to divert any other fines assessed and collected by the cabinet or funds available to the cabinet for the purpose of remediation of open dumps.***
- (11) In addition to or in lieu of the penalties set forth in this section or in KRS Chapters 532 and 534, any person found guilty of a second or subsequent offense related to littering may be ordered by the court to pick up litter for not less than four (4) hours.
- (12) Any person who violates KRS 224.20-300, 224.20-310, any other provision of this chapter, or any determination, permit, administrative regulation, or order of the cabinet relating to the Asbestos Hazard Emergency Response Act of 1986 (AHERA), Public Law 99-519, as amended, shall be liable to the Commonwealth of Kentucky for a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) for each violation. Each day a violation continues shall, for purposes of this subsection, constitute a separate violation of provisions of this chapter relating to AHERA.
- (13) A violation of KRS 224.50-413 shall be subject to a fifty dollar (\$50) fine for each day the violation continues.
- (14) Any person who removes a methamphetamine contamination notice posted under KRS 224.1-410(9) contrary to the administrative regulations governing methamphetamine contamination notice removal shall be guilty of a Class A misdemeanor.
- (15) Any person who leases, rents, or sells a property that has been determined to be contaminated property under KRS 224.1-410(4) to a lessee, renter, or buyer without giving written notice that the property is a contaminated property pursuant to KRS 224.1-410(10) shall be guilty of a Class D felony.

➔Section 5. KRS 431.100 is amended to read as follows:

- (1) When a money judgment is entered against a defendant in a criminal proceeding and each sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the Commonwealth of Kentucky to such defendant an amount equal to the unpaid amount of the judgment. Under no circumstances shall the general fund be used to reimburse court costs or pay for judgment.
- (2) Except as provided in this section, all fines and forfeitures imposed by law or ordinance shall inure to and vest in the Commonwealth.
- (3) Fines and forfeitures imposed by law for violation of KRS 222.202 or ordinances relating to similar subject matter shall inure to and vest in the Commonwealth and shall be placed in a special fund in the State Treasury, which shall not lapse, and which, effective July 1, 1987, shall be used solely by the Cabinet for Health and Family Services for the provision of treatment and counseling programs for alcoholics.
- (4) Sixty percent (60%) of fines for violation of KRS 512.070, ***433.753, and 433.757*** shall, when collected, be transferred by the circuit clerk to the county treasurer for inclusion in the general fund of the county in which the offense occurs ***for the cleanup and abatement of litter and open dumps*** and forty percent (40%) shall be transferred to the agency that issued the citation. ***One hundred percent (100%) of any fines imposed for the violation of subsection (5) of Section 3 of this Act and subsection (10) of Section 4 of this Act shall, when collected, be transferred to the treasurer of the county in which the violation occurred.***
- (5) The court shall not order a fine, forfeiture, service fee, cost, or any other money due the Commonwealth or any other public officer paid to any person or organization other than one specifically required by the Kentucky Revised Statutes, nor shall a court suspend payment of a fine, forfeiture, service fee, cost, or any other money due the Commonwealth if the defendant makes a payment to another person or organization, unless so authorized by the court and the Kentucky Revised Statutes.
- (6) When, as authorized in the Kentucky Revised Statutes, a court does order a fine, forfeiture, service fee, cost, or any other monetary penalty to be paid to a person other than the circuit clerk, notice of this order will be

served on the defendant and a copy of the order will be delivered to the person. Such an order constitutes a judgment of the court and carries with it all lawful means of enforcement and collection.

**Signed by Governor March 25, 2021.**

## CHAPTER 138

### ( SB 140 )

AN ACT relating to jails.

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

➔Section 1. KRS 441.055 is amended to read as follows:

- (1) The Department of Corrections shall for those counties which elect to house state prisoners in their jail:
  - (a) *I.* Adopt the recommendations of the Jail Standards Commission created pursuant to Executive Order Number 81-1026 and promulgate regulations pursuant to KRS Chapter 13A establishing minimum standards for jails. These standards shall include~~[ ]~~ but not be limited to~~[ ]~~ rules governing the following areas:
    - a.*~~[1.]~~ Health and safety conditions;
    - b.*~~[2.]~~ Fire safety;
    - c.*~~[3.]~~ Jail operations, recordkeeping, and administration;
    - d.*~~[4.]~~ Curriculum of basic and continuing annual training for jailers and jail personnel;
    - e.*~~[5.]~~ Custody, care, and treatment of prisoners;
    - f.*~~[6.]~~ Medical care; and
    - g.*~~[7.]~~ Jail equipment, renovation, and construction.
  - 2. These minimum standards shall specifically allow for:*
    - a. Provision of required documents to prisoners through electronic format;*
    - b. Confidential prisoner access to attorneys through unmonitored phone lines in non-contact visitation areas;*
    - c. Measures to prevent receipt of prisoner mail containing intoxicants, including in fabricated legal mail; and*
    - d. Delivery of mail received from the court, an attorney of record, or a public official to the prisoner via an electronic copy provided on a secure, personal account after opened and inspected in the presence of the prisoner;*
  - (b) Develop a jail standards review process, which shall include the participation of persons knowledgeable of jail operations to review and amend the standards as necessary. The jail standards shall be reviewed no later than December 31, 1992, and at least every two (2) years thereafter. Fifty percent (50%) of the participants in the review process shall be appointed from persons representing county interests and fifty percent (50%) shall be appointed from persons representing state interests; and
  - (c) Provide technical assistance and consultation to local governments in order to facilitate compliance with standards.
- (2) The department shall, for those counties that elect not to hold state prisoners in their jails, adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations pursuant to KRS Chapter 13A to establish minimum standards for those jails. These standards shall be limited to health and life safety.

- (3) All minimum standards promulgated by the department applying to jails shall include requirements for adequate nutrition for pregnant prisoners, an adequate number of hygiene products for female prisoners, and an appropriate number of undergarments for female prisoners.
- (4) The department may establish classifications of jails based on the maximum permissible period of incarceration or other criteria and promulgate standards for each class of jail.

**Signed by Governor March 25, 2021.**

## CHAPTER 139

( SB 227 )

AN ACT relating to Capitol campus security.

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

→Section 1. KRS 6.420 is amended to read as follows:

The Department of Kentucky State Police shall ***provide certified officers for the*** ~~[furnish adequate]~~ protection ~~of for~~ the property, ~~and~~ facilities, ***and the meetings*** of the General Assembly and the Legislative Research Commission, ***including off-site protection***, both during and between sessions of the General Assembly, and shall render such additional security services as may be required by the co-chairmen of the Legislative Research Commission. ***Notwithstanding any other law to the contrary, the Department of Kentucky State Police shall brief the leadership of the General Assembly and the Legislative Research Commission on security matters relating to the Capitol campus when requested to do so.***

**Signed by Governor March 25, 2021.**

## CHAPTER 140

( SB 231 )

AN ACT relating to attorney's fees for paternity actions.

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

→SECTION 1. A NEW SECTION OF KRS CHAPTER 406 IS CREATED TO READ AS FOLLOWS:

***The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees for private counsel, including sums for legal services rendered and costs incurred prior to commencement of the proceeding, or after entry of judgment. Upon determination that an action under this chapter was initiated in bad faith, the court may order the offending party to pay attorney's fees to the opposing attorney for legal services rendered and costs incurred. The court may order that the amount be paid directly to the attorney, who may enforce the order in his or her name.***

**Signed by Governor March 25, 2021.**

## CHAPTER 141

( SB 255 )

AN ACT relating to commercial mining of cryptocurrency.

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

➔Section 1. 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) ***"Blockchain technology" or "blockchain" means shared or distributed data structures or digital ledgers governed by consensus protocols and maintained by peer-to-peer networks that:***
  - (a) ***Store digital transactions; and***
  - (b) ***Verify and secure transactions cryptographically;***
- ~~(9)~~(8) "Biomass resources" has the same meaning as in KRS 152.715;
- ~~(10)~~(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;
- ~~(11)(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;
- ~~(12)(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;
- ~~(13)(12)~~ "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- (14) "Commercial mining of cryptocurrency" means the process through which blockchain technology is used to mine cryptocurrency at a cryptocurrency facility, and includes the process through which blockchain transactions are verified and accepted by adding the transactions to a blockchain ledger, which involves solving complex mathematical cryptographic problems associated with a block containing transaction data;**
- ~~(15)(13)~~ "Commonwealth" means the Commonwealth of Kentucky;
- ~~(16)(14)~~ "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;
- (17) "Consensus protocol" means a set of rules and procedures that control how and when blockchain transactions are verified, validated, recorded, and recognized;**
- (18) "Cryptocurrency" means a type of virtual currency that utilizes blockchain technology and that:**
- (a) Can be digitally traded between users; or**
  - (b) Can be converted or exchanged for legal tender;**
- (19) "Cryptocurrency facility" means a facility located in the Commonwealth that is utilized in the commercial mining of cryptocurrency or in hosting persons engaged in the commercial mining of cryptocurrency through utilization of the facility's infrastructure, including servers and network hardware powered by Internet bandwidth, electricity, and other services generally required for such mining operations;**
- ~~(20)(15)~~ "Department" means the Department of Revenue;
- ~~(21)(16)~~ "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;
  - (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 KRS 154.27-020; **or**
  - (e) A cryptocurrency facility meeting the investment requirements of Section 2 of this Act;**
- ~~(22)(17)~~ "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;
- ~~(23)(18)~~ "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;
- ~~(24)(19)~~ "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- ~~(25)(20)~~ (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used:
1. In a manufacturing process that transforms raw materials into a product with commercial value;  
*or*
  2. *In the commercial mining of cryptocurrency or in hosting persons engaged in the commercial mining of cryptocurrency.*
- ~~(b)(1)~~ The facility shall include the physical plant structure where the manufacturing process occurs *or where the commercial mining of cryptocurrency occurs* and machinery and equipment within the physical plant structure.
- ~~(c)(2)~~ The facility may include:
- 1.~~(a)~~ On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
  - 2.~~(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;
  - 3.~~(c)~~ On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
  - 4.~~(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.
- ~~(d)(b)~~ "Facility" shall not include any mining operations, or drilling and production operations for natural gas, *unless such coal, natural resource, or natural gas operations are being used for purposes of, or are hosting, the commercial mining of cryptocurrency, in which case such operations shall be a facility*;
- ~~(26)(21)~~ "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- ~~(27)(22)~~ (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;
- ~~(28)(23)~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- ~~(29)(24)~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- ~~(30)(25)~~ "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;

~~(31)(26)~~ "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;

~~(32)(27)~~ "Resident" has the same meaning as in KRS 141.010;

~~(33) (a)(28)~~ "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product *or services* or uses a new or different process to produce the same product *or services* at the facility.

- (b) 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;

~~(34)(29)~~ "Synthetic natural gas" has the same meaning as in KRS 152.715;

~~(35)(30)~~ "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;

~~(36)(31)~~ "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

~~(37)(32)~~ "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 *or services* that are required to be produced *or performed* by that facility to be an eligible project.

➔Section 2. KRS 154.27-020 is amended to read as follows:

(1) This subchapter shall be known as the "Incentives for *Energy-related Business* ~~[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 and advanced technologies*, 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, *and to become a national leader in emerging industries which use substantial amounts of energy*. 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; *or*
- (e) *Increasing the usage of electricity in areas which have an abundant supply due to the loss of manufacturing businesses across the state.*

(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;
  - (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); *and*
  - (g) ***For a cryptocurrency facility, the minimum capital investment shall be one million dollars (\$1,000,000).***
- (5) The incentives under the Incentives for ***Energy-related Business***~~[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, ***including commercial cryptocurrency mining equipment at a facility***, 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 3. KRS 154.27-030 is amended to read as follows:

- (1) A company with an eligible project may submit an application for incentives to the authority prior to making any capital investment it will seek to recover.
- (2) The application shall include:
  - (a) The name of the applicant and identification of any affiliates of the applicant;
  - (b) The type of eligible project;
  - (c) A description of the location;
  - (d) A full description of the eligible project scope, including but not limited to:
    1. A list and the status of permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
    2. A description of the carbon capture readiness of the facility, if the proposed eligible project is an alternative fuel facility or a gasification facility;
    3. Any feasibility studies, including supporting documents;
    4. Anticipated sources of eligible project funding;
    5. The total anticipated capital investment and the time period over which the capital investment will occur;
    6. The proposed feedstock and the estimated volume of feedstock use per year;
    7. A description of the proposed products *or services* to be produced by the facility and the process that will be used to produce the products;
    8. The planned capacity of the facility after construction, retrofit, or upgrade;
    9. The estimated output of the facility upon completion; and
    10. A plan for and description of how the company will employ Kentucky residents at the facility and how the company will ensure, to the extent possible, that workers employed during construction, retrofit, or upgrade of the facility are Kentucky residents. The plan shall include projected numbers;
  - (e) Identification of the specific incentives sought;
  - (f) Payment of any applicable application fees required by the authority to offset reasonable costs of reviewing and processing the application; and
  - (g) Other information as required by the authority.
- (3) The authority shall forward the application to the Department of Revenue and the Office of Energy Policy, *if applicable*, for review and comment with a date by which comments shall be provided back to the authority. The authority may forward the application to the Center for Applied Energy Research for review and comment as well.
- (4) (a) The authority shall review the application and shall verify that:
  1. The applicant has met all of the statutory and regulatory requirements established by this subchapter and regulations promulgated thereunder;
  2. The applicant has secured or is in the process of securing all necessary permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
  3. The proposed facility is carbon capture ready, if the proposed facility is an alternative fuel facility or gasification facility;
  4. The company has a plan that includes a projected number of Kentucky residents that will be employed during the construction, retrofit, or upgrade of the facility and at the facility upon completion; and
  5. Any other requirements established by the authority.

- (b) The Department of Revenue and the Office of Energy Policy, *if applicable*, shall review the application and shall verify that the company seeking approval and all affiliate companies are in good standing with the department.
  - (c) The authority may engage the services of outside consultants to assist in the review of the application. Costs associated with the engagement of outside consultants shall be borne by the applicant.
- (5) (a) Upon the earlier of:
1. The receipt of comments and recommendations from the Office of Energy Policy, the Department of Revenue, and the Center for Applied Energy Research, if applicable; or
  2. The expiration of the time period established by the authority for receiving comments pursuant to subsection (3) of this section;
- the authority may, through the adoption of a resolution, preliminarily approve an applicant for incentives under this subchapter.
- (b) Preliminary approval shall be based upon representations of the applicant in the application and attachments as well as other information submitted with the application. The authority shall make a finding that, based upon the applicant's representations, the project appears to be eligible for incentives pursuant to this subchapter.
  - (c) Prior to final approval:
    1. The applicant shall:
      - a. Provide all supportive data requested by the authority;
      - b. Secure all required permits or take appropriate steps to do so; and
      - c. Cooperate with the authority to obtain opinions or recommendations from any outside consultants; and
    2. The authority shall, in consultation with the Office of Energy Policy or any other entity, verify the representations of the applicant.
  - (d)
    1. A preliminarily approved company seeking an advance disbursement employment incentive under KRS 154.27-090 shall, prior to receiving final approval from the authority, provide to the authority a labor market analysis prepared by a public postsecondary education institution in the Commonwealth with knowledge of the labor market in the region in which the eligible project will be located.
    2. The labor market analysis shall evaluate the construction market in the region where the proposed project is to be located and the estimated labor component of the proposed project. The public postsecondary education institution may consult with the Center for Applied Energy Research or the Office of Energy Policy in determining the types of laborers required for the construction, retrofit, or upgrade of the eligible facility.
    3. The labor market analysis shall include an estimate of the percentage of the estimated labor component that constitutes wages to be paid to Kentucky residents.
  - (e) Based upon all of the information available, the authority may, through adoption of a resolution, give its final approval and authorize the execution of a tax incentive agreement to be negotiated pursuant to KRS 154.27-040.
- (6) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.
  - (7) The actual capital investment that may be recovered and percentages of each incentive that an approved company may receive shall be negotiated between the approved company and the authority and shall not exceed the limitations established by KRS 154.27-020.
  - (8) The General Assembly recognizes that the incentives offered under this subchapter include the possibility of the release of incentives to approved companies prior to construction completion, and that the release of these incentives may present more risk for the Commonwealth. The authority is directed to consider the possible increased risk to the Commonwealth when negotiating tax incentive agreements that include incentives prior to construction completion, and to incorporate repayment or similar remedy provisions in the tax incentive

agreement to the extent the authority determines such provisions are necessary to protect the investment made by the Commonwealth if the approved company fails to comply with the terms of the tax incentive agreement.

- (9) The authority and the approved company shall enter into a tax incentive agreement in accordance with KRS 154.27-040.
- (10) The authority, with input from the Office of Energy Policy, *if applicable*, and the Department of Revenue, shall establish additional standards and requirements for the application process through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The standards shall include but not be limited to the creditworthiness of eligible companies and the likelihood of economic success of the economic development project.
- (11) Notwithstanding any other provision of this subchapter, the authority may approve a maximum of five (5) projects under this subchapter that involve an alternative fuel facility located in Kentucky that:
  - (a) 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;
  - (b) 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; and
  - (c) Has a minimum capital investment of one million dollars (\$1,000,000).

➔Section 4. KRS 154.27-095 is amended to read as follows:

No application for incentives found in KRS 154.27-010 to 154.27-100 shall be accepted by the authority *for alternative fuel facilities, gasification facility, energy-efficient facility, renewable energy facility, or a carbon dioxide transmission pipeline* after August 1, 2018. All outstanding projects with preliminary or final approval shall continue to be governed by the provisions of this subchapter.

➔Section 5. KRS 154.12-2035 is amended to read as follows:

- (1) The cabinet shall maintain a searchable electronic database on its Web site containing information on the cost and status of the programs listed in subsection (3)(a) of this section. The database shall include all projects approved at any time in the last five (5) years and shall include for each, where applicable, the following information:
  - (a) The name of the program, the recipient or participant, the type of project, and its location by county;
  - (b) Total and approved costs of the project or investment, and the amount of incentives or other benefits authorized;
  - (c) For the Kentucky Business Investment Program and the Kentucky Enterprise Initiative Act, the amount of incentives or other benefits actually recovered as self-reported by the recipient;
  - (d) The number of new jobs estimated and, for the Kentucky Business Investment Program, actually created, along with wage information for those jobs;
  - (e) Project status and the date and nature of the most recent activity; and
  - (f) Any other comparable data or information necessary to achieve transparency and accountability for the specified programs.
- (2) In addition to the electronic database required in subsection (1) of this section, the cabinet shall prepare an annual report on the programs listed in subsection (3) of this section and make it available on the Cabinet for Economic Development Web site by November 1 of each year. The report shall include all projects approved in the preceding fiscal year and shall provide for these projects the information specified in subsection (1) of this section plus aggregate data for each program, summary evaluations of program activity and effectiveness, and anything required by statute to be reported for any particular program. The report shall also list all projects that were approved in prior years but active at any time in the preceding fiscal year, although for these projects the report need not provide further data.
- (3) The following programs shall be subject to the reporting requirements of this section:
  - (a) The electronic database required in subsection (1) of this section shall include the Bluegrass State Skills Corporation, grants-in-aid and skills training investment credit; Kentucky Business Investment Program; Kentucky Enterprise Initiative Act; Office of Entrepreneurship programs; Incentives for *Energy-related Business* ~~[Energy Independence]~~ Act; Kentucky Economic Development Finance

Authority small business and direct loan programs; Kentucky Industrial Revitalization Act; Kentucky Reinvestment Act; Kentucky Small Business Tax Credit; economic development bonds; Kentucky Industrial Development Act; Kentucky Jobs Development Act; Kentucky Jobs Retention Act; the Kentucky Rural Economic Development Act; and

- (b) The annual report required by subsection (2) of this section shall include all programs listed in paragraph (a) of this subsection plus the Kentucky Investment Fund Act, and tax increment financing, state participation projects.
- (4) The cabinet shall coordinate with any other agency necessary to supply the information required by this section.

➔Section 6. KRS 353.804 is amended 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-related Business*~~[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, United States 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 7. This Act takes effect July 1, 2021.

**Signed by Governor March 25, 2021.**

## CHAPTER 142

( SB 257 )

AN ACT relating to utility fuel costs.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *In any review by the commission of any fuel adjustment clause, for any contracts entered into on or after July 1, 2021, the commission shall, in determining the reasonableness of fuel costs in procurement contracts and fuel procurement practices, evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction.*
- (2) *As used in this section, "fuel adjustment clause" means any clause or provision in any tariff or contract by which an electric utility may immediately recover increases in fuel costs subject to later scrutiny or review by the commission.*

**Signed by Governor March 25, 2021.**



**CHAPTER 143****( HB 542 )**

AN ACT relating to certain weather-related emergencies and declaring an emergency.

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

→Section 1. The General Assembly hereby approves and ratifies Executive Order 2021-093 dated February 11, 2021, in full, and declares that the order shall expire 60 days from its effective date of February 11, 2021.

→Section 2. The General Assembly hereby approves and ratifies Executive Order 2021-136, dated February 28, 2021, in full, and declares that the order shall expire 60 days from the effective date of this Act.

→Section 3. Whereas the General Assembly desires to ensure that the citizens of the Commonwealth are protected during the extreme weather of February and March 2021, and wishes to continue the emergency measures outlined in Executive Orders 2021-093 and 2021-136 for specific periods of time, 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.

**Became law without Governor's signature March 25, 2021.**

**CHAPTER 144****( HB 331 )**

AN ACT relating to removal of local school board members.

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

→Section 1. KRS 156.132 is amended to read as follows:

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools ~~or board member~~ during which time charges were brought against him under this section.

- (1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate jurisdiction, the removal of any superintendent of schools, principal, teacher, member of a school council, or other public school officer as to whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. In the case of a member of a school council, the written charges shall be provided to the local board of education.
- (2) The chief state school officer shall recommend by written charges the suspension by the Kentucky Board of Education of any ~~district board member,~~ superintendent of schools ~~or~~ other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. If the charges brought under this subsection represent an immediate threat to the public health, safety, or welfare, the Kentucky Board of Education shall summarily suspend the person against whom the charges are made. The action by the Kentucky Board of Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the Kentucky Board of Education without recommendation from the chief state school officer.
- (3) The Kentucky Board of Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if, after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the proper school authorities having immediate jurisdiction, either the superintendent or the district board of education, have refused to act, have acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.

- (4) Any officer suspended by the Kentucky Board of Education under subsection (2) of this section shall be furnished with an emergency order specifying in detail the reasons for suspension and notifying the officer of his right to appeal the action and have an emergency hearing pursuant to KRS 13B.125.
- (5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the Kentucky Board of Education of any ~~district board member,~~ superintendent of schools ~~or~~ other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of procedural rights conferred under KRS Chapter 13B. Within twenty (20) days after receipt of the charges, the officer may notify the Kentucky Board of Education of his intention to appear and answer the charges. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the officer fails to notify the board of his intention to appear and answer the charges, the Kentucky Board of Education may remove the officer by a majority vote, and the dismissal shall be final.
- (6) The hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members.
- (7) The Kentucky Board of Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare final order specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.
- (8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district in accordance with KRS Chapter 13B. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.
- (9) If a superintendent of schools is removed from office or resigns while charges are pending pursuant to this section after July 15, 1994, any continuing contract pursuant to KRS 161.720 to 161.810 shall be terminated. If the removal is reversed upon appeal, the continuing contract shall be restored and he shall be paid his full salary for the period of suspension.

➔Section 2. KRS 156.136 is amended to read as follows:

The Kentucky Board of Education, upon suspension of any officer ~~or district board of education member~~ under KRS 156.132, shall name a person to fill the vacancy caused by such suspension. Persons appointed by the Kentucky Board of Education to fill vacancies under KRS 156.132 and this section shall hold office only during the time an officer is suspended, not to exceed ninety (90) days from the date of suspension. At the expiration of such period, vacancies shall be filled in the manner provided by law for the office. Persons appointed by the Kentucky Board of Education to fill vacancies caused by suspension shall be paid from funds of the district board of education. Any person employed to fill the position of a superintendent who has been removed by the Kentucky Board of Education under KRS 156.132 shall be employed by the district board of education for periods not to exceed one (1) year if the superintendent has appealed to the courts and if the courts have not taken final action.

➔Section 3. KRS 158.785 is amended to read as follows:

- (1) The Kentucky Board of Education shall establish a program to improve specific aspects of the management of local school districts as described in KRS 158.780.
- (2) The State Department of Education shall, pursuant to administrative regulations promulgated by the Kentucky Board of Education, collect and review data relative to the instructional and operational performance of local school districts. When a review of the data or of any other information, including site investigations of local management practices, indicates the presence of critically ineffective or inefficient management, the chief state school officer shall order a management audit of the governance and administration of the district. A local school board or superintendent may also request a management audit of the district.
- (3) If a management audit, conducted for any of the reasons set forth in subsection (2) of this section, indicates that there is a pattern of a significant lack of efficiency and effectiveness in the governance or administration of a school district, the chief state school officer shall recommend the district to the Kentucky Board of Education either as a "state assisted district" or a "state managed district."
- (4) The Kentucky Board of Education shall promulgate an administrative regulation establishing a procedure for considering the recommendation of the chief state school officer to declare a district a "state assisted district"

or a "state managed district." This procedure shall fully comply with the procedures for administrative hearings established in KRS Chapter 13B.

- (5) When the chief state school officer presents a recommendation to the state board for designation as a "state assisted district" or a "state managed district," he shall establish the following:
  - (a) Existence of a pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district;
  - (b) The pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district continues to exist; and
  - (c) State assistance or state management is necessary to correct the inefficiencies and ineffectiveness.
- (6) When a district is designated a "state assisted district" under subsection (4) of this section, the following actions shall be required of the chief state school officer:
  - (a) Management assistance shall be provided to the district to develop and implement a plan to correct deficiencies found in the management audit.
  - (b) The Department of Education shall monitor the development and implementation of the correctional plan to improve the governance or administration of the school district. If the chief state school officer determines that the plan is being inadequately developed or implemented, he shall make a recommendation to the Kentucky Board of Education to declare the district a "state managed district."
- (7) If the state board designates a district a "state managed district" under subsection (4) of this section, the following actions shall be required of the chief state school officer:
  - (a) All administrative, operational, financial, personnel, and instructional aspects of the management of the school district formerly exercised by the local school board and the superintendent shall be exercised by the chief state school officer or his designee.
  - (b) ~~The~~ ~~Any local school board member or the~~ local superintendent may be removed from office by the Kentucky Board of Education pursuant to KRS 156.132.
  - (c) Notwithstanding any statute to the contrary, after thirty (30) days after a district becomes a "state managed district" any appointment to an administrative position may be revoked by the chief state school officer and the individual employee may be reassigned to any duty for which that person is qualified. The chief state school officer shall provide to the reassigned employee written reasons for the reassignment. The individual shall not be dismissed from subsequent employment except as provided by KRS 156.132 and 161.790.
  - (d) The chief state school officer shall make the administrative appointments as necessary to exercise full and complete control of all aspects of the management of the district. The chief state school officer, through the appointments, may make any and all decisions previously made by the local school board and the local superintendent. The chief state school officer shall retain clear supervisory and monitoring powers over the operation and management of the district.
- (8) A school district shall be designated as a "state managed district" until the Kentucky Board of Education determines that the pattern of ineffective and inefficient governance or administration and the specific deficiencies determined by the management audit have been corrected. Each year following the school year in which the designation of a "state managed district" was made, the chief state school officer shall report the status of the corrective action being taken to the Kentucky Board of Education. No local school district shall remain in the status of a "state managed district" longer than three (3) consecutive school years unless the Kentucky Board of Education extends the time after a complete review of a new management audit. Any judicial review of actions taken by the chief state school officer or the board under KRS 158.780 or this section shall be in accordance with the provisions for conducting judicial review of administrative hearings outlined in KRS Chapter 13B.

➔Section 4. 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 (i)11. of this subsection. 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.
      - a.
        - i. 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.
        - ii. Except as provided in subdivision b. of this subparagraph, 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. 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;
      - b. An alternative principal selection process may be used by the school council as follows:
        - i. Prior to a meeting called to select a principal, all school council members shall receive informational materials regarding Kentucky open records and open meetings laws and sign a nondisclosure agreement forbidding the sharing of information shared and discussions held in the closed session;
        - ii. The superintendent shall convene the school council and move into closed session as provided in KRS 61.810(1)(f) to confidentially recommend a candidate;
        - iii. The council shall have the option to interview the recommended candidate while in closed session; and

- iv. After any discussion, at the conclusion of the closed session, the council shall decide, in a public meeting by majority vote of the membership of the council, whether to accept or reject the recommended principal candidate;
  - c. If the recommended candidate is selected, and the recommended candidate accepts the offer, the name of the candidate shall be made public during the next meeting in open session;
  - d.
    - i. If the recommended candidate is not accepted by the school council under subdivision b. of this subparagraph, then the process set forth in subdivision a. of this subparagraph shall apply.
    - ii. The confidentially recommended candidate's name and the discussions of the closed session shall remain confidential under KRS 61.810(1)(f), and any documents used or generated during the closed meeting shall not be subject to an open records request as provided in KRS 61.878(1)(i) and (j).
    - iii. A recommended candidate who believes a violation of this subdivision has occurred may file a written complaint with the Kentucky Board of Education.
    - iv. A school council member who is found to have disclosed confidential information regarding the proceeding of the closed session shall be subject to removal from the school council by the Kentucky Board of Education under subsection (9)(e) of this section;
  3. No principal who has been previously removed from a position in the district for cause may be considered for appointment as principal in that district;
  4. Personnel decisions made at the school level under the authority of subparagraphs 1. and 2. of this paragraph shall be binding on the superintendent who completes the hiring process;
  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;
  6. Notwithstanding other provisions of this paragraph, if the applicant is the spouse of the superintendent and the applicant meets the service requirements of KRS 160.380(3)(a), the applicant shall only be employed upon the recommendation of the principal and the approval of a majority vote of the school council; and
  7. Beginning June 27, 2019, notwithstanding the requirement that a principal be elected on a majority vote of the council in subparagraph 2. of this paragraph, if the school council is in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C, then the selection of a principal shall be subject to approval by the superintendent. If the superintendent does not approve the principal selected by the council, then the superintendent may select the principal;
- (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(19);
  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 related to improving classroom teaching and learning;
  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. Adoption of an emergency plan as required in KRS 158.162;
  10. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; and
  11. 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 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 October 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) All schools shall implement school-based decision making 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 ~~or~~ 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.
  - (e) Notwithstanding paragraph (d) of this subsection and KRS 7.410(2)(c), if the state board determines a violation of the confidentiality requirements set forth in subsection (2)(h)2. of this section by a school council member has occurred, the state board shall remove the member from the school council, and the member shall be permanently prohibited from serving on any school council in the district.
- (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.
- (12) Discretionary authority exercised under subsection (2)(h)2.b. of this section shall not violate provisions of any employer-employee bargained contract existing between the district and its employees.

➔Section 5. KRS 160.470 is amended to read as follows:

- (1) (a) Notwithstanding any statutory provisions to the contrary, no district board of education shall levy a general tax rate which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the general tax rate that could have been levied in the preceding year to the preceding year's assessment, except as provided in subsections (9) and (10) of this section and KRS 157.440.
- (b) If an election is held as provided for in KRS 132.017 and the question should fail, such failure shall not reduce the "...general tax rate that could have been levied in the preceding year..." referred to in subsection (1)(a) of this section, for purposes of computing the general tax rate for succeeding years.

In the event of a merger of school districts, the limitations contained in this section shall be based upon the combined revenue of the merging districts, as computed under the provisions of this section.

- (2) No district board of education shall levy a general tax rate within the limits imposed in subsection (1) of this section which respectively exceeds the compensating tax rate defined in KRS 132.010, except as provided in subsections (9) and (10) of this section, KRS 157.440, and KRS 157.621, until the district board of education has complied with the provisions of subsection (7) of this section.
- (3) Upon receipt of property assessments from the Department of Revenue, the commissioner of education shall certify the following to each district board of education:
- (a) The general tax rate that a district board of education could levy under the provisions of subsection (1) of this section, and the amount of revenue expected to be produced;
- (b) The compensating tax rate as defined in KRS 132.010 for a district's general tax rate the amount of revenue expected to be produced;
- (c) The general tax rate which will produce, respectively, no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, and the amount of revenue expected to be produced.
- (4) Upon completion of action on property assessment data, the Department of Revenue shall submit certified property assessment data as required in KRS 133.125 to the chief state school officer.
- (5) Within thirty (30) days after the district board of education has received its assessment data, the rates levied shall be forwarded to the Kentucky Board of Education for its approval or disapproval. The failure of the district board of education to furnish the rates within the time prescribed shall not invalidate any levy made thereafter.
- (6) (a) Each district board of education shall, on or before January 31 of each calendar year, formally and publicly examine detailed line item estimated revenues and proposed expenditures for the subsequent fiscal year. On or before May 30 of each calendar year, each district board of education shall adopt a tentative working budget which shall include a minimum reserve of two percent (2%) of the total budget.
- (b) Each district board of education shall submit to the Kentucky Board of Education no later than September 30, a close estimate or working budget which shall conform to the administrative regulations prescribed by the Kentucky Board of Education.

- (7) (a) Except as provided in subsections (9) and (10) of this section and KRS 157.440, a district board of education proposing to levy a general tax rate within the limits of subsection (1) of this section which exceed the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district or, in the event the taxing district has no office, or the office is not suitable for such a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.
- (b) The district board of education shall advertise the hearing by causing the following to be published at least twice for two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:
1. The general tax rate levied in the preceding year, and the revenue produced by that rate;
  2. The general tax rate for the current year, and the revenue expected to be produced by that rate;
  3. The compensating general tax rate, and the revenue expected from it;
  4. The revenue expected from new property and personal property;
  5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
  6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day that the second advertisement is published;
  7. The purpose of the hearing; and
  8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained herein.
- (c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property, addressed to the property owner at his residence or principal place of business as shown on the current year property taxroll.
- (d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The district board of education may set reasonable time limits for testimony.
- (8) (a) That portion of a general tax rate, except as provided in subsections (9) and (10) of this section, KRS 157.440, and KRS 157.621, levied by an action of a district board of education which will produce, respectively, revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be subject to a recall vote or reconsideration by the district board of education as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.
- (b) The district board of education shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a general tax rate, except as provided in subsections (9) and (10) of this section and KRS 157.440, which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause the following to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:
1. The fact that the district board of education has adopted such a rate;
  2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and
  3. The name, address, and telephone number of the county clerk of the county or urban-county in which the school district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.
- (9) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after June 30, 1990, the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents (\$0.30) for general school purposes. Equivalent tax rate is defined as the rate which results

when the income collected during the prior year from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Department of Revenue. School districts collecting school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, or 160.635 to 160.648 for less than twelve (12) months during a school year shall have included in income collected under this section the pro rata tax collection for twelve (12) months.

- (b) ***Failure of a board***~~[If a board fails]~~ to comply with paragraph (a) of this subsection ***may constitute a forfeiture of office by***~~[ shall be subject to removal from office for willful neglect of duty]~~ its members~~[ shall be subject to removal from office for willful neglect of duty]~~ pursuant to KRS ***415.050 and 415.060***~~[156.132]~~.

- (10) A district board of education may levy a general tax rate that will produce revenue from real property, exclusive of revenue from new property, that is four percent (4%) over the amount of the revenue produced by the compensating tax rate as defined in KRS 132.010.

➔Section 6. KRS 160.1592 is amended to read as follows:

- (1) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a local school district, or a school, except the public charter school shall adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all public schools and to all requirements otherwise identified in KRS 160.1590 to 160.1599 and 161.141.
- (2) A public charter school may elect to comply with any one (1) or more provisions of any state statute or administrative regulation.
- (3) A public charter school shall:
- (a) Be governed by a board of directors;
  - (b) Be established and operate in pursuit of a specific set of educational objectives as defined in the charter contract between the school's board of directors and its authorizer;
  - (c) Ensure students meet compulsory attendance requirements under KRS 158.030 and 158.100;
  - (d) Hire only qualified teachers to provide student instruction;
  - (e) Ensure high school course offerings meet or exceed the minimum required under KRS 156.160 for high school graduation;
  - (f) Design its education programs to meet or exceed the student performance standards adopted by the Kentucky Board of Education;
  - (g) Ensure students' participation in required state assessment of student performance, as required under KRS 158.6453;
  - (h) Adhere to all generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements as are applied to other public schools under KRS 156.265;
  - (i) Utilize the same system for reporting student information data and financial data as is utilized by other school districts across the state;
  - (j) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all public school employees and volunteers within the public schools specified in KRS 160.380 and 161.148;
  - (k) Comply with open records and open meeting requirements under KRS Chapter 61;
  - (l) Comply with purchasing requirements and limitations under KRS Chapter 45A and KRS 156.074 and 156.480, or provide to the public charter school board of directors a detailed monthly report of school purchases over ten thousand dollars (\$10,000), including but not limited to curriculum, furniture, and technology;
  - (m) Provide instructional time that is at least equivalent to the student instructional year specified in KRS 158.070;
  - (n) Provide data to the Kentucky Department of Education and the authorizer as required by the Kentucky Department of Education or authorizer to generate a school report card under KRS 158.6453;

- (o) Operate under the oversight of its authorizer in accordance with its charter contract and application;
  - (p) As a public body corporate, have all the powers necessary for carrying out the terms of its charter contract, including the power to:
    1. Receive and disburse funds for school purposes;
    2. Secure appropriate insurance and enter into contracts and leases;
    3. Contract with an education service provider, provided the board of directors of the public charter school retains oversight and authority over the school;
    4. Incur debt in reasonable anticipation of the receipt of public or private funds;
    5. Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;
    6. Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter;
    7. Acquire real property for use as its facility or facilities, from public or private sources; and
    8. Employ or contract with other entities for the provision of teaching, professional, and support staff, as needed; and
  - (q) Conduct an admissions lottery if capacity is insufficient to enroll all students who wish to attend the school and ensure that every student has a fair opportunity to be considered in the lottery and that the lottery is competently conducted, equitable, randomized, transparent, impartial, and in accordance with targeted student population and service community as identified in KRS 160.1593(3) so that students are accepted in a public charter school without regard to ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability.
- (4) For purposes of this subsection, a member of the board of directors of a public charter school shall be considered ~~as a board member under KRS 156.132 and~~ an officer under KRS 61.040 and shall be removed from office under the *statute's* provisions ~~[of those statutes]~~.
- (5) A local school district shall provide or publicize to parents and the general public information about public charter schools authorized by the local school district as an enrollment option within the district to the same extent and through the same means that the school district provides and publicizes information about noncharter public schools in the district.
- (6) A local school district shall not assign or require any student enrolled in the local school district to attend a public charter school.
- (7) (a) For purposes of ensuring compliance with this section and the charter under which it operates, a public charter school shall be administered by a public charter school board of directors accountable to the authorizer in a manner agreed to in the charter contract, as negotiated between the public charter school applicant and the authorizer.
- (b) The board of directors of a public charter school shall consist of a minimum of two (2) parents of students attending any public charter school operating under the direction of the board of directors.
- (c) A member of the board of directors of a public charter school shall:
1. Not be an employee of that school or of an education service provider that provides services to the school; and
  2. File full disclosure reports and identify any potential conflicts of interest, relationships with management organizations, and relationships with family members who are applying to or are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school and shall make these documents available online through the authorizer.
- (8) Collectively, members of the board of directors shall possess expertise in leadership, curriculum and instruction, law, and finance.
- (9) (a) A board of directors may hold one (1) or more charter contracts.
- (b) Each public charter school under contract with a board of directors shall be separate and distinct from any other public charter school under contract with the board of directors.

- (10) The board of directors shall be responsible for the operation of its public charter school, including but not limited to preparation of a budget, contracting for services, school curriculum, and personnel matters.
- (11) The board of directors shall:
  - (a) Ensure that all meetings of the board are publicized in advance according to the rules governing the authorizer and are open to the public at times convenient to parents; and
  - (b) Require any education service provider contracted with the board to provide a monthly detailed budget to the board.
- (12)
  - (a) A public charter school may negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations. The public charter school shall have standing to sue and be sued in its own name for the enforcement of any contract under color of authority granted by KRS 160.1590 to 160.1599. A public charter school may own, rent, or lease its space.
  - (b) Any entity contracted to provide educational services or goods to a public charter school in an amount exceeding ten thousand dollars (\$10,000) shall be subject to the Open Records Act under KRS Chapter 61 for all records associated with the public charter school contract.
- (13) A public charter school shall be exempt from administrative regulations governing public schools for purposes of zoning and local land use regulation. The Finance and Administration Cabinet shall annually publish a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by the state and that may be suitable for the operation of a public charter school and shall provide the list to applicants for public charter schools and to existing public charter schools upon request.
- (14) A public charter school shall be nonsectarian in its programs, admissions policies, employment practices, partnerships, and all other operations and shall not have entrance requirements or charge tuition or fees, except that a public charter school may require the payment of fees on the same basis and to the same extent as other public schools.
- (15) A public charter school shall not discriminate against any student, employee, or any other person on the basis of ethnicity, religion, national origin, sex, disability, special needs, athletic ability, academic ability, or any other ground that would be unlawful if done by a public school.
- (16) A public charter school shall serve one (1) or more of grades kindergarten through twelve (12) and shall limit admission to students within the grade levels served.
- (17) A public charter school shall provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services. A public charter school shall establish an admissions and release committee at the school and the committee shall:
  - (a) Develop an individualized education program for each student with a disability; or
  - (b) Review, revise, or utilize a student's individualized education program completed by the admissions and release committee of the student's former school. If needed, the committee shall work collaboratively with staff from the student's former school to review and revise a student's existing individualized education program.
- (18)
  - (a) A public charter school shall be eligible to participate in state-sponsored or district-sponsored interscholastic athletics, academic programs, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as noncharter public schools. Participants shall comply with eligibility requirements of students enrolled in noncharter public schools.
  - (b) A public charter school has no obligation to provide extracurricular activities or access to facilities for students enrolled in the public charter school.
  - (c) If a public charter school sponsors interscholastic athletic activities, students enrolled in the public charter school shall be considered eligible to participate in interscholastic competitions by the Kentucky

- Board of Education or the agency designated by the state board to manage interscholastic athletics, if other eligibility requirements are met. A student enrolled in a public charter school that sponsors an interscholastic athletic activity shall be ineligible to participate in that activity at any other school.
- (d) If a public charter school does not offer any interscholastic athletic activity sanctioned by the Kentucky Board of Education or the agency designated by the state board to manage interscholastic athletics, a student enrolled in the public charter school shall be eligible to participate at the school the student would attend based on the student's residence.
- (e) If a public charter school offers any interscholastic athletic activity sanctioned by the Kentucky Board of Education or the agency designated by the state board to manage interscholastic athletics, a student enrolled in the public charter school shall be ineligible to participate in any interscholastic athletic activity at any other school.
- (19) Nothing in this section shall be construed to prevent the establishment of a single-sex public charter school consistent with federal regulations or a public charter school designed to provide expanded learning opportunities for students at risk of academic failure or for students with special needs.
- (20) The authorizer of a public charter school shall semiannually consider for approval a public charter school's proposed amendments to a charter contract. The authorizer may consider requests for amendments more frequently upon mutual agreement between the authorizer and the public charter school. The denial of an amendment request is appealable pursuant to KRS 160.1595.
- (21) If a student who was previously enrolled in a public charter school enrolls in another public school located within the state, the new school shall accept any credits earned and grades received by the student in courses or instructional programs while enrolled in the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept credits from other public schools.
- (22) A teacher employed by a local board of education under a continuing service contract and offered employment with a public charter school shall be granted a two (2) year leave of absence to teach in a public charter school. The leave of absence shall commence on the first day of service to the public charter school. During the first or second year of the leave of absence, the teacher may notify the local board of education that the teacher intends to return to a teaching position in the local school district. The teacher shall be allowed to return to a teaching position in the local school district at the appropriate salary for the teacher's years of experience and educational level. After two (2) years on leave, the relationship between the teacher and the local board of education shall be determined by the local board and the local board shall notify the teacher of the decision.

**Became law without Governor's signature March 29, 2021.**

## CHAPTER 145

( SB 274 )

AN ACT relating to local government.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 81A IS CREATED TO READ AS FOLLOWS:

- (1) *If a city is wholly contained within two (2) counties and that city intends to annex territory in an additional county, then it may proceed if:*
- (a) *The territory proposed to be annexed:*
1. *Is adjacent or contiguous to the city's boundaries at the time the annexation proceeding is begun;*
  2. *Which by reason of population density, commercial, industrial, institutional, or governmental use of land, or subdivision of land, is urban in character or suitable for development for urban purposes without unreasonable delay;*
  3. *Is not within the boundary of another incorporated city; and*

4. *Contains infrastructure owned by the city or any agency, political subdivision, department, or instrumentality of the city, including governing bodies of municipal utilities operating under KRS Chapter 96; however, the territory to be annexed shall not include any territory that does not contain infrastructure as set out in this subparagraph; and*
- (b) *Each of the owners of record of the territory proposed to be annexed gives prior consent in writing to the annexation and the annexation is proceeding under the provisions of KRS 81A.412.*
- (2) (a) *At least thirty (30) days prior to the adoption of the annexation ordinance under KRS 81A.412, the city shall provide notice of the proposed annexation to the fiscal court of the county containing the territory to be annexed. The failure of the city to notify the fiscal court of the annexation as set out in this subsection shall serve to void the ordinance annexing the territory contained in that county.*
- (b) *The notice set out in paragraph (a) of this subsection shall:*
1. *Contain, at a minimum:*
    - a. *A description of the territory to be annexed;*
    - b. *The date in which the annexation shall take effect, that date being the passage of the ordinance annexing the territory; and*
    - c. *A certification by the mayor of the city proposing the annexation that the city shall comply with the applicable requirements of this chapter; and*
  2. *Be delivered to the fiscal court of the county containing the territory to be annexed by certified mail.*

➔Section 2. KRS 81A.410 is amended to read as follows:

- (1) Except as provided in KRS 67C.111(3), a city legislative body may extend the city's boundaries to include any area:
- (a) Which is adjacent or contiguous to the city's boundaries at the time the annexation proceeding is begun; and
  - (b) Which by reason of population density, commercial, industrial, institutional, or governmental use of land, or subdivision of land, is urban in character or suitable for development for urban purposes without unreasonable delay.
- (2) No part of the area to be annexed shall be included within the boundary of another incorporated city.
- (3) If a city is considering the annexation of two (2) or more areas which are all adjacent to the city boundary but are not adjacent to one another, it may undertake simultaneous proceedings under the authority of KRS 81A.420 for the annexation of such areas.
- (4) ***If a city is wholly contained within two (2) counties and that city intends to annex territory in an additional county, then the provisions of Section 1 of this Act shall apply.***

➔Section 3. KRS 68.197 is amended to read as follows:

- (1) The fiscal court of each county having a population of thirty thousand (30,000) or more may by ordinance impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing.
- (2) License fees on business, trade, occupation, or profession for revenue purposes, except those of the common schools, may be imposed at a percentage rate not to exceed one percent (1%) of:
- (a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county;
  - (b) The net profits of self-employed individuals, partnerships, professional associations, or joint ventures resulting from trades, professions, occupations, businesses, or activities conducted in the county; and
  - (c) The net profits of corporations resulting from trades, professions, occupations, businesses, or activities conducted in the county.
- (3) In order to reduce administrative costs and minimize paperwork for employers, employees, and businesses, the fiscal court may provide:

- (a) For an annual fixed amount license fee which a person may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on salaries, wages, commissions, and other compensation earned within the county for work done and services performed or rendered in the county; and
  - (b) For an annual fixed amount license fee which an individual, partnership, professional association, joint venture, or corporation may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on net profits of businesses, trades, professions, or occupations from activities conducted in the county.
- (4) (a) Licenses imposed for regulatory purposes are not subject to limitations as to form and amount.
- (b) No public service company that pays an ad valorem tax is required to pay a license tax.
- (c) 1. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to the effective date of this section.
2. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming services including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.
- (d) No license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust company, combined bank and trust company, combined trust, banking, and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license fee.
- (5) No license fee shall be imposed or collected on income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections, or upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.
- (6) Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may, upon agreement between the county and the city, credit their city license fee against their county license fee. As used in this subsection, "city contained in the county" shall include a city that is in more than one (1) county.
- (7) The provisions of subsection (6) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee. As used in this subsection, "city contained in the county" shall include a city that is in more than one (1) county.
- (8) ***If a city annexes territory pursuant to Section 1 of this Act on or after the effective date of this Act, and both the city and the county in which the territory annexed is contained levy a license fee at the time of annexation, then the county shall at least receive the same dollar amount of revenue that was generated in the preceding tax year by the county license fee. After the tax year in which the annexation occurs, if the revenues generated by both the city and county license fees for that territory decrease below the amount of revenue generated in that preceding tax year by the county license fee, then the revenue received by the county shall be reduced proportionately. Any increase in the license fee rate by the city or the county after the date of the annexation shall be subject to the crediting provisions contained in subsections (6) and (7) of this section.*** ~~Notwithstanding any statute to the contrary, the provisions of subsection (7) of this section shall apply as follows from March 14, 2012, through July 15, 2014:~~
- ~~(a) Any set off or credit of city license fees against county license fees that exists between a city and county as of March 15, 2012, shall remain in effect as it is on March 15, 2012; and~~



- ~~(b) The provisions of subsection (7) of this section shall not apply to a city and county unless both the city and the county have both levied and are collecting license fees on March 15, 2012.~~
- (9) A county that enacted an occupational license fee under the authority of KRS 67.083 shall not be required to reduce its occupational tax rate when it is determined that the population of the county exceeds thirty thousand (30,000).
- (10) Notwithstanding any statute to the contrary:
- (a) In those counties where a license fee has been authorized by a public question approved by the voters, there shall be no credit of a city license fee against a county license fee except by agreement between the county and the city in accordance with subsection (6) of this section;
  - (b) Notwithstanding any provision of the KRS to the contrary, no taxpayer shall be refunded or credited for any overpayment of a license tax paid to any county to the extent the overpayment is attributable to or derives from this section as it existed at any time subsequent to July 15, 1986, and the taxpayer seeks a credit for a license tax paid to a city located within such county, if such refund claim or amended tax return claim was filed or perfected after November 18, 2004, except by agreement between the city and county in accordance with subsection (6) of this section;
  - (c) In those counties where a license fee has been authorized by a public question approved by the voters, the percentage rate of the license fee in effect on January 1, 2005, and any maximum salary limit upon which the license fee is calculated shall remained unchanged for subsequent fiscal years. A percentage rate higher than the percentage rate in effect on January 1, 2005, or any change in the maximum salary limit upon which a license fee is calculated shall be prohibited unless approved by the voters at a public referendum. The percentage rate of a license fee in such counties shall at no time exceed one percent (1%). Any question to be placed before the voters as a result of this paragraph shall be placed on the ballot at a regular election or nominating primary.
  - (d) This subsection shall have retroactive application; and
  - (e) If any provision of this subsection or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this section that can be given effect without the invalid provision or application, and to this end the provisions of this subsection are severable.
- (11) Pursuant to this section, no fiscal court shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the county on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

**Became law without Governor's signature March 29, 2021.**

## CHAPTER 146

( SB 10 )

AN ACT relating to the creation of a Commission on Race and Access to Opportunity.

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) *The Commission on Race and Access to Opportunity is hereby established within the legislative department of state government. The purpose of the commission shall be to conduct studies and research on issues where disparities may exist across the sectors of educational equity, child welfare, health, economic opportunity, juvenile justice, criminal justice, and any other sectors that are deemed relevant in an effort to identify areas of improvement in providing services and opportunities for minority communities.*
- (2) *The commission shall be composed of the following thirteen (13) members:*

- (a) *One (1) member appointed by the President of the Senate and the Speaker of the House of Representatives from a list of three (3) names provided by the Prosecutors Advisory Council;*
- (b) *Four (4) members of the Senate, two (2) of whom shall be appointed by the Senate President, and two (2) of whom shall be appointed by the Senate Minority Floor Leader;*
- (c) *Four (4) members of the House of Representatives, two (2) of whom shall be appointed by the Speaker of the House, and two (2) of whom shall be appointed by the House Minority Floor Leader; and*
- (d) *Four (4) members from the private and nonprofit sectors, universities, or local governments who have expertise in social policy related to education, health, economic development, or the law and who shall be appointed for up to two (2) consecutive, three (3) year terms by the following:*
  - 1. *One (1) shall be appointed by the Senate President;*
  - 2. *One (1) shall be appointed by the Senate Minority Floor Leader;*
  - 3. *One (1) shall be appointed by the Speaker of the House; and*
  - 4. *One (1) shall be appointed by the House Minority Floor Leader.*
- (3) *The President of the Senate and the Speaker of the House shall each appoint one (1) co-chair of the commission from among that chamber's members appointed to the commission.*
- (4) *Any vacancy which may occur in the membership of the commission shall be filled by the appointing authority who made the original appointment.*
- (5) *The commission shall have the authority to:*
  - (a) *Hold monthly meetings during the interim meeting period of the General Assembly;*
  - (b) *Seek comment, testimony, documents, records, or other information from various government agencies and organizations representing the public to address existing and potential barriers to minority success and empowerment; and*
  - (c) *Provide research-driven policy proposals and actionable items when areas of improvement are identified.*
- (6) *A majority of the entire membership of the commission shall constitute a quorum.*
- (7) *The Legislative Research Commission shall have exclusive jurisdiction over the employment of personnel necessary to carry out the provisions of this section.*
- (8) *The commission shall publish and submit an annual report to the Legislative Research Commission with recommendations on any potential legislative or administrative actions with respect to their findings.*

**Became law without Governor's signature March 29, 2021.**

## CHAPTER 147

### ( SB 8 )

AN ACT relating to exceptions to mandatory immunization requirements and declaring an emergency.

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

➔Section 1. KRS 214.036 is amended to read as follows:

- (I) Nothing contained in KRS 158.035, 214.010, 214.020, 214.032 to 214.036, and 214.990 shall be construed to require:
  - (a) The testing for tuberculosis or the immunization of any child at a time when, in the written opinion of his *or her attending health care provider*~~[attending physician]~~, such testing or immunization would be injurious to the child's health;~~[- Nor shall KRS 158.035, 214.010, 214.020, 214.032 to 214.036, and 214.990 be construed to require.]~~

- (b) The immunization of any child whose parents *or guardian* are opposed to medical immunization against disease, and who object by a written sworn statement to the immunization of such child ~~for religious grounds. Provided, however, that~~ *based on religious grounds; or*
- (c) *The immunization of any emancipated minor or adult who is opposed to medical immunization against disease, and who objects by a written sworn statement to the immunization based on religious grounds.*
- (2) In the event of an epidemic in a given area, the Cabinet for Health and Family Services may ~~by emergency regulation,~~ require the immunization of all persons within the area of epidemic, against the disease responsible for such epidemic, *except that any administrative regulation promulgated pursuant to KRS Chapter 13A, administrative order issued by the cabinet, or executive order issued pursuant to KRS Chapter 39A requiring such immunization shall not include:*
- (a) *The immunization of any child or adult for whom, in the written opinion of his or her attending health care provider, such testing or immunization would be injurious to his or her health;*
- (b) *The immunization of any child whose parents or guardians are opposed to medical immunization against disease and who object by a written sworn statement to the immunization based on religious grounds or conscientiously held beliefs; or*
- (c) *The immunization of any emancipated minor or adult who is opposed to medical immunization against disease, and who objects by a written sworn statement to the immunization based on religious grounds or conscientiously held beliefs.*
- (3) *The cabinet shall:*
- (a) *Develop and make available on its Web site a standardized form relating to exemptions in this section from the immunization requirements; and*
- (b) *Accept a completed standardized form when submitted.*

➔Section 2. Whereas the civil rights of Kentucky's citizens are to remain protected against mandatory immunization requirements during an epidemic, 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.

**Became law without Governor's signature March 29, 2021.**

## CHAPTER 148

( HB 199 )

AN ACT relating to rights-of-way on state roads.

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

➔Section 1. KRS 177.106 is amended to read as follows:

- (1) *As used in this section, "encroachment" means any improvement to land including but not limited to buildings, fences, ditches, embankments, driveways, or signs, or any change from the original contour of land, that:*
- (a) *Is constructed, created, or implemented under, on, or over the right-of-way of a state-maintained road; and*
- (b) *May hinder or prevent use or maintenance of a road or right-of-way.*
- (2) (a) *A person shall not cause an encroachment or allow an encroachment to remain under, on, or over any part of the right-of-way of a state-maintained road unless that person has first obtained an encroachment permit from the Department of Highways.*
- (b) *If the department determines that an encroachment, for which an encroachment permit has not been issued, interferes with the safe, convenient, and continuous use and maintenance of a road, the*

*department shall issue to the responsible party a notice of violation and order to remove or relocate the encroachment within seven (7) days, at the responsible party's expense.*

- (c) *If the department orders the removal or change in location of any encroachment from the right-of-way and the responsible party fails to remove it or change its location within the time allotted in paragraph (b) of this subsection, the department shall:*
1. *Cause the removal of the encroachment; and*
  2. *Recoup the cost of removal from the responsible party. Moneys recouped under this paragraph shall be deposited in the road fund.*
- (3) *In addition to any payment required to cover the costs of removal pursuant to subsection (2)(c) of this section, any person who fails to obtain a permit as required by subsection (2)(a) of this section shall, upon issuance of a notice of violation under subsection (2)(b) of this section:*
- (a) *Be subject to a civil fine of:*
1. *Five hundred dollars (\$500) for the first violation;*
  2. *One thousand dollars (\$1,000) for the second violation within a three (3) year period; and*
  3. *Two thousand dollars (\$2,000) for a third or subsequent violation within a three (3) year period;*
- (b) *After a third violation within a three (3) year period, be prohibited from receiving an encroachment permit from the department for a period of six (6) months, from the date of notice of the third violation; and*
- (c) *Be responsible for payment, within twenty-four (24) hours of notice from the department, for any safety measures determined to be necessary by the department.*
- (4) *Any civil fines imposed pursuant to subsection (3)(a) of this section shall be:*
- (a) *Collected by the municipality in which the violation occurred; and*
- (b) *Used by that municipality for public safety or infrastructure purposes* [~~Before any person shall proceed to cause or continue or allow to remain in existence any encroachment under, on or over any part of the right of way of a state highway he shall first obtain from the Department of Highways a permit so to do. Any encroachment heretofore or hereafter placed or allowed to continue or remain under, on or over any road which is found by the Department of Highways to be interfering in any way with the safe, convenient and continuous use and maintenance of such road shall upon thirty (30) days notice to the person or to his chief agent by the Department of Highways be removed or relocated by such person at his own expense.~~]
- ~~(2) Whenever an order of the Department of Highways requires such removal or change in location of any encroachment from the right of way of a road and the person causing such encroachment or allowing same to continue or remain fails to remove or change location of same at his own expense to conform to the order within the time stated in the notice, the Department of Highways shall proceed to cause the encroachment to be removed; the expense thereby incurred shall be paid out of any money available therefor, and shall be charged against the person and levied and collected and paid into the State Treasury as provided by law.~~

➔Section 2. The following KRS sections are repealed:

177.103 Definitions for KRS 177.106.

**Became law without Governor's signature March 29, 2021.**

## CHAPTER 149

( HB 133 )

AN ACT relating to recall petitions.

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

➔Section 1. KRS 132.017 is amended to read as follows:

- (1) As used in this section, "local governmental entity" includes a county fiscal court and legislative body of a city, urban-county government, consolidated local government, charter county government, unified local government, or other taxing district.
- (2)
  - (a)
    1. Except as provided in subparagraph 2. of this paragraph, the portion of a tax rate levied by an ordinance, order, resolution, or motion of a local governmental entity or district board of education subject to recall as provided for in KRS 68.245, 132.023, 132.027, and 160.470, shall go into effect forty-five (45) days after its passage.
    2. When a tax rate is levied by a district board of education or other taxing district that is primarily located in a county containing an urban-county government or a consolidated local government, the portion of a tax rate levied by an ordinance, order, resolution, or motion of a district board of education or other taxing district subject to recall as provided for in KRS 68.245, 132.023, 132.027, and 160.470, shall go into effect fifty (50) days after its passage.
  - (b) During the same forty-five (45) day or fifty (50) day time period provided by paragraph (a) of this subsection, any five (5) qualified voters, who reside in the area where the tax levy will be imposed, may commence petition proceedings to protest the passage of the ordinance, order, resolution, or motion by filing an affidavit with the county clerk. The affidavit shall state:
    1. The five (5) qualified voters constitute the members of the petition committee;
    2. The petition committee will be responsible for circulating the petition;
    3. The petition committee will file the petition in the proper form within the same forty-five (45) day or fifty (50) day time period provided by paragraph (a) of this subsection;
    4. The names and addresses of the petition committee members;
    5. The address to which all notices to the committee are to be sent; and
    6. For petition committees filing petitions in response to a tax rate levied by a district board of education or other taxing district that is primarily located in a county containing an urban-county government or a consolidated local government, whether or not the petition committee is willing to incur all of the expenses associated with electronic petition signatures. If the petition committee is not willing to incur all of the expenses, then electronic petition signatures shall not be allowed for the petition.
  - (c) Upon receipt of the affidavit, the county clerk shall immediately:
    1. Notify the petition committee of all statutory requirements for the filing of a valid petition under this section;
    2. Notify the petition committee that the clerk will publish a notice identifying the tax levy being challenged and providing the names and addresses of the petition committee in a newspaper of general circulation within the county, if:
      - a. There is a newspaper within the county in which to publish the notice; and
      - b. The petition committee remits an amount equal to the cost of publishing the notice determined in accordance with the provisions of KRS 424.160 at the time of the filing of the affidavit.If the petition committee elects to have the notice published, the clerk shall publish the notice within five (5) days of receipt of the affidavit; and
    3. Deliver a copy of the affidavit to the appropriate local governmental entity or district board of education.
  - (d) The petition shall be filed with the county clerk within the same forty-five (45) day or fifty (50) day time period provided by paragraph (a) of this subsection and meet the following requirements:
    1. All papers of the petition shall be substantially uniform in size and style and shall be assembled in one (1) instrument for filing;
    2. For a district board of education or other taxing district that is primarily located in a county containing an urban-county government or a consolidated local government, each sheet of the

petition may contain the names of voters from more than one (1) voting precinct, and for a district board of education or other taxing district that is not primarily located in a county containing an urban-county government or a consolidated local government, each sheet of the petition shall contain the names of voters from one (1) voting precinct;

3. Each nonelectronic petition signature shall be executed in ink or indelible pencil;
4. Each electronic petition signature shall comply with the requirements of the Uniform Electronic Transactions Act, KRS 369.101 to 369.120;
5. Each electronic and nonelectronic petition signature shall be followed by the printed name, street address, Social Security number or **birth month** ~~(birth date)~~, and the name and number of the designated voting precinct of the person signing; and
6.
  - a. The petition shall be signed by a number of registered and qualified voters residing in the affected jurisdiction equal to at least ten percent (10%) of the total number of votes cast in the last preceding presidential election.
  - b. Electronic petition signatures shall be included in determining whether the required number of petition signatures has been obtained when the expenses associated with the electronic petition signatures have been incurred in accordance with paragraph (b)6. of this subsection, the electronic petition signatures comply with the requirements of this subsection, and the petition was filed in response to a tax rate levied by a district board of education or other taxing district that is primarily located in a county containing an urban-county government or a consolidated local government. The inclusion of an invalid electronic or nonelectronic petition signature on a page shall not invalidate the entire page of the petition, but shall instead result in the invalid petition signature being stricken and not counted.
  - c. ***Notwithstanding subdivision a. of this subparagraph if a petition is filed in response to a tax rate levied by a district board of education, the petition shall be signed by at least five thousand (5,000) registered and qualified voters residing in the affected jurisdiction, or signed by a number of registered and qualified voters residing in the affected jurisdiction equal to at least ten percent (10%) of the total number of votes cast in the last preceding presidential election, whichever is less.***
- (e) Upon the filing of the petition with the county clerk, the ordinance, order, resolution, or motion shall be suspended from going into effect until after the election referred to in subsection (3) of this section is held, or until the petition is finally determined to be insufficient and no further action may be taken pursuant to paragraph (i) of this subsection.
- (f) The county clerk shall immediately notify the presiding officer of the appropriate local governmental entity or district board of education that the petition has been received and shall, within thirty (30) days of the receipt of the petition, make a determination of whether the petition contains enough signatures of qualified voters to place the ordinance, order, resolution, or motion before the voters.
- (g) If the county clerk finds the petition to be sufficient, the clerk shall certify to the petition committee and the local governmental entity or district board of education within the thirty (30) day period provided for in paragraph (f) of this subsection that the petition is properly presented and in compliance with the provisions of this section, and that the ordinance, order, resolution, or motion levying the tax will be placed before the voters for approval.
- (h) If the county clerk finds the petition to be insufficient, the clerk shall, within the thirty (30) day period provided for in paragraph (f) of this subsection, notify, in writing, the petition committee and the local governmental entity or district board of education of the specific deficiencies found. Notification shall be sent by certified mail and shall be published at least one (1) time in a newspaper of general circulation within the county containing the local governmental entity or district board of education levying the tax. If there is not a newspaper within the county in which to publish the notification, then the notification shall be posted at the courthouse door.
- (i) A final determination of the sufficiency of a petition shall be subject to final review by the Circuit Court of the county in which the local governmental entity or district board of education is located, and shall be limited to the validity of the county clerk's determination. Any petition challenging the county clerk's final determination shall be filed within ten (10) days of the issuance of the clerk's final determination.

- (j) The local governmental entity or district board of education may cause the cancellation of the election by reconsidering and amending the ordinance, order, resolution, or motion to levy a tax rate which will produce no more revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 from real property. The action by the local governmental entity or district board of education shall be valid only if taken within fifteen (15) days following the date the clerk finds the petition to be sufficient.
- (3) (a) If an election is necessary under the provisions of subsection (2) of this section, the local governmental entity shall cause to be submitted to the voters of the district at the next regular election, the question as to whether the property tax rate shall be levied. The question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election.
- (b) If an election is necessary for a school district under the provisions of subsection (2) of this section, the district board of education may cause to be submitted to the voters of the district in a called common school election not less than thirty-five (35) days nor more than forty-five (45) days from the date the signatures on the petition are validated by the county clerk, or at the next regular election, at the option of the district board of education, the question as to whether the property tax rate shall be levied. If the election is held in conjunction with a regular election, the question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election. The cost of a called common school election shall be borne by the school district holding the election. Any called common school election shall comply with the provisions of KRS 118.025.
- (c) In an election held under paragraph (a) or (b) of this subsection, the question shall be so framed that the voter may by his or her vote answer "for" or "against." If a majority of the votes cast upon the question oppose its passage, the ordinance, order, resolution, or motion shall not go into effect. If a majority of the votes cast upon the question favor its passage, the ordinance, order, resolution, or motion shall become effective.
- (d) If the ordinance, order, resolution, or motion fails to pass pursuant to an election held under paragraph (a) or (b) of this subsection, the property tax rate which will produce four percent (4%) more revenues from real property, exclusive of revenue from new property as defined in KRS 132.010, than the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be levied without further approval by the local governmental entity or district board of education.
- (4) Notwithstanding any statutory provision to the contrary, if a local governmental entity or district board of education has not established a final tax rate as of September 15, due to the recall provisions of this section, KRS 68.245, 132.027, or 160.470, regular tax bills shall be prepared as required in KRS 133.220 for all districts having a tax rate established by that date; and a second set of bills shall be prepared and collected in the regular manner, according to the provisions of KRS Chapter 132, upon establishment of final tax rates by the remaining districts.
- (5) If a second billing is necessary, the collection period shall be extended to conform with the second billing date.
- (6) All costs associated with the second billing shall be paid by the taxing district or districts requiring the second billing.

**Became law without Governor's signature March 29, 2021.**

## CHAPTER 150

( SB 93 )

AN ACT relating to the State Board of Agriculture and declaring an emergency.

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

➔Section 1. KRS 246.120 is amended to read as follows:

- (1) The board shall consist of eighteen (18) members as follows:

- (a) The commissioner or the commissioner's designee, who shall be a voting member and serve as chairman;
  - (b) The dean of the University of Kentucky College of Agriculture, Food and Environment or the dean's designee, who shall be a voting member and serve as vice chairman;
  - (c) Thirteen (13) citizens of the Commonwealth appointed by the **Commissioner**~~[Governor]~~ who shall serve as voting members, specifically:
    - 1. Four (4) members who are farmers with experience in crop production, each of whom shall be selected from a list of at least three (3) individuals nominated by the Kentucky Corn Growers Association, the Kentucky Small Grain Growers Association, the Kentucky Soybean Association, or other similar trade organizations or commodity groups;
    - 2. Four (4) members who are farmers with experience in animal agriculture, each of whom shall be selected from a list of at least three (3) individuals nominated by the Kentucky Cattlemen's Association, the Kentucky Dairy Development Council, the Kentucky Pork Producers Association, the Kentucky Poultry Federation, the Kentucky Sheep and Goat Development Office, or other similar trade organizations or commodity groups;
    - 3. Three (3) members who shall be appointed from the state at large who are farmers with due consideration to geographical distribution throughout the state and industry representation;
    - 4. One (1) member who shall be appointed from a list of at least three (3) individuals nominated by the AgriBusiness Association of Kentucky or other similar trade organizations representing agribusiness; and
    - 5. One (1) member who shall be appointed from a list of at least three (3) individuals nominated by the Kentucky Farm Bureau Federation;
  - (d) The state president of the Kentucky FFA Association who shall serve as a nonvoting member for the duration of his or her term;
  - (e) The state president of the Kentucky Young Farmers Association who shall serve as a nonvoting member for the duration of his or her term; and
  - (f) The state president of the Kentucky 4-H who shall serve as a nonvoting member for the duration of his or her term.
- (2) The members who serve on the board and were appointed by the **Commissioner**~~[Governor]~~ shall serve four (4) year terms and shall serve until their successors are duly appointed and qualified. ~~[The initial appointments shall be for staggered terms, as follows:~~
- ~~(a) Three (3) members shall be appointed for one (1) year;~~
  - ~~(b) Three (3) members shall be appointed for two (2) years;~~
  - ~~(c) Three (3) members shall be appointed for three (3) years; and~~
  - ~~(d) Four (4) members shall be appointed for four (4) years.]~~ No more than eight (8) of the thirteen (13) shall belong to the same political party.
- (3) Upon the expiration of the term of a member of the board, the **Commissioner**~~[Governor]~~ shall appoint a successor. A board member whose term has expired shall serve until a replacement has been appointed and qualified. No person shall serve on the board for more than twelve (12) years.
- (4) The board shall be a body corporate under the corporate name "State Board of Agriculture" and shall have the usual corporate powers.

➔Section 2. KRS 257.230 is amended to read as follows:

The state veterinarian shall be **an**~~[the chief executive]~~ agent of the board, shall ~~[execute and]~~ enforce the **administrative** regulations of the board and, under the direction of the board, shall supervise and control the action of all deputies, inspectors, agents and specialists **within the Office of the State Veterinarian**~~[employed by the board]~~. He **or she** shall devote his **or her** entire time to the duties of ~~the~~**his** office. He **or she** shall recommend from time to time such changes in the **administrative** regulations of the board, as he **or she** deems necessary, and do all other things necessary and proper for the successful enforcement of this chapter.



➔Section 3. Whereas, in order to ensure that Kentucky's farmers receive the assistance they so desperately need, 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.

**Veto overridden March 29, 2021.**

## CHAPTER 151

( SB 165 )

AN ACT relating to financial transactions.

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

➔Section 1. KRS 65.530 is amended to read as follows:

- (1) The purposes of the authority shall be to establish, maintain, operate, and expand necessary and proper riverport and river navigation facilities, and to acquire and develop property, or rights therein within the economic environs, the home county, or any county adjacent thereto, of the riverport or proposed riverport to attract directly or indirectly river-oriented industry. It shall have the duty and such powers as may be necessary or desirable to promote and develop navigation, river transportation, riverports, and riverport facilities, and to attract industrial or commercial operations to the property held as industrial parks.
- (2) The authority ~~may~~~~shall~~ establish and fix reasonable rates, charges, and fees for the use of the riverport facilities which shall be published in a *manner available to the general public*~~newspaper of general circulation~~ in the county in which the riverport is located. In fixing rates, charges, or fees the authority may take into consideration, among other factors, the total capital investment of the authority, the revenue needed properly to maintain such facilities, the revenue needed properly to expand the riverport and its facilities, the portion of the facilities utilized by the licensee or contracting party and its customers, and the volume and type of business conducted. Any party aggrieved by the rates, charges, or fees may appeal from the action of the authority to the Circuit Court of the county within which the authority operates, within ninety (90) days from the date that the authority finally publishes the rates, charges, or fees and gives notice of same to the contracting party or licensee. The Circuit Court may hear evidence and determine whether or not the rates, charges, or fees are, or are not, reasonable in amount. Appeal from the judgment of the Circuit Court may be prosecuted as any other civil appeal.
- (3) The authority shall also have power, from time to time, to fix rates, charges, or fees by contract, or by publishing general rates, charges, or fees for commercial vendors, concessionaires, or other persons for the use or occupancy of riverport facilities under the terms and conditions it deems to be in the best interest of maintaining, operating, or expanding necessary riverport facilities, and the public use thereof.
- (4) The authority may acquire by contract, lease, purchase, option, gift, condemnation, or otherwise any real or personal property, or rights therein, necessary or suitable for establishing, developing, operating, or expanding riverports, riverport facilities, water navigation facilities, including spoilage areas for the disposal of materials dredged from river bottoms in an effort to improve the navigability of rivers, reserve storage areas and reserves of bulk materials utilized by the authority or any person acting as the authority's agent or licensee, and industrial parks or sites within the economic environs of the riverport or proposed riverport. The authority may erect, equip, operate, and maintain on the property buildings and equipment necessary and proper for riverport and water navigation facilities. The authority may dispose of any real or personal property, or rights therein, which in the opinion of the authority is not needed for use as riverport or water navigation facilities, or use as industrial parks or sites. The authority may lease, sell, convey, or assign its interest in land owned, optioned, or otherwise held by it to any person for the purpose of constructing and/or operating any industrial or commercial facility or for the purpose of acting as the authority's agent or licensee in effectively carrying out any of its powers and duties.
- (5) With the consent of the legislative body of the governmental unit in which the property to be condemned is located, the authority may by resolution, reciting that the property cannot be acquired by purchase or agreement and is needed for riverport, water navigation, or industrial purposes in accordance with the powers set forth in subsection (4) of this section, direct the condemnation of any property. The procedure for condemnation shall conform to the procedure set out in the Eminent Domain Act of Kentucky.

- (6) The authority may apply for, receive authorization for, establish, and operate a foreign trade zone, as permitted by 19 U.S.C. sec. 81, provided approval is obtained from the Cabinet for Economic Development.
- (7) The authority shall comply with the provisions of KRS 65A.010 to 65A.090.

➔Section 2. KRS 426.522 is amended 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) ***When the sale is the result of a foreclosure process initiated upon the request of a creditor or mortgage holder:***
    - I. Shall not exceed six percent (6%) of the sale price on sales of real property; ***and***
    - ~~[(b) —]2.~~ Shall not exceed twenty percent (20%) of the sale price on sales of personal property; ~~and~~
  - (b) ***In the instance of any other court-ordered or -decreed sale of real or personal property, the fee paid the auctioneer shall be agreed upon between the auctioneer and the person making the request; 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.

➔Section 3. KRS 45A.705 is amended to read as follows:

- (1) There is hereby created a permanent committee of the Legislative Research Commission to be known as the Government Contract Review Committee. The committee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members shall serve for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. Any vacancy that may occur in the membership of the committee shall be filled by the appointing authority who made the original appointment.
- (2) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. A majority of the entire membership of the Government Contract Review Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership. The members of the committee shall be compensated for attending meetings, as provided in KRS 7.090(3).
- (3) Any professional, clerical, or other employees required by the committee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).
- (4) All proposed personal service contracts, tax incentive agreements, and memoranda of agreement received by the Legislative Research Commission shall be submitted to the committee to:
  - (a) Examine the stated need for the service or benefit to the Commonwealth of the motion picture or entertainment production;

- (b) Examine whether the service could or should be performed by state personnel, for personal service contracts and memoranda of agreement;
  - (c) Examine the amount and duration of the contract or agreement; and
  - (d) Examine the appropriateness of any exchange of resources or responsibilities.
- (5) If the committee determines that the contract service or agreement, other than an emergency contract approved by the secretary of the Finance and Administration Cabinet or his or her designee, is not needed or inappropriate, the motion picture or entertainment production is not beneficial or is inappropriate, the service could or should be performed by state personnel, the amount or duration is excessive, or the exchange of resources or responsibilities are inappropriate, the committee shall attach a written notation of the reasons for its disapproval or objection to the personal service contract, tax incentive agreement, or memorandum of agreement and shall return the personal service contract, tax incentive agreement, or memorandum of agreement to the secretary of the Finance and Administration Cabinet or his or her designee. The committee shall act on a personal service contract, tax incentive agreement, or memorandum of agreement submitted to the Legislative Research Commission within forty-five (45) days of the date received.
- (6) Upon receipt of the committee's disapproval or objection to a personal service contract, tax incentive agreement, or memorandum of agreement, the secretary of the Finance and Administration Cabinet or his or her designee shall determine whether the personal service contract, tax incentive agreement, or memorandum of agreement shall:
- (a) Be revised to comply with the objections of the committee;
  - (b) Be canceled and, if applicable, payment allowed for services rendered under the contract or amendment; or
  - (c) ***Be appealed within ten (10) days to the State Treasurer, who shall make a final determination within ten (10) days of receipt of the appeal of whether the personal service contract, tax incentive agreement, or memorandum of agreement shall:***
    - 1. ***Be revised to comply with the objection of the committee;***
    - 2. ***Be canceled and, if applicable, payment allowed for services already rendered under the contract or amendment; or***
    - 3. ***Remain effective as originally submitted*** [~~Remain effective as originally approved~~].
- (7) ~~[The secretary of the Finance and Administration Cabinet or his or her designee shall notify the committee of the action taken on personal service contracts, tax incentive agreements, and memoranda of agreement disapproved or objected to within ten (10) days from the date the personal service contracts, tax incentive agreement, or memoranda of agreement were reviewed by the committee.~~
- ~~(8)~~ Contracting bodies shall make annual reports to the committee not later than December 1 of each year. The committee shall establish reporting procedures for contracting bodies related to personal service contracts, tax incentive agreements, and memoranda of agreement submitted by the secretary of the Finance and Administration Cabinet or his or her designee.

**Veto overridden March 29, 2021.**

## CHAPTER 152

( SB 171 )

AN ACT relating to local government and declaring an emergency.

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:

- (1) ***For the purposes of this section, "splash pad" means an artificially constructed public recreation area for water play over which water is sprayed but is not allowed to pool.***

(2) *The Cabinet for Health and Family Services shall promulgate administrative regulations pursuant to KRS 211.180 and KRS Chapter 13A to set out standards for the operation and maintenance of splash pads operated by local governments to ensure they are maintained in a safe, sanitary manner to protect public health and to distinguish the operation and maintenance of splash pads from the operation and maintenance of swimming pools. The administrative regulations shall include but not be limited to the following:*

- (a) *Requiring that water in splash pads, if recirculated, be chemically treated and properly filtered and monitored; and*
- (b) *Not requiring the following equipment to be provided:*
  - 1. *Flow meters, if the water in the splash pad is not recirculated;*
  - 2. *Ring buoys;*
  - 3. *Life poles;*
  - 4. *Shepherd's crooks;*
  - 5. *Backboards;*
  - 6. *Telephones;*
  - 7. *Bathhouses;*
  - 8. *Restrooms;*
  - 9. *Drinking fountains;*
  - 10. *First-aid kits;*
  - 11. *Lifeguards;*
  - 12. *On-site attendants; and*
  - 13. *Fences.*

➔Section 2. KRS 66.480 is amended to read as follows:

- (1) The governing body of a city, county, urban-county, charter county, school district (provided that its general procedure for action is approved by the Kentucky Board of Education), or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:
  - (a) Obligations of the United States and of its agencies and instrumentalities, including obligations subject to repurchase agreements, if delivery of these obligations subject to repurchase agreements is taken either directly or through an authorized custodian. These investments may be accomplished through repurchase agreements reached with sources including but not limited to national or state banks chartered in Kentucky;
  - (b) Obligations and contracts for future delivery or purchase of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:
    - 1. United States Treasury;
    - 2. Export-Import Bank of the United States;
    - 3. Farmers Home Administration;
    - 4. Government National Mortgage Corporation; and
    - 5. Merchant Marine bonds;
  - (c) Obligations of any corporation of the United States government, including but not limited to:
    - 1. Federal Home Loan Mortgage Corporation;
    - 2. Federal Farm Credit Banks;
    - 3. Bank for Cooperatives;
    - 4. Federal Intermediate Credit Banks;
    - 5. Federal Land Banks;

6. Federal Home Loan Banks;
  7. Federal National Mortgage Association; and
  8. Tennessee Valley Authority;
- (d) Certificates of deposit issued by or other interest-bearing accounts of any bank or savings and loan institution having a physical presence in Kentucky which are insured by the Federal Deposit Insurance Corporation or similar entity or which are collateralized, to the extent uninsured, by any obligations, including surety bonds, permitted by KRS 41.240(4);
  - (e) Uncollateralized certificates of deposit issued by any bank or savings and loan institution having a physical presence in Kentucky rated in one (1) of the three (3) highest categories by a competent rating agency;
  - (f) Bankers' acceptances for banks rated in one (1) of the three (3) highest categories by a competent rating agency;
  - (g) Commercial paper rated in the highest category by a competent rating agency;
  - (h) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;
  - (i) Securities issued by a state or local government, or any instrumentality of agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a competent rating agency;
  - (j) Shares of mutual funds and exchange traded funds, each of which shall have the following characteristics:
    1. The mutual fund shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended;
    2. The management company of the investment company shall have been in operation for at least five (5) years; and
    3. All of the securities in the mutual fund shall be eligible investments pursuant to this section;
  - (k) Individual equity securities if the funds being invested are managed by a professional investment manager regulated by a federal regulatory agency. The individual equity securities shall be included within the Standard and Poor's 500 Index, and a single sector shall not exceed twenty-five percent (25%) of the equity allocation; and
  - (l) Individual high-quality corporate bonds that are managed by a professional investment manager that:
    1. Are issued, assumed, or guaranteed by a solvent institution created and existing under the laws of the United States;
    2. Have a standard maturity of no more than ten (10) years; and
    3. Are rated in the three (3) highest rating categories by at least two (2) competent credit rating agencies.
- (2) The investment authority provided by subsection (1) of this section shall be subject to the following limitations:
- (a) The amount of money invested at any time by a local government or political subdivision in any one (1) of the categories of investments authorized by subsection (1)(e), (f), (g), (k), and (l) of this section shall not exceed twenty percent (20%) of the total amount of money invested by the local government;
  - (b) The amount of money invested at any one (1) time by a local government or a political subdivision in the categories of investments authorized in subsection (1)(j), (k), and (l) of this section shall not, aggregately, exceed forty percent (40%) of the total money invested ***unless the investment is in a mutual fund consisting solely of the investments authorized under subsection (1)(a), (b), (c), (h), or (i) of this section, or any combination thereof;***
  - (c) No local government or political subdivision shall purchase any investment authorized by subsection (1) of this section on a margin basis or through the use of any similar leveraging technique; and
  - (d) At the time the investment is made, no more than five percent (5%) of the total amount of money invested by the local governments or political subdivisions shall be invested in any one (1) issuer unless:

1. The issuer is the United States government or an agency or instrumentality of the United States government, or an entity which has its obligations guaranteed by either the United States government or an entity, agency, or instrumentality of the United States government;
  2. The money is invested in a certificate of deposit or other interest-bearing accounts as authorized by subsection (1)(d) and (e) of this section;
  3. The money is invested in bonds or certificates of indebtedness of this state and its agencies and instrumentalities as authorized in subsection (1)(h) of this section; or
  4. The money is invested in securities issued by a state or local government, or any instrumentality or agency thereof, in the United States as authorized in subsection (1)(i) of this section.
- (3) The governing body of every local government or political subdivision that invests or reinvests money subject to its control or jurisdiction according to the provisions of subsection (1) of this section shall by January 1, 1995, adopt a written investment policy that shall govern the investment of funds by the local government or political subdivision. The written investment policy shall include but shall not be limited to the following:
- (a) A designation of the officer or officers of the local government or political subdivision who are authorized to invest and oversee the investment of funds;
  - (b) A list of the permitted types of investments;
  - (c) Procedures designed to secure the local government's or political subdivision's financial interest in the investments;
  - (d) Standards for written agreements pursuant to which investments are to be made;
  - (e) Procedures for monitoring, control, deposit, and retention of investments and collateral;
  - (f) Standards for the diversification of investments, including diversification with respect to the types of investments and firms with whom the local government or political subdivision transacts business;
  - (g) Standards for the qualification of investment agents which transact business with the local government, such as criteria covering creditworthiness, experience, capitalization, size, and any other factors that make a firm capable and qualified to transact business with the local government or political subdivision; and
  - (h) Requirements for periodic reporting to the governing body on the status of invested funds.
- (4) Sheriffs, county clerks, and jailers, who for the purposes of this section shall be known as county officials, may invest and reinvest money subject to their control and jurisdiction, including tax dollars subject to the provisions of KRS Chapter 134 and 160.510, as permitted by this section.
- (5) The provisions of this section are not intended to impair the power of a county official, city, county, urban-county, charter county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.
- (6) The governing body or county official may delegate the investment authority provided by this section to the treasurer or other financial officer or officers charged with custody of the funds of the local government, and the officer or officers shall thereafter assume full responsibility for all investment transactions until the delegation of authority terminates or is revoked.
- (7) All county officials shall report the earnings of any investments at the time of their annual reports and settlements with the fiscal courts for excess income of their offices.
- (8) The state local debt officer is authorized and directed to assist county officials and local governments, except school districts, in investing funds that are temporarily in excess of operating needs by:
- (a) Explaining investment opportunities to county officials and local governments through publication and other appropriate means; and
  - (b) Providing technical assistance in investment of idle funds to county officials and local governments that request that assistance.
- (9) (a) The state local debt officer may create an investment pool for local governments, except school districts, and county officials; and counties and county officials and cities may associate to create an investment pool. If counties and county officials and cities create a pool, each group may select a manager to administer their pool and invest the assets. Each county and each county official and each

city may invest in a pool created pursuant to this subsection. Investments shall be limited to those investment instruments permitted by this section. The funds of each local government and county official shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local government or county official shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local government or county official participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the state local debt officer. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his or her own investigative report or audit to verify the findings of the independent certified public accountant's report.

- (b) If the state local debt officer creates an investment pool, he or she shall establish an account in the Treasury for the pool. He or she shall also establish a separate trust and agency account for the purpose of covering management costs, and he or she shall deposit management charges in this account. The state local debt officer may promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the operation of the investment pool, including but not limited to provisions on minimum allowable investments and investment periods, and method and timing of investments, withdrawals, payment of earnings, and assignment of charges.
  - (c) Before investing in an investment pool created pursuant to this subsection, a local government or county official shall allow any savings and loan association or bank in the county, as described in subsection (1)(d) of this section, to bid for the deposits, but the local government or county official shall not be required to seek bids more often than once in each six (6) month period.
- (10) (a) With the approval of the Kentucky Board of Education, local boards of education, or any of them that desire to do so, may associate to create an investment pool. Each local school board which associates itself with other local school boards for the purpose of creating the investment pool may invest its funds in the pool so created and so managed. Investments shall be limited to those investment instruments permitted by this section. The funds of each local school board shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local school board shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local school board participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the Kentucky Board of Education. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his or her own investigative report or audit to verify the findings of the independent certified public accountant's report.
- (b) The Kentucky Board of Education may promulgate administrative regulations governing the operation of the investment pool including but not limited to provisions on minimum allowable investments and investment periods, and methods and timing of investments, withdrawals, payment of earnings, and assignment of charges.
- (11) As used in this section, "competent rating agency" means a rating agency certified or approved by a national entity that engages in such a process. The certification or approval process shall include but not necessarily be limited to the following elements the subject rating agency must possess:
- (a) A requirement for the rating agency to register and provide an annual updated filing;
  - (b) Record retention requirements;
  - (c) Financial reporting requirements;
  - (d) Policies for the prevention of misuse of material nonpublic information;
  - (e) Policies addressing management of conflicts of interest, including prohibited conflicts;

- (f) Prohibited acts practices;
- (g) Disclosure requirements;
- (h) Any policies, practices, and internal controls required by the national entity; and
- (i) Standards of training, experience, and competence for credit analysts.

➔Section 3. KRS 58.150 is amended to read as follows:

- (1) When the governing body of any county, city, or other municipal corporation, or agency thereof, shall make a determination that, in accordance with the provisions of any section of the statutes authorizing it to issue revenue bonds, assessment bonds, or mortgage bonds to finance any project, it will finance a project by the issuance of bonds, then in anticipation of financing, the governing body may provide for the interim financing of a project by the sale and issuance of revenue bond, assessment bond, or mortgage bond anticipation notes, as the case may be, bearing interest at a rate or rates not exceeding the maximum rate permitted for the issuance of the bonds so anticipated, and payable within a specified period of time only from the proceeds of the bonds, when issued, or from the revenues or income of the project as may be available prior to or at maturity of the notes; provided that the initial term of the notes shall not be in excess of five (5) years from the date of issuance. The term "revenue bond" means bonds, notes, or other obligations for the payment of money issued by the state, any county, municipality, or other public district or authority except a school district, or any corporation or other corporate body acting as an instrumentality of the unit, and payable from a special fund into which some or all of the revenues of a public project have been or will be paid. "Assessment bond" means bonds, notes, or other obligations for the payment of money issued by any one (1) or more of the same issuing authorities payable from a special fund into which assessments levied on properties for benefits conferred have been or will be paid in accordance with law. "Mortgage bond" means revenue bonds which are secured by a mortgage deed of trust. A school district shall not be excluded from these definitions if it is authorized by the Kentucky Board of Education, by general or special authorization, to proceed under the authority of this section or KRS 56.513 through the agency of the appropriate city or county.
- (2) The notes authorized herein shall be sold in the same manner as the bonds in anticipation of which they are issued, ~~except that when the principal amount of the notes does not exceed one million dollars (\$1,000,000) the provisions of KRS 424.360 for advertisement of the notes in a publication having general circulation among bond buyers shall be inapplicable, and the other publications required by this section shall be deemed sufficient.~~
- (3) Each bond anticipation note may include prepayment provisions which will allow the issuing authority to prepay the note after giving reasonable notice to the holder; shall identify the bond issue from the proceeds of which the note or notes and any interest thereon are to be paid; and shall include a statement that the note is being issued in anticipation of the identified bond issue, and that neither the note, nor the interest, shall constitute or evidence an indebtedness of the issuing authority. Each note and the interest, to the extent not previously paid from other sources, shall be paid from the proceeds of the identified bond issue, when the proceeds have been received and are available; provided, however, that payment from the revenues of the project, for the financing of which the bonds will eventually be issued, shall be permitted, and provision shall be made for payment of that portion of the principal of any note issue which represents the principal of the proposed bonds scheduled to mature on or prior to the maturity of the notes.
- (4) The notes authorized herein may be issued in a principal amount sufficient to include all interest due on the notes at or prior to maturity, if the notes shall be issued for a term of three (3) years or less, and the notes may be sold at a discount representing the interest due to the purchaser during the term.
- (5) When, prior to the maturity of any notes issued under the authority of this section or KRS 56.513, the governing body of the issuing authority shall make a determination that by reason of construction delays, changes in plans, uncertainties in the bond market, or other causes justifying delay in the final offering of the bond issue, the bond issue should not immediately be offered, renewal notes may be issued subject to the same limitations contained in this section or KRS 56.513 relative to the original issue of notes, and the proceeds of the sale of the renewal notes shall be applied to the payment of the principal of the notes originally issued, or any prior issue of renewal notes, or to the payment of interest due or to become due on the notes or renewal notes; provided, however, that the interest, including discount, if any, payable from the proceeds of notes or renewal notes shall not exceed an amount equal to three (3) years' interest from the date of the original notes at the rate per annum established for the original notes.
- (6) Counties, cities, and other municipal corporations, or agencies, in the discretion of the governing body in each case, may, as an alternative to this section and for interim financing purposes, solicit proposals, issue bond



anticipation notes, and make commitment agreements in the same manner as provided for the State Property and Buildings Commission by KRS 56.513; provided, however, that in the case of notes issued on behalf of a school district, general or special approval of the Kentucky Board of Education shall be required in substitution for the approval of the State Property and Buildings Commission; and provided further, that the approval of the State Property and Buildings Commission will not be required for any issue of a county, city, or other municipal corporation, or any agency, and references to the commission shall be interpreted to be references to the governing body of the issuing authority.

- (7) Nothing herein shall be deemed to invalidate any bond anticipation notes sold or issued under general statutes prior to the adoption of this section and KRS 56.513.
- (8) Each bond anticipation note issued according to this section or KRS 56.513, and the receipt of interest on the note, shall be exempt from all taxation by the Commonwealth and all of its subdivisions, municipalities, and taxing authorities; and this may be stated as a representation in the text of each bond anticipation note.

→Section 4. Notwithstanding the provisions of KRS 67.045, fiscal courts shall initiate reapportionment proceedings in May of the second year following the 2020 decennial census of the United States.

→Section 5. Whereas KRS 67.045 requires fiscal courts to initiate reapportionment proceedings in May of the first year following the decennial census of the United States, an emergency is declared to exist, and Section 4 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Veto overridden March 29, 2021.**

## CHAPTER 153

( SB 49 )

AN ACT relating to home and community based services waiver providers.

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

→Section 1. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
- (a) "Commissioner" means the commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;
- (b) "Department" means the Department of Workplace Standards in the Labor Cabinet;
- (c) 1. "Wages" includes any compensation due to an employee by reason of his or her employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States, checks on banks, direct deposits, or payroll card accounts convertible into cash on demand at full face value, subject to the allowances made in this chapter. However, an employee may not be charged an activation fee and the payroll card account shall provide the employee with the ability, without charge, to make at least one (1) withdrawal per pay period for any amount up to and including the full account balance.
2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(8), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in KRS 95A.210(9), "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;
- (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and

- (e) "Employee" is any person employed by or suffered or permitted to work for an employer, except that:
1. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter; and
  2. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisor, neither a franchisor nor a franchisor's employee shall be deemed to be an employee of the franchisee for any purpose under this chapter.

For purposes of this paragraph, "franchisee" and "franchisor" have the same meanings as in 16 C.F.R. sec. 436.1.

- (2) As used in KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
1. Any individual employed in agriculture;
  2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;
  3. Any individual employed by the United States;
  4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
  5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;
  6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his or her employer's immediate family;
  7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
  8. Any individual engaged in the delivery of newspapers to the consumer;
  9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
  10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than two hundred ten (210) days in any calendar year;
  11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670;
  12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver, *family home provider*, or *adult foster care provider* and who is approved to provide family caregiver services to an adult with a disability through a contractual

relationship with a community board for mental health or individuals with an intellectual disability established under KRS 210.370 to 210.460 *or through a contractual relationship with a certified waiver provider as defined in 907 KAR 7:005 sec. 1(5)*, or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care; ~~or~~

13. A direct seller as defined in Section 3508(b)(2) of the Internal Revenue Code of 1986; *or*

**14. Any individual whose function is to provide behavior support services, behavior programming services, case management services, community living support services, positive behavior support services, or respite services through a contractual relationship with a certified waiver provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c) home and community based services waiver program, as defined in 907 KAR 7:005 sec. 1(2).**

- (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;
- (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
- (d) "Tipped employee" means any employee engaged in an occupation in which he or she customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
- (e) "U.S.C." means the United States Code.

➔Section 2. KRS 342.650 is amended to read as follows:

The following employees are exempt from the coverage of this chapter:

- (1) Any person employed as a domestic servant in a private home by an employer who has less than two (2) employees each regularly employed forty (40) or more hours a week in domestic servant employment;
- (2) Any person employed, for not exceeding twenty (20) consecutive work days, to do maintenance, repair, remodeling, or similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where that employer carries on his or her trade, business, or profession;
- (3) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization;
- (4) Any person for whom a rule of liability for injury or death is provided by the laws of the United States, except those persons covered under Title IV, Public Law 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the Federal Coal Mine Health and Safety Act of 1969, or as amended;
- (5) Any person employed in agriculture;
- (6) Any person who would otherwise be covered but who elects not to be covered in accordance with the administrative regulations promulgated by the commissioner;
- (7) Any person participating as a driver or passenger in a voluntary vanpool or carpool program while that person is on the way to or from his or her place of employment. For the purposes of this subsection, carpool or vanpool means any method by which two (2) or more employees are transported from their residences to their places of employment;
- (8) Members of a religious sect or division that is an adherent of established tenets or teachings by reason of which members are conscientiously opposed to acceptance of the benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established by the Federal Social Security Act, 42 U.S.C. secs. 301 et seq., and it is the practice, and has been for ten (10) or more years, for members of the sect or division to make reasonable provision for their dependent members;
- (9) Any licensed or unlicensed, commissioned, ordained or unordained, or lay minister of religion who has no set oral or written agreement with a church or religious organization to receive a fixed regular payment for services provided to the church or who works no more than ten (10) hours per week;

- (10) Any caretaker of a cemetery or property owned or operated by a church or religious organization who provides general cleanup services, including but not limited to mowing, raking, dusting, sweeping, and mopping which could be performed for other individuals or organizations, who works no more than ten (10) hours per week; ~~and~~
- (11) A direct seller as defined in Section 3508(b)(2) of the Internal Revenue Code of 1986; **and**
- (12) ***Any individual whose function is to provide behavior support services, behavior programming services, case management services, community living support services, positive behavior support services, or respite services through a contractual relationship with a certified waiver provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c) home and community based services waiver program, as defined in 907 KAR 7:005 sec. 1(2).***

➔Section 3. KRS 341.055 is amended to read as follows:

Unless the employing unit thereof has elected that the services become covered employment under the provisions of subsection (3) or (4) of KRS 341.250, "covered employment" shall not include:

- (1) Service performed in agricultural labor, as defined in Section 3306(k) of the Internal Revenue Code, but only if the service is not defined as "covered employment" in paragraphs (f) and (h) of subsection (1) of KRS 341.050; or agricultural service performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;
- (2) Domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority, but only if the service is not defined as "covered employment" in paragraphs (g) and (h) of subsection (1) of KRS 341.050;
- (3) Service in the employ of an organization described in paragraph (e) of subsection (1) of KRS 341.050, but only if the service is not defined as "covered employment" in paragraphs (e) and (h) of subsection (1) of KRS 341.050;
- (4) Certain service performed in the employ of this state or any of its political subdivisions, municipalities, or instrumentalities thereof, but only if the service is performed by an individual in the exercise of his or her duties:
  - (a) As a public elected official;
  - (b) As a member of a legislative body of this state or a political subdivision thereof;
  - (c) As a member of the judiciary of this state or political subdivision thereof;
  - (d) As a member of the State National Guard or Air National Guard;
  - (e) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or
  - (f) In a position which, under or pursuant to the state law is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week or by reason of service on any appointed state or local board or commission;
- (5) Except as provided in paragraph (d) of subsection (1) of KRS 341.050, service performed in the employ of any other state or any political subdivision thereof, or of the United States government or an instrumentality of the United States exempt by federal law from the contributions imposed by this chapter, except that to the extent that the Congress of the United States shall permit states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment insurance law, all the provisions of this chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employing units, individuals and services; provided that if this state shall not be certified for any year by the Secretary of Labor of the United States under Section 3304 of the Internal Revenue Code, the payments required of such instrumentalities, with respect to such year, shall be refunded from the fund in the same manner and within the same period as is provided in KRS 341.330 with respect to contributions erroneously collected;
- (6) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress. The secretary may enter into agreements with the proper agencies under such Act of Congress to provide reciprocal treatment to workers who have, after acquiring potential

rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter;

- (7) Service performed by a worker in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;
- (8) Service performed in the employ of a foreign government, including service as a consular, or other officer or employee, or a nondiplomatic representative, or of an instrumentality wholly owned by a foreign government if:
  - (a) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
  - (b) The secretary finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (9) Service performed as a student nurse in the employ of a hospital or a nurses' training school by a worker who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to the laws of this state; and service performed as an intern in the employ of a hospital by a worker who has completed a four (4) years' course in a medical school chartered or approved pursuant to the laws of this state;
- (10) Service performed by a worker for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such worker for such employing unit is performed for remuneration solely by way of commission;
- (11) Service performed by a worker under the age of eighteen (18) in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (12) Service not in the course of the employing unit's trade or business performed in any calendar quarter by a worker, unless the cash remuneration paid for such service is fifty dollars (\$50) or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purpose of this subsection, an individual shall be deemed to be regularly employed by an employing unit during a calendar quarter only if:
  - (a) On each of some twenty-four (24) days during the quarter, the individual performs for such employing unit for some portion of the day service not in the course of the employing unit's trade or business; or
  - (b) The individual was regularly employed, as determined under paragraph (a) of this subsection, by the employing unit in the performance of the service during the preceding calendar quarter;
- (13) Service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 501(a) of the Internal Revenue Code, other than an organization described in Section 401(a), or under Section 521 of the Internal Revenue Code, if the remuneration for the service is less than fifty dollars (\$50);
- (14) Service performed in the employ of an international organization;
- (15) Service covered by an election, duly approved by the agency charged with the administration of any other state or federal employment security law, in accordance with an arrangement pursuant to KRS 341.145 during the effective period of the election;
- (16) Service performed in the employ of a school, college, or university, if the service is performed:
  - (a) By a student who is enrolled and is regularly attending classes at the school, college or university; or
  - (b) By the spouse of such a student, if the spouse is advised, at the time the spouse commences to perform the service, that:
    1. The employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university; and
    2. The employment will not be covered by any program of unemployment insurance;
- (17) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program,

taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of such program, and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

- (18) Service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in KRS 341.067;
- (19) Service performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;
- (20) Service defined in KRS 341.050(1)(d) and (e) performed for a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work; or as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving the work relief or work training; or in a custodial or penal institution by an inmate of such institution;~~[-or]~~
- (21) Service performed by a direct seller as defined in Section 3508(b)(2) of the Internal Revenue Code of 1986; *or*
- (22) *Any individual whose function is to provide behavior support services, behavior programming services, case management services, community living support services, positive behavior support services, or respite services through a contractual relationship with a certified waiver provider, as defined in 907 KAR 7:005 sec. 1(5), pursuant to a 1915(c) home and community based services waiver program, as defined in 907 KAR 7:005 sec. 1(2).*

**Veto overridden March 29, 2021.**

## CHAPTER 154

### ( SB 228 )

AN ACT relating to a vacancy in Congress.

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

➔Section 1. KRS 63.200 is amended to read as follows:

- (1) (a) The Governor shall fill vacancies in the office of United States Senator by appointment *and the appointee shall serve until a successor has been elected and qualified under subsection (2), (3), (4), or (5) of this section.*
- (b) *The appointee shall be selected from a list of three (3) names submitted by the state executive committee of the same political party as the Senator who held the vacant seat to be filled, shall have been continuously registered as a member of that political party since December 31 of the preceding year, and shall be named within twenty-one (21) days from the date of the list submission*
- (c) *In the event the vacant seat was held by a person who was not a member of any political party as defined under KRS 118.015, the Governor shall appoint any qualified voter who is not a member of any political party as defined under KRS 118.015.*
- (d) *Upon appointment, the Governor*~~[until the next regular election at which members of the lower branch of Congress are elected, and]~~ shall, under the seal of the Commonwealth, certify the appointment to the President of the Senate of the United States. The certificate of appointment shall be countersigned by the Secretary of State.

- (2) *If a vacancy occurs more than three (3) months before the election in any year in which any regular election is held in this state, the remainder of the unexpired term shall be filled as follows:*
- (a) *Candidates for the unexpired term shall file petitions of nomination no later than the fourth Tuesday in August before the date of the scheduled regular election;*
  - (b) *Petitions shall meet the requirements established under KRS 118.315 except:*
    - 1. *The signatures of no more than one thousand (1,000) petitioners shall be required;*
    - 2. *The petition of nomination shall contain a selection where a candidate shall designate whether the political party affiliation, or lack of affiliation, shall be placed on the ballot with the name of the candidate; and*
    - 3. *The designation made under subparagraph 2. of this paragraph shall not be changed following the filing of the nomination papers;*
  - (c) *The order of the names on the ballot for the candidates to be voted for shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., prevailing time, on the Thursday following the last Tuesday in August;*
  - (d) *After the order of names has been determined under paragraph (c) of this subsection, the Secretary of State shall certify to the county clerks:*
    - 1. *The name of each candidate; and*
    - 2. *The party affiliation, or lack of affiliation, of the candidate if designated for inclusion on the ballot as provided in paragraph (b) of this subsection;*
  - (e) *All candidates qualifying to be placed on the ballot shall be listed in a separate column or columns, or in a separate line or lines, and in a manner so that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for any candidate for a vacancy in the United States Senate. The words "Vote for one" shall be printed in the appropriate location;*
  - (f) *1. No candidate shall be elected to fill a vacancy at any regular election held under this subsection unless the candidate receives a majority of the votes cast in the regular election;*
    - 2. *If no candidate receives a majority of the votes cast, a runoff election shall be held between the candidates receiving the two (2) highest numbers of votes cast in the regular election;*
    - 3. *If a runoff election is required as provided in this paragraph, it shall be held seventy (70) days after the date of the regular election at which the two (2) candidates were selected; and*
    - 4. *The candidate receiving the highest number of votes cast in the runoff election to fill the vacancy shall be the candidate elected to fill the unexpired term of the office of United States Senator;*
  - (g) *If a vacancy occurs in the nomination of a candidate eligible for the special election because of death, disqualification to hold the office sought, severe disabling condition, or withdrawal, the remaining candidate or candidates receiving the second highest number of votes shall be the second candidate or candidates in the special election;*
  - (h) *The order of names on the ballot of the two (2) candidates to be voted for under paragraph (f) of this subsection shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., prevailing time, on the Thursday following the certification by the State Board of Elections under KRS 118.425;*
  - (i) *After the order of names has been determined, the Secretary of State shall give certification to the county clerks in accordance with paragraph (d) of this subsection; and*
  - (j) *The successful candidate in the special election held for the purpose of filling the unexpired term in the office of United States Senator shall take office immediately as provided under subsection (9) of this section.*
- (3) *If a vacancy occurs less than three (3) months before the regular election in any year in which any regular election is held in this state, and if a regular election is scheduled in the succeeding year, the vacancy shall be filled by appointment under subsection (1) of this section, and the unexpired term shall be filled at the regular election in the succeeding year.*

- (4) *If a vacancy occurs less than three (3) months before the regular election in any year in which any regular election is held in this state, but no regular election is scheduled in the succeeding year, or if a vacancy occurs during any year in which no regular election is scheduled, the Governor shall issue a writ of election. The writ of election shall:*
- (a) *Be signed by the Governor;*
  - (b) *Be issued within thirty (30) days of the occurrence of the vacancy;*
  - (c) *Set the date of the special election which shall be held no sooner than sixty (60) days, and no later than ninety (90) days, following the issuance of the writ; and*
  - (d) *Be directed to the sheriffs as required under Section 2 of this Act.*
- (5) (a) *Candidates in any special election held under this section shall file petitions of nomination no later than forty-nine (49) days before the date of the election.*
- (b) *Petitions shall meet the requirements established under KRS 118.315, except:*
1. *The signatures of no more than one thousand (1,000) petitioners shall be required;*
  2. *The petition of nomination shall contain a selection where a candidate shall designate whether the political party affiliation, or lack of affiliation, shall be placed on the ballot with the name of the candidate; and*
  3. *The designation made under subparagraph 2. of this paragraph shall not be changed following the filing of the nomination papers.*
- (c) *All candidates qualifying for the election shall be placed on the same ballot regardless of any candidate's political party affiliation, or lack of affiliation.*
- (d) *The order of the names on the ballot for the candidates to be voted for shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., prevailing time, no later than forty-seven (47) days before the day of the election.*
- (e) *After the order of names has been determined under paragraph (d) of this subsection, the Secretary of State shall certify to the county clerks:*
1. *The name of each candidate; and*
  2. *The party affiliation, or lack of affiliation, of the candidate if designated for inclusion on the ballot as provided in paragraph (b) of this subsection.*
- (6) (a) *No candidate shall be elected to fill a vacancy at any special election held under subsection (5) of this section unless the candidate receives a majority of the votes cast in the special election.*
- (b) *If no candidate receives a majority of the votes cast, a special runoff election shall be held between the candidates receiving the two (2) highest numbers of votes cast in the special election.*
- (c) *If a special runoff election is required as provided in this subsection, it shall be held forty-nine (49) days after the date of the special election.*
- (d) *The candidate receiving the highest number of votes cast in the special runoff election to fill the vacancy shall be the candidate elected to fill the unexpired term of the office of United States Senator.*
- (7) *Any special election or special runoff election held under this section shall proceed in the manner prescribed in KRS 118.740 to 118.775, except as otherwise provided in this section.*
- (8) *After the returns for any election under this section have been canvassed and certified by the State Board of Elections, the Governor shall certify the election of the person elected in accordance with KRS 118.465.*
- (9) *Any person elected to fill an unexpired term in the office of United States Senator under this section shall take office immediately upon certification of the election results by the State Board of Elections and administration of the oath of office.*
- (10) *Notwithstanding any other statute to the contrary, if the unexpired term will end at the next succeeding regular election, the office shall be filled by appointment in accordance with subsection (1) of this section until the winner of the election takes office in January.*



- (11) *Notwithstanding the provisions of KRS 117.085 and any other statute to the contrary, ballots for any special election or special runoff election under this section shall be printed as soon as practicable following the certification by the Secretary of State under KRS 118.225.*

➔Section 2. KRS 118.740 is amended to read as follows:

- (1) A copy of a proclamation issued under KRS 118.710 or 118.720, or a writ of election issued under KRS **63.200 or** 118.730 shall be forwarded by mail to the sheriff of each county in the district in which the election is to be held, at least fifty-six (56) days before the election. The sheriff of each county in which an election is to be held shall give notice at least forty-nine (49) days before the day of election. If, from any cause, the sheriff cannot properly act, he shall immediately hand the writ or proclamation to the person authorized to act in his place.
- (2) If a special election is administered under KRS 118.730(2), the notice required by subsection (1) of this section shall include the location of the election.

➔Section 3. KRS 118.770 is amended to read as follows:

When a writ of election or proclamation is issued to fill a vacancy as prescribed in KRS **63.200**, 118.710, 118.720, or 118.730, independent, or political organization, or political group petitions and certificates of nomination shall be filed at least forty-nine (49) days before the day of election, and if filed with the Secretary of State shall be immediately certified by him or her to the proper county clerks, *except as may be provided under Section 1 of this Act.*

**Veto overridden March 29, 2021.**

## CHAPTER 155

( HB 231 )

AN ACT relating to the Treasury.

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

➔Section 1. KRS 41.010 is amended to read as follows:

- (1) As used in KRS 41.070, 41.110, 41.120, 41.130, ~~41.150, 41.160,~~ **41.280**, 41.290, *or* 41.300, ~~or 41.990,~~ unless the context requires otherwise, the terms "appropriation," "budget unit," "disbursements," "expenditures," "expenses," and "receipts" have the meaning given them by KRS 43.010 and 48.010.
- (2) As used in this chapter:
- (a) *"Administrative body" includes an authority, board, bureau, interstate compact, commission, committee, conference, council, or any other form of organization in the executive branch of state government, but does not include office, department, program cabinet, or division;*
- (b) *"Agency" means any state administrative body, program cabinet, office, department, or division;*
- (c) *"Assistant" means assistant treasurer;*
- (d) *"Bank" includes ~~and "depository" include~~ any bank ~~or qualified financial intermediary and~~ savings and loan ~~association~~ **association** ~~associations~~ chartered by the State of Kentucky or the United States government designated to take custody of state funds on deposit, for periods greater than overnight, with the intent to honor presentments against those deposits;*
- (e) *"Check," unless the context requires otherwise, means either a paper check or a paperless entry on an electronic data processing medium that substitutes for a paper check and of which a permanent record is made for purposes of debiting or crediting an account;*
- (f) *"Collateral" means the listed securities and other obligations in subsection (4) of Section 12 of this Act;*
- ~~(b) "Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check;~~

- (g)~~(e)~~ "Form" or "report" means any written method of transporting data;
- (h) *"Secretary" means the secretary of the Finance and Administration Cabinet;*
- (i) *"State depository" means any bank designated to take custody of state funds on deposit pursuant to Section 10 of this Act;*
- (j) *"Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check;* and
- (k)~~(d)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

➔Section 2. KRS 41.060 is amended to read as follows:

- (1) The Treasurer shall appoint an assistant and may remove him *or her* at pleasure. *The assistant shall take the constitutional oath.* The assistant may perform any of the duties of the Treasurer, excepting the signing of checks, and shall perform the duties of clerk.
- (2) If the Treasurer is *incapacitated*~~[disabled by sickness]~~, or *is absent*~~[if he absents himself]~~ from the seat of government, *the assistant shall*~~the shall notify the Governor in writing of the facts, and recommend his assistant or some other person to~~ discharge the duties of the office during *the incapacity*~~[his sickness]~~ or absence *of the Treasurer.*~~[If the Governor approves the recommendation he shall enter his approval on the executive journal, after which the assistant or other person may perform all the duties of the Treasurer until he is restored to health or returns to the seat of government.]~~
- (3) The Treasurer and his *or her* sureties shall be responsible on his *or her* bond for all the acts and omissions of the assistant.
- (4) The salary of the assistant shall be fixed by the Treasurer, subject to the provisions of KRS *Chapter 18A*~~[12.050, 12.060, 18A.020, 18A.095 to 18A.110, 18A.120 to 18A.165, 18A.180 and 18A.185].~~

➔Section 3. KRS 41.070 is amended to read as follows:

- (1) Unless otherwise expressly provided by law, no receipts from any source of state money or money for which the state is responsible shall be held, used, or deposited in any personal or special bank account, temporarily or otherwise, by any agent or employee of any budget unit, to meet expenditures or for any other purpose.
- (2) All receipts of any character of any budget unit, all revenue collected for the state, and all public money and dues to the state shall be deposited in state depositories in the most prompt and cost-efficient manner available. However in the case of state departments or agencies located outside Frankfort, and all state institutions, the Finance and Administration Cabinet may permit temporary deposits to be made to the accounts maintained by the agency, department, or institution in *a state depository*~~[a bank which has been designated as a depository for state funds]~~ for a period not to exceed thirty (30) days, and may require that the money be forwarded to the State Treasury at the time and in the manner and form prescribed by the cabinet. Nothing in this section shall be construed as authorizing any representative of any agency, department, or institution to enforce or cash, even for the purpose of a deposit, any check or other instrument of value payable to the Commonwealth or any agency thereof.
- (3)~~(2)~~ Each agency depositing its receipts directly with the State Treasurer shall do so in the manner approved by the State Treasurer as agent in charge of public fund deposits.
- (4)~~(3)~~ The Department of Revenue may deposit receipts to the credit of the State Treasury directly with a *state depository*~~[designated by the Treasurer and]~~ utilized by the Commonwealth for its primary banking services. The State Treasurer, with the approval of the Finance and Administration Cabinet, may authorize other agencies to deposit receipts directly with a *state depository*~~[designated by the Treasury]~~ to the credit of the State Treasury if the Treasurer prescribes the manner in which the deposit is to be made, and the forms and reports to be filed with the Treasury Department. The Finance and Administration Cabinet shall prescribe the forms and reports to be filed with it when this type of deposit is made.
- (5)~~(4)~~ Each department, agency, or other budget unit which receives funds to be deposited into the State Treasury shall maintain records to report adequately each amount received, from whom received, and date received. Agency records shall be easily reconcilable with the information forwarded to the State Treasurer.

➔Section 4. KRS 41.110 is amended to read as follows:

- (1) No public money shall be withdrawn from the Treasury for any purpose other than that for which its withdrawal is proposed *in accordance with the Constitution and statutes of the Commonwealth of Kentucky*, nor unless it has been appropriated by the General Assembly or is a part of a revolving fund, and has been allotted as provided in KRS 48.010 to 48.800, and then only on the warrant of the Finance and Administration Cabinet.
- (2) The provisions of this section do not apply to withdrawals of funds from *one (1) or more* state ~~depositories~~~~[depository banks]~~ for immediate redeposit in other state ~~depositories~~~~[depository banks]~~ or to funds held in trust for the security of bond holders.

➔Section 5. KRS 41.120 is amended to read as follows:

- (1) All claims against the state shall be paid by the Treasurer on the warrants of the Finance and Administration Cabinet.
- (2) All warrants issued in accordance with the provisions of this chapter shall, when signed by the secretary of the Finance and Administration Cabinet or an assistant designated by him *or her*, constitute full and sufficient authority to the Treasurer for the disbursement of public money in the amount set forth.
- (3) Signatures may be placed on the warrants by means of an approved mechanical device. A signed transmittal which lists warrants may be accepted in lieu of each warrant being signed. Electronic authorization, approved by the secretary of the Finance and Administration Cabinet, may be accepted in lieu of any signatures.

➔Section 6. KRS 41.130 is amended to read as follows:

- (1) Each warrant of the Finance and Administration Cabinet upon the Treasury shall specify the date, amount, and person to whom payable, and no money shall be disbursed by the Treasurer unless the warrant contains these specifications.
- (2) No warrant shall be issued unless the money to pay it has been appropriated by law. The Finance and Administration Cabinet may require any claimant to state on the face of his claim the law under which it is payable.
- (3) *The Finance and Administration Cabinet shall record all warrants in the unified and integrated system of accounts.*
- (4) *The Treasurer shall maintain electronic records in the unified and integrated system of accounts that show all checks issued, the name of the payee, date, and amount and shall be in a format that is readily reconcilable with the warrants issued by the Finance and Administration Cabinet.*

➔Section 7. KRS 41.160 is amended to read as follows:

- (1) No money shall be paid out of the Treasury except by the check of the Treasurer upon a state depository, or through the provisions of KRS 45A.655.
- (2) Payments may be made direct by the Treasurer to the persons entitled to receive them, by mail or otherwise, or through the heads of the budget units which incurred the expenditures.

➔Section 8. KRS 41.167 is amended to read as follows:

~~{(4) The State Treasurer may withdraw funds from or deposit funds in the State Treasury by means of electronic funds transfers. The Finance and Administration Cabinet shall obtain a payee's prior, written consent for the payment of funds due him from the State Treasury by means of direct deposit rather than by means of a paper check issued to him. A single authorization may be granted for multiple payments to a payee by means of direct deposit.~~

~~{(2) For the purpose of implementing this section and unless the context requires a different meaning, the term "check" as used in this chapter shall mean either a paper check or a paperless entry on an electronic data processing medium that substitutes for a paper check for the purposes of debiting or crediting an account and of which a permanent record is made.}~~

➔Section 9. KRS 41.210 is amended to read as follows:

All public money of the state received into the Treasury shall be deposited, on the day it is received, in one (1) *or more* of the state ~~depositories~~~~[depository banks]~~.

➔Section 10. KRS 41.220 is amended to read as follows:

- (1) Not less than three (3) solvent banks shall be designated as *state* depositories for state funds. Each bank designated shall have not less than the minimum capital stock as required *by the primary state or federal*

**regulator of the bank** ~~[in KRS 286.3-070]~~. Banks shall be designated as **state** depositories for state funds upon agreement of the State Treasurer and the secretary of the Finance and Administration Cabinet. Those **banks** designated shall be entered in the executive journal. If at any time it appears that the capital of any **state** depository has become impaired, the state's deposits shall be withdrawn and **deposited with** another **state** depository ~~[named]~~.

- (2) The State Treasurer and the secretary of the Finance and Administration Cabinet shall determine the needs for moving state funds from one (1) designated depository to another.
- (3) ***If no banks are designated as state depositories in accordance with this section, all banks as defined in Section 1 of this Act shall be considered eligible state depositories.***

➔Section 11. KRS 41.230 is amended to read as follows:

For services rendered by ~~[the]~~ **state** depositories, compensation shall be made in the **form** ~~[forms]~~ of a predetermined fee or a predetermined compensating balance. ~~[The]~~ **State** depositories shall each pay to the state, in proportion to the deposits received, interest at such rate per annum upon the average daily deposit on hand at the close of business hours as is agreed upon between the Treasurer and the **state** depositories, consistent with the regulations promulgated by the State Investment Commission pursuant to KRS 42.525. The interest shall be paid to the Treasurer **no later than** at the end of each six (6) months or upon maturity commencing with the date of the deposit.

➔Section 12. KRS 41.240 is amended to read as follows:

- (1) (a) Before any bank shall be named as a state depository to receive public funds, it shall either pledge or provide to the State Treasurer ~~[as]~~ collateral ~~[, securities or other obligations]~~ having an aggregate current face value or current quoted market value at least equal to the deposits ***as of the last business day of each quarter in which funds are so deposited*** or provide to the State Treasurer a surety bond or surety bonds in favor of the State Treasurer in an amount at least equal to the deposits, ***as of the last business day of each quarter in which funds are deposited***; provided, however, that amounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation need not be so collateralized. The president or ***an executive officer*** ~~[cashier]~~ of each **state** depository ~~[bank]~~ shall submit to the Treasurer and the State Investment Commission a statement subscribed and sworn to by ***the president or executive officer*** ~~[him]~~ showing:

1. The face value or current quoted market value of the securities or other obligations pledged ~~[or provided as of the time the securities or other obligations are offered]~~ as collateral; and
2. The value of surety bonds provided as of the time such surety bonds are provided as collateral.

The ***aggregate*** valuation of all pledged or provided collateral ~~[and the face amount of all surety bonds provided as collateral]~~ shall be reported to the State Treasurer and State Investment Commission ***by the state depository*** ~~[upon receipt of deposit and]~~ within ten (10) days of the close of each quarter after the ***date of deposit*** ~~[quarter beginning December 31]~~. Such value with respect to pledged collateral other than surety bonds shall be as of the end of the quarter or the preceding business day and, as to ***surety bonds, the*** market values ~~[,]~~ shall be obtained from a reputable bond-pricing service. The State Treasurer and Governor may from time to time call for additional collateral to adequately secure the deposits as aggregate face or current market values may require, ***if the value of collateral is not compliant with state law as of the report date.***

- (b) No deposit of state ~~[collected demand and time]~~ funds shall collectively exceed at any time the **state** depository's sum of capital, reserves, undivided profits and surplus or ten percent (10%) of the total deposits of ***the state*** ~~[any particular]~~ depository, whichever is less. ***For purposes of this subsection only, the value of the state deposit will be determined as of the end of the last business day of each quarter that funds are deposited*** ~~[Deposits will be valued at the end of each business day]~~.
- (2) (a) As an alternative to subsection (1)(a) of this section, a **state** ~~[Kentucky]~~ depository insured by the Federal Deposit Insurance Corporation may either pledge to the State Treasurer, as collateral, securities or other obligations having an aggregate face value or a current quoted market value or provide to the State Treasurer a surety bond or surety bonds in an amount equal to eighty percent (80%) of the value of the state deposit including demand and time accounts, if the **state** depository is determined by the State Investment Commission to have very strong credit with little or no credit risk at any maturity level and the likelihood of short-term unexpected problems of significance is minimal or not of a serious or long-term nature. The value of the state deposit will be determined at the end of the business day of deposit and as of the end of business on the last day of each quarter that funds are so deposited.

- (b) Valuation of all pledged or provided collateral ~~and the face amount of surety bonds provided~~ shall be reported to the State Treasurer and the State Investment Commission ~~upon receipt of the state deposit and~~ within ten (10) days of the close of each quarter after the *date of deposit* ~~quarter beginning December 31~~.
  - (c) *State* depositories designated as qualified for reduced pledging shall be so recorded in the executive journal.
  - (d) The State Investment Commission shall determine eligibility for the reduced pledging option based on totally objective and quantifiable measures of financial intermediary performance. The information for such eligibility shall be obtained from publicly available documents. The State Investment Commission shall promulgate the particular criteria of eligibility by regulations issued pursuant to KRS Chapter 13A.
- (3) *State* depositories which do not qualify or do not choose to qualify under subsection (1) or (2) of this section shall not receive state deposits in excess of amounts that are insured by an instrumentality of the United States.
- (4) Only the following securities and other obligations may be accepted by the State Treasurer as collateral under this section:
- (a) Bonds, notes, letters of credit, or other obligations of or issued or guaranteed by the United States, or those for which the credit of the United States is pledged for the payment of the principal and interest thereof, and any bonds, notes, debentures, letters of credit, or any other obligations issued or guaranteed by any federal governmental agency or instrumentality, presently or in the future established by an Act of Congress, as amended or supplemented from time to time, including, without limitation, the United States government corporations listed in KRS 66.480(1)(c);
  - (b) Obligations of the Commonwealth of Kentucky including revenue bonds issued by its statutory authorities, commissions, or agencies;
  - (c) Revenue bonds issued by educational institutions of the Commonwealth of Kentucky as authorized by KRS 162.340 to 162.380;
  - (d) Obligations of any city of the Commonwealth of Kentucky, or any county, for the payment of principal and interest on which the full faith and credit of the issuing body is pledged;
  - (e) School improvement bonds issued in accordance with the authority granted under KRS 162.080 to 162.100;
  - (f) School building revenue bonds issued in accordance with the authority granted under KRS 162.120 to 162.300, provided that the issuance of such bonds is approved by the Kentucky Board of Education; ~~and~~
  - (g) Surety bonds issued by sureties rated in one (1) of the three (3) highest categories by a nationally recognized rating agency; ~~and~~
  - ~~(h)(5) [The State Treasurer shall accept]~~ Letters of credit issued by federal home loan banks ~~as collateral under this section~~; ~~and~~
  - (i) *Real property owned by the bank.*

→Section 13. KRS 41.250 is amended to read as follows:

The execution of the bond or the pledge of the warrants or bonds required by KRS 41.240 shall not diminish the liability of the Treasurer and his *or her* sureties upon his *or her* bond, nor impair or delay the right of the state to recover on the Treasurer's bond for any loss or misapplication of the public funds or other delinquency in office, nor impair or delay the right of the state to recover from any delinquent or defaulting bank, or the officers or stockholders thereof, in the same manner as other depositors.

→Section 14. KRS 41.260 is amended to read as follows:

Whenever the Treasurer decides to transfer any deposit of public money from one (1) state depository ~~bank~~ to another, the Treasurer shall notify the Finance and Administration Cabinet, describing the proposed transfer and the deposit of money to be transferred. On receipt of the notification the Finance and Administration Cabinet shall register the proposed transfer and issue its warrant for the amounts specified by the Treasurer. When the transfers have been completed the Treasurer shall immediately notify the Finance and Administration Cabinet.

→Section 15. KRS 41.280 is amended to read as follows:

- (1) *The Commonwealth of Kentucky shall maintain a unified and integrated system of accounts. As a part of any unified and integrated system of accounts:*
- (a) The Treasurer shall maintain the necessary records to exhibit accurately the Treasury's cash balance;~~[-]~~
  - (b) The Finance and Administration Cabinet shall provide the Treasurer with accounting data that will accurately describe the Commonwealth's financial condition, *including access to information necessary to determine the status of each receipt and expenditure account*;~~[-]~~
  - (c) The Treasurer shall keep a record of each depository, showing the amount deposited and the date, and the amount checked out and the date; *and*
  - (d) *The Treasurer shall provide the Finance and Administration Cabinet with information regarding accumulated receipts and the status of warrants.*
- (2) *The Treasurer shall make a clear, distinct, and intelligible report of all money received and disbursed during each fiscal year showing the receipts and expenditures of each year on account of every department of the public service, the name of each state depository, and the rate of interest paid by it. The report shall be published annually, and the Treasurer shall submit the report to the Governor, the Chief Justice, and the Legislative Research Commission ninety (90) days after the close of the fiscal year.*

➔Section 16. KRS 41.300 is amended to read as follows:

There shall be a special deposit fund consisting of all money received by the state or any department or officer thereof as guarantees for the payment of any costs, charges or damages accruing or liable to accrue to the state or for the performance of any specific act, including all money deposited as bail to secure the liberation of persons accused of public offenses, all money deposited by bidders on contracts to insure their entering into contracts awarded them, and all money deposited to indemnify persons whose property may be damaged or destroyed by the operations of the depositor. All such money shall be paid to the Treasurer, in the manner provided for the deposit of public money, and shall be deposited by the Treasurer as a trust fund in a separate account in a designated *state* depository~~[-bank]~~. The money so deposited may be returned to the depositor, if he becomes entitled to its return, without specific appropriation, allotment or authorization for expenditure therefor, in the same manner as other claims against the state may be paid, or may, upon default of any depositor and upon certificate to such effect by the administrative officer having charge of the matter, be declared by the Finance and Administration Cabinet to be forfeited in whole or in part and thereupon be transferred to the extent so forfeited to the general fund. The interest on bank deposits of this fund shall accrue to the general fund.

➔Section 17. KRS 41.320 is amended to read as follows:

The Governor may require, at any time, a full statement of the condition of the Treasury from the Finance and Administration Cabinet, Treasurer, and the *state* depositories. The Treasurer shall, at all times when called upon by the Governor, exhibit his *or her* books and accounts *of the Treasury* and *all*~~his]~~ cash on hand or on deposit.

➔Section 18. KRS 41.330 is amended to read as follows:

- (1) Upon the expiration of the term of office of the Treasurer, or if a vacancy occurs, the *outgoing Treasurer shall certify in writing that the accounts and inventory of the Treasury, as recorded in the recordkeeping systems of the Commonwealth, are true, complete, and accurate as of the close of business on the Treasurer's last day in office. The certification shall include accounts and tangible property held by the Treasury pursuant to KRS Chapters 393 and 393A. A copy of this certification shall be provided to the following:*

- (a) *The Auditor of Public Accounts;*
- (b) *The Secretary of State; and*
- (c) *The secretary of the Finance and Administration Cabinet.*

~~[Auditor of Public Accounts shall examine and state the accounts of the Treasurer, count the money in the Treasury, and take an inventory of the books, supplies, and equipment of the office.]~~

- (2) The money, books, supplies, and equipment shall be delivered to the newly ~~[-]~~elected Treasurer or the person who fills the vacancy, and *the newly elected Treasurer or the person who fills the vacancy*~~he]~~ shall give a receipt for them which shall be filed with the Secretary of State.~~[- The former Treasurer or his personal representative or surety may attend the Auditor while engaged in making the examination. The Auditor shall return the statement of accounts, with his report, to the Secretary of State. The report shall be prima facie evidence for and against all concerned and interested.]~~

- (3) *In the event that a vacancy occurs due to the death or incapacitation of the Treasurer, the certification set forth in subsection (1) of this section shall be completed by the assistant in accordance with Section 2 of this Act.*
- (4) *Nothing in this section shall be construed as limiting the right of the Auditor to review the accounts and inventory of the Treasurer at other times as the Auditor may deem necessary or appropriate, or as required by KRS 43.060.*

➔Section 19. KRS 41.350 is amended to read as follows:

- (1) Canceled checks *and records of all electronic transactions* of the State Treasurer ~~debiting~~~~upon~~ state ~~depositories~~~~depository banks~~ shall be ~~microfilmed and the original check~~ preserved by the State Treasurer for a period of *ten (10) years*~~one (1) year~~. ~~At the expiration of this period, unless required for the purpose of an action then pending, the checks shall be sold as waste paper or destroyed. Microfilm reproductions of Treasury Department checks shall be preserved for a period of five (5) years. Microfilm reproductions of printed warrants shall be preserved for a period of five (5) years.~~
- (2) *For purposes of this subsection, preservation of records may be in an electronic format, including the records contained within the state's unified and integrated system of accounts* ~~Microfilm reproductions of electronic fund transfer entries debiting state accounts transmitted to the State Treasurer by state depositories shall be preserved by the State Treasurer for a period of five (5) years. At the expiration of this period, unless required for the purpose of an action then pending, they may be destroyed.~~

➔Section 20. KRS 41.375 is amended to read as follows:

- (1) A duplicate check shall be issued by the Treasurer upon:
- (a) Receipt of a notarized affidavit, *which may be transmitted to the Treasury in an electronic format*, signed by the payee and stating that the original check has been lost or stolen;~~;~~ and
- (b) *A review of the records of the Treasury, including the unified and integrated system of accounts to determine that*~~if~~ the original check has not been presented for payment.
- (2) The payee receiving a duplicate check shall make good any loss the Commonwealth or the Treasurer may sustain on account of the issuance of the duplicate or the presentation and payment of the original, if the loss has been caused by actions of the payee. The Treasurer shall not be liable for any loss sustained by the issuance of the duplicate check.

➔Section 21. KRS 44.001 is amended to read as follows:

As used in this chapter:

- (1) "Local government" means any city, county, urban-county government, consolidated local government, charter county government, or unified local government of the Commonwealth; ~~and~~
- (2) *"Warrant" has the same meaning as in Section 1 of this Act; and*
- (3) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

➔Section 22. KRS 66.480 is amended to read as follows:

- (1) The governing body of a city, county, urban-county, charter county, school district (provided that its general procedure for action is approved by the Kentucky Board of Education), or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:
- (a) Obligations of the United States and of its agencies and instrumentalities, including obligations subject to repurchase agreements, if delivery of these obligations subject to repurchase agreements is taken either directly or through an authorized custodian. These investments may be accomplished through repurchase agreements reached with sources including but not limited to national or state banks chartered in Kentucky;
- (b) Obligations and contracts for future delivery or purchase of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:
1. United States Treasury;
  2. Export-Import Bank of the United States;

3. Farmers Home Administration;
  4. Government National Mortgage Corporation; and
  5. Merchant Marine bonds;
- (c) Obligations of any corporation of the United States government, including but not limited to:
1. Federal Home Loan Mortgage Corporation;
  2. Federal Farm Credit Banks;
  3. Bank for Cooperatives;
  4. Federal Intermediate Credit Banks;
  5. Federal Land Banks;
  6. Federal Home Loan Banks;
  7. Federal National Mortgage Association; and
  8. Tennessee Valley Authority;
- (d) Certificates of deposit ~~issued by~~ or other interest-bearing accounts **issued through a** ~~of any~~ bank or savings and loan institution having a physical presence in Kentucky which are insured by the Federal Deposit Insurance Corporation or similar entity or which are collateralized, to the extent uninsured, by any obligations, including surety bonds, permitted by KRS 41.240(4);
- (e) Uncollateralized certificates of deposit issued by any bank or savings and loan institution having a physical presence in Kentucky rated in one (1) of the three (3) highest categories by a competent rating agency;
- (f) Bankers' acceptances for banks rated in one (1) of the three (3) highest categories by a competent rating agency;
- (g) Commercial paper rated in the highest category by a competent rating agency;
- (h) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;
- (i) Securities issued by a state or local government, or any instrumentality of agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a competent rating agency;
- (j) Shares of mutual funds and exchange traded funds, each of which shall have the following characteristics:
1. The mutual fund shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended;
  2. The management company of the investment company shall have been in operation for at least five (5) years; and
  3. All of the securities in the mutual fund shall be eligible investments pursuant to this section;
- (k) Individual equity securities if the funds being invested are managed by a professional investment manager regulated by a federal regulatory agency. The individual equity securities shall be included within the Standard and Poor's 500 Index, and a single sector shall not exceed twenty-five percent (25%) of the equity allocation; and
- (l) Individual high-quality corporate bonds that are managed by a professional investment manager that:
1. Are issued, assumed, or guaranteed by a solvent institution created and existing under the laws of the United States;
  2. Have a standard maturity of no more than ten (10) years; and
  3. Are rated in the three (3) highest rating categories by at least two (2) competent credit rating agencies.
- (2) The investment authority provided by subsection (1) of this section shall be subject to the following limitations:



- (a) The amount of money invested at any time by a local government or political subdivision in any one (1) of the categories of investments authorized by subsection (1)(e), (f), (g), (k), and (l) of this section shall not exceed twenty percent (20%) of the total amount of money invested by the local government;
  - (b) The amount of money invested at any one (1) time by a local government or a political subdivision in the categories of investments authorized in subsection (1)(j), (k), and (l) of this section shall not, aggregately, exceed forty percent (40%) of the total money invested;
  - (c) No local government or political subdivision shall purchase any investment authorized by subsection (1) of this section on a margin basis or through the use of any similar leveraging technique; and
  - (d) At the time the investment is made, no more than five percent (5%) of the total amount of money invested by the local governments or political subdivisions shall be invested in any one (1) issuer unless:
    - 1. The issuer is the United States government or an agency or instrumentality of the United States government, or an entity which has its obligations guaranteed by either the United States government or an entity, agency, or instrumentality of the United States government;
    - 2. The money is invested in a certificate of deposit or other interest-bearing accounts as authorized by subsection (1)(d) and (e) of this section;
    - 3. The money is invested in bonds or certificates of indebtedness of this state and its agencies and instrumentalities as authorized in subsection (1)(h) of this section; or
    - 4. The money is invested in securities issued by a state or local government, or any instrumentality or agency thereof, in the United States as authorized in subsection (1)(i) of this section.
- (3) The governing body of every local government or political subdivision that invests or reinvests money subject to its control or jurisdiction according to the provisions of subsection (1) of this section shall by January 1, 1995, adopt a written investment policy that shall govern the investment of funds by the local government or political subdivision. The written investment policy shall include but shall not be limited to the following:
- (a) A designation of the officer or officers of the local government or political subdivision who are authorized to invest and oversee the investment of funds;
  - (b) A list of the permitted types of investments;
  - (c) Procedures designed to secure the local government's or political subdivision's financial interest in the investments;
  - (d) Standards for written agreements pursuant to which investments are to be made;
  - (e) Procedures for monitoring, control, deposit, and retention of investments and collateral;
  - (f) Standards for the diversification of investments, including diversification with respect to the types of investments and firms with whom the local government or political subdivision transacts business;
  - (g) Standards for the qualification of investment agents which transact business with the local government, such as criteria covering creditworthiness, experience, capitalization, size, and any other factors that make a firm capable and qualified to transact business with the local government or political subdivision; and
  - (h) Requirements for periodic reporting to the governing body on the status of invested funds.
- (4) Sheriffs, county clerks, and jailers, who for the purposes of this section shall be known as county officials, may invest and reinvest money subject to their control and jurisdiction, including tax dollars subject to the provisions of KRS Chapter 134 and 160.510, as permitted by this section.
- (5) The provisions of this section are not intended to impair the power of a county official, city, county, urban-county, charter county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.
- (6) The governing body or county official may delegate the investment authority provided by this section to the treasurer or other financial officer or officers charged with custody of the funds of the local government, and the officer or officers shall thereafter assume full responsibility for all investment transactions until the delegation of authority terminates or is revoked.

- (7) All county officials shall report the earnings of any investments at the time of their annual reports and settlements with the fiscal courts for excess income of their offices.
- (8) The state local debt officer is authorized and directed to assist county officials and local governments, except school districts, in investing funds that are temporarily in excess of operating needs by:
  - (a) Explaining investment opportunities to county officials and local governments through publication and other appropriate means; and
  - (b) Providing technical assistance in investment of idle funds to county officials and local governments that request that assistance.
- (9)
  - (a) The state local debt officer may create an investment pool for local governments, except school districts, and county officials; and counties and county officials and cities may associate to create an investment pool. If counties and county officials and cities create a pool, each group may select a manager to administer their pool and invest the assets. Each county and each county official and each city may invest in a pool created pursuant to this subsection. Investments shall be limited to those investment instruments permitted by this section. The funds of each local government and county official shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local government or county official shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local government or county official participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the state local debt officer. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his or her own investigative report or audit to verify the findings of the independent certified public accountant's report.
  - (b) If the state local debt officer creates an investment pool, he or she shall establish an account in the Treasury for the pool. He or she shall also establish a separate trust and agency account for the purpose of covering management costs, and he or she shall deposit management charges in this account. The state local debt officer may promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the operation of the investment pool, including but not limited to provisions on minimum allowable investments and investment periods, and method and timing of investments, withdrawals, payment of earnings, and assignment of charges.
  - (c) Before investing in an investment pool created pursuant to this subsection, a local government or county official shall allow any savings and loan association or bank in the county, as described in subsection (1)(d) of this section, to bid for the deposits, but the local government or county official shall not be required to seek bids more often than once in each six (6) month period.
- (10)
  - (a) With the approval of the Kentucky Board of Education, local boards of education, or any of them that desire to do so, may associate to create an investment pool. Each local school board which associates itself with other local school boards for the purpose of creating the investment pool may invest its funds in the pool so created and so managed. Investments shall be limited to those investment instruments permitted by this section. The funds of each local school board shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local school board shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local school board participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the Kentucky Board of Education. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his or her own investigative report or audit to verify the findings of the independent certified public accountant's report.
  - (b) The Kentucky Board of Education may promulgate administrative regulations governing the operation of the investment pool including but not limited to provisions on minimum allowable investments and

investment periods, and methods and timing of investments, withdrawals, payment of earnings, and assignment of charges.

- (11) As used in this section, "competent rating agency" means a rating agency certified or approved by a national entity that engages in such a process. The certification or approval process shall include but not necessarily be limited to the following elements the subject rating agency must possess:
- (a) A requirement for the rating agency to register and provide an annual updated filing;
  - (b) Record retention requirements;
  - (c) Financial reporting requirements;
  - (d) Policies for the prevention of misuse of material nonpublic information;
  - (e) Policies addressing management of conflicts of interest, including prohibited conflicts;
  - (f) Prohibited acts practices;
  - (g) Disclosure requirements;
  - (h) Any policies, practices, and internal controls required by the national entity; and
  - (i) Standards of training, experience, and competence for credit analysts.

➔Section 23. KRS 41.990 is amended to read as follows:

- (1) If the president or cashier of any state depository willfully violates any of the provisions of KRS 41.230, 41.240, 41.270 or 41.320, he shall be fined not less than one thousand dollars (\$1,000).
- (2) Any officer, agent or employee of any budget unit who willfully fails or refuses to comply with, or expends any money in violation of, any of the provisions of KRS 41.070, 41.110 to ~~41.160~~[41.170], 41.210, 41.220, 41.260, 41.270, 41.290 or 41.300 shall be subject to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than fifty (50) nor more than five hundred dollars (\$500) for each offense.

➔Section 24. The following KRS sections are repealed:

- 41.050 Suspension of Treasurer.
- 41.140 Warrants to be submitted to Treasurer.
- 41.150 Treasurer to accept warrants -- Payment -- Register of checks.
- 41.170 Record of warrants in system of accounts -- Notice of issuance of checks.
- 41.340 Annual report by Treasurer.

**Veto overridden March 29, 2021.**

## CHAPTER 156

( HB 249 )

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

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

➔Section 1. KRS 131.081 is amended to read as follows:

The following rules, principles, or requirements shall apply in the administration of all taxes subject to the jurisdiction of the department~~[of Revenue]~~.

- (1) The department shall develop and implement a Kentucky tax education and information program directed at new taxpayers, taxpayer and industry groups, and department employees to enhance the understanding of and compliance with Kentucky tax laws, including the application of new tax legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

- (2) The department shall publish brief statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of taxpayers and the department. These statements shall be provided to taxpayers with the initial notice of audit; each original notice of tax due; each denial or reduction of a refund or credit claimed by a taxpayer; each denial, cancellation, or revocation of any license, permit, or other required authorization applied for or held by a taxpayer; and, if practical and appropriate, in informational publications by the department distributed to the public.
- (3) Taxpayers shall have the right to be assisted or represented by an attorney, accountant, or other person in any conference, hearing, or other matter before the department. The taxpayer shall be informed of this right prior to conduct of any conference or hearing.
- (4) The department shall perform audits and conduct conferences and hearings only at reasonable times and places.
- (5) Taxpayers shall have the right to make audio recordings of any conference with or hearing by the department. The department may make similar audio recordings if prior written notice is given to the taxpayer or if the taxpayer records the conference or hearing. The taxpayer shall be entitled to a copy of this department recording or a transcript as provided in KRS 61.874.
- (6) If any taxpayer's failure to submit a timely return or payment to the department is due to the taxpayer's reasonable reliance on written advice from the department, the taxpayer shall be relieved of any penalty or interest with respect thereto, provided the taxpayer requested the advice in writing from the department and the specific facts and circumstances of the activity or transaction were fully described in the taxpayer's request, the department did not subsequently rescind or modify the advice in writing, and there were no subsequent changes in applicable laws or regulations or a final decision of a court which rendered the department's earlier written advice no longer valid.
- (7) Taxpayers shall have the right to receive a copy of any audit of the department by the Auditor of Public Accounts relating to the department's compliance with the provisions of KRS 131.041 to 131.081.
- (8) (a) The department shall include with each notice of tax due a clear and concise description of the basis and amount of any tax, penalty, and interest assessed against the taxpayer, ~~and copies of the agent's audit workpapers,~~ and the agent's written narrative setting forth the grounds upon which the assessment is made.
- (b) *Copies of the agent's audit workpapers shall be:*
1. *Included with the notice of tax due; or*
  2. *Delivered electronically to the taxpayer.*
- (c) Taxpayers shall be similarly notified regarding the denial or reduction of any refund or credit claim filed by a taxpayer.
- (9) (a) Taxpayers shall have the right to an installment payment agreement for the payment of delinquent taxes, penalties, and interest owed, provided the taxpayer requests the agreement in writing clearly demonstrating:
1. His or her inability to pay in full; and
  2. That the agreement will facilitate collection by the department of the amounts owed.
- (b) The department may modify or terminate an installment payment agreement and may pursue statutory remedies against the taxpayer if it determines that:
1. The taxpayer has not complied with the terms of the agreement, including minimum payment requirements established by the agreement;
  2. The taxpayers' financial condition has sufficiently changed;
  3. The taxpayer fails to provide any requested financial condition update information;
  4. The taxpayer gave false or misleading information in securing the agreement; or
  5. The taxpayer fails to timely report and pay any other tax due the Commonwealth.
- (c) The department shall give written notice to the taxpayer at least thirty (30) days prior to modifying or terminating an installment payment agreement unless the department has reason to believe that collection of the amounts owed will be jeopardized in whole or in part by delay.

- (10) The department shall not knowingly authorize, require, or conduct any investigation or surveillance of any person for nontax administration related purposes, except internal security related investigations involving department ~~of Revenue~~ personnel.
- (11) In addition to the circumstances under which an extension of time for filing reports or returns may be granted pursuant to KRS 131.170, taxpayers shall be entitled to the same extension of the due date of any comparable Kentucky tax report or return for which the taxpayer has secured a written extension from the Internal Revenue Service provided the taxpayer notifies the department in writing and provides a copy of the extension at the time and in the manner which the department may require.
- (12) The department shall bear the cost or, if paid by the taxpayer, reimburse the taxpayer for recording or bank charges as the direct result of any erroneous lien or levy by the department, provided the erroneous lien or levy was caused by department error and, prior to issuance of the erroneous lien or levy, the taxpayer timely responded to all contacts by the department and provided information or documentation sufficient to establish his or her position. When the department releases any erroneous lien or levy, notice of the fact shall be mailed to the taxpayer and, if requested by the taxpayer, a copy of the release, together with an explanation, shall be mailed to the major credit reporting companies located in the county where it was filed.
- (13) (a) The department shall not evaluate individual officers or employees on the basis of taxes assessed or collected or impose or suggest tax assessment or collection quotas or goals.
- (b) No arrangement or contract shall be entered into for the service to:
1. Examine a taxpayer's books and records;
  2. Collect a tax from a taxpayer; or
  3. Provide legal representation of the department;
- if any part of the compensation or other benefits paid or payable for the service is contingent upon or otherwise related to the amount of tax, interest, fee, or penalty assessed against or collected from the taxpayer. Any such arrangement or contract shall be void and unenforceable.
- (14) Taxpayers shall have the right to bring an action for damages against the Commonwealth to the Kentucky Claims Commission for actual and direct monetary damages sustained by the taxpayer as a result of willful, reckless, or intentional disregard by department employees of the rights of taxpayers as set out in KRS 131.041 to 131.081 or in the tax laws administered by the department. In the awarding of damages pursuant to this subsection, the commission shall take into consideration the negligence or omissions, if any, on the part of the taxpayer which contributed to the damages. If any proceeding brought by a taxpayer is ruled frivolous by the commission, the department shall be reimbursed by the taxpayer for its costs in defending the action. Any claims brought pursuant to this subsection shall be in accordance with KRS 49.040 to 49.180.
- (15) Taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any attached information or documents. Except as provided in KRS 131.190, no information pertaining to the returns, reports, or the affairs of a person's business shall be divulged by the department to any person or be intentionally and without authorization inspected by any present or former commissioner or employee of the department ~~of Revenue~~, member of a county board of assessment appeals, property valuation administrator or employee, or any other person.

➔Section 2. KRS 132.590 is amended to read as follows:

- (1) The compensation of the property valuation administrator shall be based on the schedule contained in subsection (2) of this section as modified by subsection (3) of this section. The compensation of the property valuation administrator shall be calculated by the department ~~of Revenue~~ annually. Should a property valuation administrator for any reason vacate the office in any year during his term of office, he shall be paid only for the calendar days actually served during the year.
- (2) The salary schedule for property valuation administrators provides for nine (9) levels of salary based upon the population of the county in the prior year as determined by the United States Department of Commerce, Bureau of the Census annual estimates. To implement the salary schedule, the department shall, by November 1 of each year, certify for each county the population group applicable to each county based on the most recent estimates of the United States Department of Commerce, Bureau of the Census. The salary schedule provides four (4) steps for yearly increments within each population group. Property valuation administrators shall be paid according to the first step within their population group for the first year or portion thereof they serve in office. Thereafter, each property valuation administrator, on January 1 of each subsequent year, shall be

advanced automatically to the next step in the salary schedule until the maximum salary figure for the population group is reached. If the county population as certified by the department increases to a new group level, the property valuation administrator's salary shall be computed from the new group level at the beginning of the next year. A change in group level shall have no effect on the annual change in step. Prior to assuming office, any person who has previously served as a property valuation administrator must certify to the department ~~of Revenue~~ the total number of years, not to exceed four (4) years, that the person has previously served in the office. The department shall place the person in the proper step based upon a formula of one (1) incremental step per full calendar year of service:

SALARY SCHEDULE

County Population by Group	Steps and Salary for Property Valuation Administrators			
	Step 1	Step 2	Step 3	Step 4
Group I 0-4,999	\$45,387	\$46,762	\$48,137	\$49,513
Group II 5,000-9,999	49,513	50,888	52,263	53,639
Group III 10,000-19,999	53,639	55,014	56,389	57,765
Group IV 20,000-29,999	55,702	57,765	59,828	61,891
Group V 30,000-44,999	59,828	61,891	63,954	66,017
Group VI 45,000-59,999	61,891	64,641	67,392	70,143
Group VII 60,000-89,999	66,017	68,768	71,518	74,269
Group VIII 90,000-499,999	68,080	71,518	74,957	78,395
Group IX 500,000 and up	72,206	75,644	79,083	82,521

- (3) (a) For calendar year 2000, the salary schedule in subsection (2) of this section shall be increased by the amount of increase in the annual consumer price index as published by the United States Department of Commerce for the year ended December 31, 1999. This salary adjustment shall take effect on July 14, 2000, and shall not be retroactive to the preceding January 1.
- (b) For each calendar year beginning after December 31, 2000, upon publication of the annual consumer price index by the United States Department of Commerce, the annual rate of salary for the property valuation administrator shall be determined by applying the increase in the consumer price index to the salary in effect for the previous year. This salary determination shall be retroactive to the preceding January 1.
- (c) In addition to the step increases based on service in office, each property valuation administrator shall be paid an annual incentive of six hundred eighty-seven dollars and sixty-seven cents (\$687.67) per calendar year for each forty (40) hour training unit successfully completed based on continuing service in that office and, except as provided in this subsection, completion of at least forty (40) hours of approved training in each subsequent calendar year. If a property valuation administrator fails without good cause, as determined by the commissioner of the ~~Kentucky~~ department ~~of Revenue~~, to obtain the minimum amount of approved training in any year, the officer shall lose all training incentives previously accumulated. No property valuation administrator shall receive more than one (1) training unit per calendar year nor more than four (4) incentive payments per calendar year. Each property

valuation administrator shall be allowed to carry forward up to forty (40) hours of training credit into the following calendar year for the purpose of satisfying the minimum amount of training for that year. This amount shall be increased by the consumer price index adjustments prescribed in paragraphs (a) and (b) of this subsection. Each training unit shall be approved and certified by the ~~the Kentucky~~ department ~~of Revenue~~. Each unit shall be available to property valuation administrators in each office based on continuing service in that office. The ~~Kentucky~~ department ~~of Revenue~~ shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish guidelines for the approval and certification of training units.

- (4) Notwithstanding any provision contained in this section, no property valuation administrator holding office on July 14, 2000, shall receive any reduction in salary or reduction in adjustment to salary otherwise allowable by the statutes in force on July 14, 2000.
- (5) Deputy property valuation administrators and other authorized personnel may be advanced one (1) step in grade upon completion of twelve (12) months' continuous service. The department ~~of Revenue~~ may make grade classification changes corresponding to any approved for department employees in comparable positions, so long as the changes do not violate the integrity of the classification system. Subject to availability of funds, the department may extend cost-of-living increases approved for department employees to deputy property valuation administrators and other authorized personnel, by advancement in grade.
- (6) Beginning with the 1990-1992 biennium, the department ~~of Revenue~~ shall prepare a biennial budget request for the staffing of property valuation administrators' offices. An equitable allocation of employee positions to each property valuation administrator's office in the state shall be made on the basis of comparative assessment work units. Assessment work units shall be determined from the most current objective information available from the United States Bureau of the Census and other similar sources of unbiased information. Beginning with the 1996-1998 biennium, assessment work units shall be based on parcel count per employee. The total sum allowed by the state to any property valuation administrator's office as compensation for deputies, other authorized personnel, and for other authorized expenditures shall not exceed the amount fixed by the department ~~of Revenue~~. However, each property valuation administrator's office shall be allowed as a minimum such funds that are required to meet the federal minimum wage requirements for two (2) full-time deputies.
- (7) Beginning with the 1990-1992 biennium each property valuation administrator shall submit by June 1 of each year for the following fiscal year to the department ~~of Revenue~~ a budget request for his office which shall be based upon the number of employee positions allocated to his office under subsection (6) of this section and upon the county and city funds available to his office and show the amount to be expended for deputy and other authorized personnel including employer's share of FICA and state retirement, and other authorized expenses of the office. The department ~~of Revenue~~ shall return to each property valuation administrator, no later than July 1, an approved budget for the fiscal year.
- (8) Each property valuation administrator may appoint any persons approved by the department ~~of Revenue~~ to assist him in the discharge of his duties. Each deputy shall be more than twenty-one (21) years of age and may be removed at the pleasure of the property valuation administrator. The salaries of deputies and other authorized personnel shall be fixed by the property valuation administrator in accordance with the grade classification system established by the department ~~of Revenue~~ and shall be subject to the approval of the department ~~of Revenue~~. The Personnel Cabinet shall provide advice and technical assistance to the department ~~of Revenue~~ in the revision and updating of the personnel classification system, which shall be equitable in all respects to the personnel classification systems maintained for other state employees. Any deputy property valuation administrator employed or promoted to a higher position may be examined by the department ~~of Revenue~~ in accordance with standards of the Personnel Cabinet, for the position to which he is being appointed or promoted. No state funds available to any property valuation administrator's office as compensation for deputies and other authorized personnel or for other authorized expenditures shall be paid without authorization of the department ~~of Revenue~~ prior to the employment by the property valuation administrator of deputies or other authorized personnel or the incurring of other authorized expenditures.
- (9) Each county fiscal court shall annually appropriate and pay each fiscal year to the office of the property valuation administrator as its cost for use of the assessment, as required by KRS 132.280, an amount determined as follows:

Assessment Subject to

County Tax of:

ACTS OF THE GENERAL ASSEMBLY

At Least	But Less Than	Amount
---	\$100,000,000	\$0.005 for each \$100 of the first \$50,000,000 and \$0.002 for each \$100 over \$50,000,000.
\$100,000,000	150,000,000	\$0.004 for each \$100 of the first \$100,000,000 and \$0.002 for each \$100 over \$100,000,000.
150,000,000	300,000,000	\$0.004 for each \$100 of the first \$150,000,000 and \$0.003 for each \$100 over \$150,000,000.
300,000,000	---	\$0.004 for each \$100.

- (10) The total sum to be paid by the fiscal court to any property valuation administrator's office under the provisions of subsection (9) of this section shall not exceed the limits set forth in the following table:

Assessed Value of Property Subject to  
County Tax of:

At Least	But Less Than	Limit
---	\$700,000,000	\$25,000
\$700,000,000	1,000,000,000	35,000
1,000,000,000	2,000,000,000	50,000
2,000,000,000	2,500,000,000	75,000
2,500,000,000	5,000,000,000	100,000
5,000,000,000	7,500,000,000	175,000
7,500,000,000	<del>30,000,000,000</del> <del>[15,000,000,000]</del>	250,000
<del>30,000,000,000</del> <del>[15,000,000,000]</del>	----	400,000

This allowance shall be based on the assessment as of the previous January 1 and shall be used for deputy and other personnel allowance, supplies, maps and equipment, travel allowance for the property valuation administrator and his deputies and other authorized personnel, and other authorized expenses of the office.

- (11) Annually, after appropriation by the county of funds required of it by subsection (9) of this section, and no later than August 1, the property valuation administrator shall file a claim with the county for that amount of the appropriation specified in his approved budget for compensation of deputies and assistants, including employer's shares of FICA and state retirement, for the fiscal year. The amount so requested shall be paid by the county into the State Treasury by September 1, or paid to the property valuation administrator and be submitted to the State Treasury by September 1. These funds shall be expended by the department ~~of Revenue~~ only for compensation of approved deputies and assistants and the employer's share of FICA and state retirement in the appropriating county. Any funds paid into the State Treasury in accordance with this provision but unexpended by the close of the fiscal year for which they were appropriated shall be returned to the county from which they were received.
- (12) After submission to the State Treasury or to the property valuation administrator of the county funds budgeted for personnel compensation under subsection (11) of this section, the fiscal court shall pay the remainder of the county appropriation to the office of the property valuation administrator on a quarterly basis. Four (4) equal payments shall be made on or before September 1, December 1, March 1, and June 1 respectively. Any unexpended county funds at the close of each fiscal year shall be retained by the property valuation administrator, except as provided in KRS 132.601(2). During county election years the property valuation administrator shall not expend in excess of forty percent (40%) of the allowances available to his office from county funds during the first five (5) months of the fiscal year in which the general election is held.



- (13) The provisions of this section shall apply to urban-county governments and consolidated local governments. In an urban-county government and a consolidated local government, all the rights and obligations conferred on fiscal courts or consolidated local governments by the provisions of this section shall be exercised by the urban-county government or consolidated local government.
- (14) When an urban-county form of government is established through merger of existing city and county governments as provided in KRS Chapter 67A or when a consolidated local government is established through merger of existing city and county governments as provided by KRS Chapter 67C, the annual county assessment shall be presumed to have been adopted as if the city had exercised the option to adopt as provided in KRS 132.285. For purposes of this subsection, the amount to be considered as the assessment for purposes of KRS 132.285 shall be the amount subject to taxation for full urban services.
- (15) Notwithstanding the provisions of subsection (9) of this section, the amount appropriated and paid by each county fiscal court to the office of the property valuation administrator for 1996 and subsequent years shall be equal to the amount paid to the office of the property valuation administrator for 1995, or the amount required by the provisions of subsections (9) and (10) of this section, whichever is greater.

➔Section 3. KRS 138.140 is amended to read as follows:

- (1) (a) A tax shall be paid on the sale of cigarettes within the state at a proportionate rate of three cents (\$0.03) on each twenty (20) cigarettes.
- (b) Effective July 1, 2018, a surtax shall be paid in addition to the tax levied in paragraph (a) of this subsection at a proportionate rate of one dollar and six cents (\$1.06) on each twenty (20) cigarettes.
- (c) A surtax shall be paid in addition to the tax levied in paragraph (a) of this subsection and in addition to the surtax levied by paragraph (b) of this subsection, at a proportionate rate of one cent (\$0.01) on each twenty (20) cigarettes. The revenues from this surtax shall be deposited in the cancer research institutions matching fund created in KRS 164.043.
- (d) The surtaxes imposed by paragraphs (b) and (c) of this subsection shall be paid at the time that the tax imposed by paragraph (a) of this subsection is paid.
- (2) (a) An excise tax is hereby imposed upon every distributor for the privilege of selling tobacco products in this state at the following rates:
1. Upon snuff at the rate of nineteen cents (\$0.19) per each one and one-half (1-1/2) ounces or portion thereof by net weight sold;
  2. Upon chewing tobacco at the rate of:
    - a. Nineteen cents (\$0.19) per each single unit sold;
    - b. Forty cents (\$0.40) per each half-pound unit sold; or
    - c. Sixty-five cents (\$0.65) per each pound unit sold.

If the container, pouch, or package on which the tax is levied contains more than sixteen (16) ounces by net weight, the rate that shall be applied to the unit shall equal the sum of sixty-five cents (\$0.65) plus nineteen cents (\$0.19) for each increment of four (4) ounces or portion thereof exceeding sixteen (16) ounces sold;
  3. Upon tobacco products sold, at the rate of fifteen percent (15%) of the actual price for which the distributor sells tobacco products, except snuff and chewing tobacco, within the Commonwealth;
  4. Upon closed vapor cartridges, one dollar and fifty cents (\$1.50) per cartridge; and
  5. ***Upon open vaping systems, fifteen percent (15%) of the actual price for which the distributor sells:***
    - a. ***The open vaping system when the actual price includes the items described in both KRS 138.130(10)(a)1. and 2.; or***
    - b. ***The liquid solution described in KRS 138.130(10)(a)2. when the solution is sold separately***~~Upon open vaping systems, fifteen percent (15%) of the actual price for which the distributor sells the open vaping system].~~
- (b) The net weight posted by the manufacturer on the container, pouch, or package or on the manufacturer's invoice shall be used to calculate the tax due on snuff or chewing tobacco.

- (c) 1. A retailer located in this state shall not purchase tobacco products for resale to consumers from any person within or outside this state unless that person is a distributor licensed under KRS 138.195(7)(a) or the retailer applies for and is granted a retail distributor's license under KRS 138.195(7)(b) for the privilege of purchasing untax-paid tobacco products and remitting the tax as provided in this paragraph.
2. A licensed retail distributor of tobacco products shall be subject to the excise tax as follows:
- a. On purchases of untax-paid snuff, at the same rate levied by paragraph (a)1. of this subsection;
  - b. On purchases of untax-paid chewing tobacco, at the same rates levied by paragraph (a)2. of this subsection;
  - c. On purchases of untax-paid tobacco products, except snuff and chewing tobacco, fifteen percent (15%) of the total purchase price as invoiced by the retail distributor's supplier;
  - d. On purchases of untax-paid closed vapor cartridges, at the same rate levied by paragraph (a)4. of this subsection; and
  - e. On purchases of untax-paid open vaping systems, fifteen percent (15%) of the total purchase price as invoiced by the retail distributor's supplier *as described in paragraph (a)5. of this subsection.*
- (d) 1. The licensed distributor that first possesses tobacco products or vapor products for sale to a retailer in this state or for sale to a person who is not licensed under KRS 138.195(7) shall be the distributor liable for the tax imposed by this subsection except as provided in subparagraph 2. of this paragraph.
2. A distributor licensed under KRS 138.195(7)(a) may sell tobacco products or vapor products to another distributor licensed under KRS 138.195(7)(a) without payment of the excise tax. In such case, the purchasing licensed distributor shall be the distributor liable for the tax.
3. A licensed distributor or licensed retail distributor shall:
- a. Identify and display the distributor's or retail distributor's license number on the invoice to the retailer; and
  - b. Identify and display the excise tax separately on the invoice to the retailer. If the excise tax is included as part of the product's sales price, the licensed distributor or licensed retail distributor shall list the total excise tax in summary form by tax type with invoice totals.
4. It shall be presumed that the excise tax has not been paid if the licensed distributor or licensed retail distributor does not comply with subparagraph 3. of this paragraph.
- (e) No tax shall be imposed on tobacco products or vapor products under this subsection that are not within the taxing power of this state under the Commerce Clause of the United States Constitution.
- (3) (a) The taxes imposed by subsections (1) and (2) of this section:
1. Shall not apply to reference products; and
  2. Shall be paid only once, regardless of the number of times the cigarettes or tobacco products may be sold.
- (b) The taxes imposed by subsection (1)(a) and (b) and subsection (2) of this section shall be reduced by:
1. Fifty percent (50%) on any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(1); or
  2. Twenty-five percent (25%) for any product as to which a modified risk tobacco product order is issued under 21 U.S.C. sec. 387k(g)(2).
- (4) A reference product shall carry a marking labeling the contents as a research cigarette, research vapor product, or a research tobacco product to be used only for tobacco-health research and experimental purposes and shall not be offered for sale, sold, or distributed to consumers.
- (5) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.

- (6) The General Assembly recognizes that increasing taxes on tobacco products should reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The relative taxes on tobacco products proposed in this section reflect the growing data from scientific studies suggesting that although smokeless tobacco poses some risks, those health risks are significantly less than the risks posed by other forms of tobacco products. Moreover, the General Assembly acknowledges that some in the public health community recognize that tobacco harm reduction should be a complementary public health strategy regarding tobacco products. Taxing tobacco products according to relative risk is a rational tax policy and may well serve the public health goal of reducing smoking-related mortality and morbidity and lowering health care costs associated with tobacco-related disease.
- (7) Any person subject to the taxes imposed under subsections (1) and (2) of this section that:
  - (a) Files an application related to a modified risk tobacco product shall report to the department that an application has been filed within thirty (30) days of that filing; and
  - (b) Receives an order authorizing the marketing of a modified risk tobacco product shall report to the department that an authorizing order has been received.
- (8) Upon receipt of the information required by subsection (7)(b) of this section, the department shall reduce the tax imposed on the modified risk tobacco product as required by subsection (3)(b) of this section on the first day of the calendar month following the expiration of forty-five (45) days following receipt of the information required by subsection (7)(b) of this section.

➔Section 4. KRS 138.146 is amended to read as follows:

- (1) The cigarette tax shall be due when any licensed wholesaler or unclassified acquirer takes possession within this state of untax-paid cigarettes.
- (2)
  - (a) The cigarette tax shall be paid by the purchase of stamps by a resident wholesaler within forty-eight (48) hours after the wholesaler receives the cigarettes.
  - (b) A stamp shall be affixed to each package of an aggregate denomination not less than the amount of the cigarette tax on the package.
  - (c) The affixed stamp shall be prima facie evidence of payment of the cigarette tax.
  - (d) Unless stamps have been previously affixed, they shall be affixed by each resident wholesaler prior to the delivery of any cigarettes to a retail location or any person in this state.
  - (e) The evidence of cigarette tax payment shall be affixed to each individual package of cigarettes by a nonresident wholesaler prior to the introduction or importation of the cigarettes into the territorial limits of this state.
  - (f) The evidence of cigarette tax payment shall be affixed by an unclassified acquirer within twenty-four (24) hours after the cigarettes are received by the unclassified acquirer.
- (3)
  - (a) The department shall by regulation prescribe the form of cigarette tax evidence, the method and manner of the sale and distribution of cigarette tax evidence, and the method and manner that tax evidence shall be affixed to the cigarettes.
  - (b) All cigarette tax evidence prescribed by the department shall be designed and furnished in a fashion to permit identification of the person that affixed the cigarette tax evidence to the particular package of cigarettes, by means of numerical rolls or other mark on the cigarette tax evidence.
  - (c) The department shall maintain for at least three (3) years information identifying the person that affixed the cigarette tax evidence to each package of cigarettes. This information shall not be kept confidential or exempt from disclosure to the public through open records.
- (4)
  - (a) Units of cigarette tax evidence shall be sold at their face value, but the department shall allow as compensation to any licensed wholesaler an amount of tax evidence equal to thirty cents (\$0.30) face value for each three dollars (\$3) of tax evidence purchased at face value and attributable to the tax assessed in KRS 138.140(1)(a). No compensation shall be allowed for tax evidence purchased at face value attributable to the surtaxes imposed in KRS 138.140(1)(b) or (c).
  - (b) The department shall have the power to withhold compensation as provided in paragraph (a) of this subsection from any licensed wholesaler for failure to abide by any provisions of KRS 138.130 to

138.205 or any administrative regulations promulgated thereunder. Any refund or credit for unused cigarette tax evidence shall be reduced by the amount allowed as compensation at the time of purchase.

- (5) (a) Payment for units of cigarette tax evidence shall be made at the time the units are sold, unless the licensed wholesaler:
1. Has filed with the department a bond, issued by a corporation authorized to do surety business in Kentucky, in an amount:
    - a. *Not less than the amount of the payment for units of cigarette tax evidence which may be delayed under paragraph (b) of this subsection; and*
    - b. *No greater than ten million dollars (\$10,000,000) [equal to or greater than the amount of payment for the units of cigarette tax evidence purchased, plus all penalties, interest, and collection fees applicable to that amount, should the taxpayer default on the payment]; and*
  2. Has registered and agrees to make the payment of tax to the department electronically.
- (b) Except as provided in paragraph (c) of this subsection, if the licensed wholesaler qualifies under paragraph (a) of this subsection, the licensed wholesaler shall have ten (10) days from the date of purchase to remit payment of cigarette tax, without the assessment of civil penalties under KRS 131.180 or interest under KRS 131.183 during the ten (10) day period.
- (c)
  1. The ten (10) day payment period under paragraph (b) of this subsection shall not apply to the payment for units of cigarette tax evidence during the last ten (10) days of the month of June during each fiscal year.
  2. All payments for units of cigarette tax evidence made under paragraph (b) of this subsection during the month of June shall be made the earlier of:
    - a. The ten (10) day period; or
    - b. June 25.
- (d) If the licensed wholesaler does not make the payment of cigarette tax within the ten (10) day period, or within the period of time under paragraph (c) of this subsection, the department shall:
1. Revoke the license required under KRS 138.195;
  2. Issue a demand for payment in an amount equal to the cigarette tax evidence purchased, plus all penalties, interest, and collection fees applicable, **up to the [that] amount of the required bond;** and
  3. Require immediate payment of the bond.
- (6) (a) The bond required under subsection (5) of this section shall be on a form and with a surety approved by the department.
- (b) The licensed wholesaler shall be named as the principal obligor and the department shall be named as the obligee within the bond.
- (c) The bond shall be conditioned upon the payment by the licensed wholesaler of all cigarette tax imposed by the Commonwealth.
- (d) The provisions of KRS 131.110 shall not apply to the demand for payment required under subsection (5)(c)2. of this section.
- (7) (a) No tax evidence may be affixed, or used in any way, by any person other than the person purchasing the evidence from the department.
- (b) Tax evidence may not be transferred or negotiated, and may not, by any scheme or device, be given, bartered, sold, traded, or loaned to any other person.
- (c) Unaffixed tax evidence may be returned to the department for credit or refund for any reason satisfactory to the department.
- (8) (a) In the event any retailer receives into his possession cigarettes to which evidence of Kentucky tax payment is not properly affixed, the retailer shall, within twenty-four (24) hours, notify the department of the receipt.

- (b) The notification to the department shall be in writing, stating the name of the person from whom the cigarettes were received and the quantity of those cigarettes.
- (c) The written notice may be:
  - 1. Given to any field agent of the department; or
  - 2. Directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.
- (d) If the notice is given by means of the United States mail, it shall be sent by certified mail.
- (e) Any such cigarettes shall be retained by the retailer, and not sold, for a period of fifteen (15) days after giving the notice provided in this subsection.
- (f) The retailer may, at his option, pay the tax due on those cigarettes according to administrative regulations prescribed by the department, and proceed to sell those cigarettes after the payment.
- (9) (a) Cigarettes stamped with the cigarette tax evidence of another state shall at no time be commingled with cigarettes on which the Kentucky cigarette tax evidence has been affixed.
- (b) Any licensed wholesaler, licensed sub-jobber, or licensed vending machine operator may hold cigarettes stamped with the tax evidence of another state for any period of time, subsection (2) of this section notwithstanding.

➔Section 5. KRS 138.463 is amended to read as follows:

- (1) A holder of a certificate as required under KRS 281.630 to operate as a U-Drive-It as defined in KRS 281.010:
  - (a) May pay the *motor vehicle* usage tax **imposed under**~~as provided in~~ KRS 138.460 **upon the retail price of the motor vehicle;** or~~, subject to the provisions of this section,~~
  - (b) May pay **the motor vehicle**~~ta~~ usage tax of six percent (6%)~~levied~~ upon the amount of the gross rental or lease charges paid by a customer or lessee renting or leasing a motor vehicle from such holder of the certificate, **subject to the provisions of this section and Section 6 of this Act.**
- (2) The provisions of KRS 138.462 and this section shall apply to all rental and leasehold contracts entered into after March 9, 1990.
- (3) A holder of a certificate shall pay the usage tax as provided in KRS 138.460 unless he shows to the satisfaction of the cabinet that he is regularly engaged in the renting or leasing of motor vehicles to retail customers as a part of an established business. The issuance of a U-Drive-It certificate under the provisions of KRS Chapter 281 shall create a rebuttable presumption that the holder of a certificate is regularly engaged in renting or leasing. Persons first engaging in the renting or leasing of motor vehicles to retail customers shall, in addition to obtaining a certificate required under KRS 281.630, demonstrate to the satisfaction of the cabinet that they are prepared to qualify under the standards set forth in this subsection.
- (4) In the event the holder of such certificate qualifies under subsection (3) of this section and elects to pay the *motor vehicle* usage tax by the alternate method as provided in subsection (1)(b) of this section, or is required by subsection (8) of this section to pay by the alternate method, he shall pay the fee imposed by KRS 281.631(3) and in addition shall pay the monthly tax authorized by subsection (1) of this section.
- (5) The tax authorized by subsection (1) of this section shall be the direct obligation of the holder of the certificate but it may be charged to and collected from the customer in addition to the rental or lease charges. The tax due shall be remitted to the cabinet each month on forms and pursuant to regulations promulgated by the cabinet.
- (6) (a) As soon as practicable after each return is received, the cabinet shall examine and audit it. If the amount of tax computed by the cabinet is greater than the amount returned by the taxpayer, the excess shall be assessed by the cabinet within four (4) years from the date the return was filed, except as provided in paragraph (c) of this subsection, and except that in the case of a failure to file a return or of a fraudulent return the excess may be assessed at any time. A notice of such assessment shall be mailed to the taxpayer. The time herein provided may be extended by agreement between the taxpayer and the cabinet.
- (b) For the purpose of paragraphs (a) and (c) of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
- (c) Notwithstanding the four (4) year time limitation of paragraph (a) of this subsection, in the case of a return where the tax computed by the cabinet is greater by twenty-five percent (25%) or more than the

amount returned by the taxpayer, the excess shall be assessed by the cabinet within six (6) years from the date the return was filed.

- (7) Failure of the holder of the certificate to remit the taxes applicable to the rental charges as provided herein shall be sufficient cause for the Department of Vehicle Regulation to void the certificate issued to such holder and the usage tax on each of the motor vehicles which had been registered by the holder under the certificate shall be due and payable on the retail price of each such motor vehicle when it was first purchased by the holder.
- (8) Notwithstanding the provisions of KRS 138.460 and subsection (1) of this section, a holder of a certificate operating a fleet of rental passenger cars which has been registered pursuant to an allocation formula approved by the cabinet shall pay the tax by the method provided in this section. The provisions of this section shall apply to all vehicles rented by the holder in this state.
- (9) The usage tax reported and paid on every rental or lease of a vehicle registered pursuant to this section shall be based on the fair market rental or lease value of the vehicle. Fair market rental or lease value shall be based on standards established by administrative regulation promulgated by the cabinet. The cabinet may remove a vehicle from the U-Drive-It program without a hearing if it is determined by the cabinet that no taxes have been remitted on that vehicle during the registration period. However, the tax reported and paid to the Transportation Cabinet shall not be less than the amount due based on the actual terms of a rental or lease agreement. The burden of proving that the consideration charged by the holder satisfies this subsection is on the holder.

➔Section 6. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

- (1) (a) Motor vehicles titled or registered to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions; **and**
  - (b) ***The gross rental or lease charges for the rental or lease of a motor vehicle paid by the United States, or 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 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. 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;
  - (b) To be eligible for the exemption established in paragraph (a) of this subsection, motor vehicles shall 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;
- (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; and
- (20) Motor vehicles under a manufacturer's statement of origin in possession of a licensed new motor vehicle dealer that are titled and transferred to a licensed used motor vehicle dealer and held for sale.

➔Section 7. KRS 139.340 is amended to read as follows:

- (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business in this state shall collect the tax imposed by KRS 139.310 from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the department. The taxes collected or required to be collected by the retailer under this section shall be deemed to be held in trust for and on account of the Commonwealth.
- (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section includes any of the following:
  - (a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, representative, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business. Property owned by a person who has contracted with a printer for printing, which consists of the final printed product, property which becomes a part of the final printed product, or copy from which the printed product is produced, and which is located at the premises of the printer, shall not be deemed to be an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business maintained, occupied, or used by the person;

- (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property, digital property, or an extended warranty service. An unrelated printer with which a person has contracted for printing shall not be deemed to be a representative, agent, salesman, canvasser, or solicitor for the person;
- (c) Any retailer soliciting orders for tangible personal property, digital property, or an extended warranty service from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or the payment for the order utilizes the services of any financial institution, telecommunication system, radio or television station, cable television service, print media, or other facility or service located in this state;
- (d) Any retailer deriving receipts from the lease or rental of tangible personal property situated in this state;
- (e) Any retailer soliciting orders for tangible personal property, digital property, or an extended warranty service from residents of this state on a continuous, regular, systematic basis if the retailer benefits from an agent or representative operating in this state under the authority of the retailer to repair or service tangible personal property or digital property sold by the retailer;
- (f) Any retailer located outside Kentucky that uses a representative in Kentucky, either full-time or part-time, if the representative performs any activities that help establish or maintain a marketplace for the retailer, including receiving or exchanging returned merchandise; or
- (g) 1. Any remote retailer selling tangible personal property or digital property delivered or transferred electronically to a purchaser in this state, including retail sales facilitated by a marketplace provider on behalf of the remote retailer, if:
  - a. The remote retailer sold tangible personal property or digital property that was delivered or transferred electronically to a purchaser in this state in two hundred (200) or more separate transactions in the previous calendar year or the current calendar year; or
  - b. The remote retailer's gross receipts derived from the sale of tangible personal property or digital property delivered or transferred electronically to a purchaser in this state in the previous calendar year or current calendar year exceeds one hundred thousand dollars (\$100,000).
- 2. Any remote retailer that meets either threshold provided in subparagraph 1. of this paragraph shall register for a sales and use tax permit and collect the tax imposed by KRS 139.310 from the purchaser *no later than* ~~by~~ the first day of the calendar month that *is at the most sixty* ~~(60)~~ ~~begins no later than thirty (30)~~ days after either threshold is reached.

➔Section 8. KRS 139.450 is amended to read as follows:

- (1) It shall be presumed that:
  - (a) Tangible personal property shipped or brought to this state by the purchaser; or
  - (b) Digital property delivered or transferred electronically into this state;
 was purchased from a retailer for storage, use, or other consumption in this state.
- (2) (a) A marketplace provider that makes retail sales on its own behalf or facilitates retail sales of tangible personal property, digital property, or services that are delivered or transferred electronically to a purchaser in this state for one (1) or more marketplace retailers that in any sales combination exceeds one hundred thousand dollars (\$100,000) or reaches two hundred (200) or more separate transactions in the immediately preceding calendar year or current calendar year shall be subject to this section.
- (b) The marketplace provider shall:
  - 1. Register for a sales and use tax permit number to report and remit the tax due ~~on the marketplace provider's sales~~; *and*
  - 2. ~~Register for a separate sales and use tax permit number to report and remit the tax due on all of the sales it facilitates for one (1) or more marketplace retailers; and~~
  - 3. ~~Collect tax imposed under this chapter;~~



~~no later than~~<sup>by</sup> the first day of the calendar month that *is at the most sixty (60)*~~begins no later than thirty (30)~~ days after either threshold in paragraph (a) of this subsection is reached.

- (c) **The marketplace provider may register for:**
1. **A single sales and use tax permit number to report and remit all the tax due on the marketplace provider's direct sales and sales the marketplace provider facilitates for one (1) or more marketplace retailers; or**
  2. **a. One (1) sales and use tax permit number to report and remit the tax due on the marketplace provider's direct sales; and**  
**b. One (1) additional sales and use tax permit number to report and remit the tax due on all sales the marketplace provider facilitates for one (1) or more marketplace retailers.**
- (d) 1. **If the marketplace provider elects to report and remit the tax due on a single sales and use tax permit number as provided in paragraph (c)1. of this subsection, the marketplace provider shall, upon request of the department, provide a separate breakdown of receipts from the marketplace provider's direct sales and the sales the marketplace provider facilitates for the preceding fiscal year ending June 30.**
2. **The department may request the breakdown of receipts no more than once annually.**
- (e) The marketplace provider shall collect Kentucky tax on the entire sales price or purchase price paid by a purchaser on each retail sale subject to tax under this chapter that is made on its own behalf or that is facilitated by the marketplace provider, regardless of whether the seller would have been required to collect the tax had the retail sale not been facilitated by the marketplace provider.
- (3) Nothing in this section shall be construed to relieve the marketplace provider of liability for collecting but failing to remit the taxes imposed under this chapter.
- (4) (a) The marketplace provider shall be subject to audit on all sales made on its own behalf and on all sales facilitated by the marketplace provider.
- (b) The marketplace retailer shall be relieved of all liability for the collection and remittance of the sales or use tax on sales facilitated by the marketplace provider.
- (5) No class action may be brought against a marketplace provider on behalf of purchasers arising from or in any way related to an overpayment of tax collected by the marketplace provider.

➔Section 9. KRS 141.206 is amended to read as follows:

- (1) Every pass-through entity doing business in this state shall, on or before the fifteenth day of the fourth month following the close of its annual accounting period, file a copy of its federal tax return with the form prescribed and furnished by the department.
- (2) (a) Pass-through entities shall calculate net income in the same manner as in the case of an individual under KRS 141.019 and the adjustment required under Sections 703(a) and 1363(b) of the Internal Revenue Code.
- (b) Computation of net income under this section and the computation of the partner's, member's, or shareholder's distributive share shall be computed as nearly as practicable identical with those required for federal income tax purposes except to the extent required by differences between this chapter and the federal income tax law and regulations.
- (3) Individuals, estates, trusts, or corporations doing business in this state as a partner, member, or shareholder in a pass-through entity shall be liable for income tax only in their individual, fiduciary, or corporate capacities, and no income tax shall be assessed against the net income of any pass-through entity, except as required:
  - (a) For S corporations under KRS 141.040; and
  - (b) For a partnership level audit under KRS 141.211.
- (4) (a) Every pass-through entity required to file a return under subsection (1) of this section, except publicly traded partnerships as described in KRS 141.0401(6)(a)18. and (b)14., shall withhold Kentucky income tax on the distributive share, whether distributed or undistributed, of each ~~¶~~

~~1. — nonresident individual partner, member, or shareholder; and~~

- ~~2. Corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity].~~
- (b) Withholding shall be at the maximum rate provided in KRS 141.020 ~~[or 141.040].~~
- (5) (a) ~~[Effective for taxable years beginning after December 31, 2018,]~~ Every pass-through entity required to withhold Kentucky income tax as provided by subsection (4) of this section shall pay estimated tax for the taxable year, if ~~;~~
- ~~1. [for a nonresident individual partner, member, or shareholder, the estimated tax liability can reasonably be expected to exceed five hundred dollars (\$500)]; or~~
- ~~2. For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the estimated tax liability can reasonably be expected to exceed five thousand dollars (\$5,000)].~~
- (b) The payment of estimated tax shall contain the information and shall be filed as provided in KRS 141.207.
- (6) (a) If a pass-through entity demonstrates to the department that a partner, member, or shareholder has filed an appropriate tax return for the prior year with the department, then the pass-through entity shall not be required to withhold on that partner, member, or shareholder for the current year unless the exemption from withholding has been revoked pursuant to paragraph (b) of this subsection.
- (b) 1. An exemption from withholding shall be considered revoked if the partner, member, or shareholder does not file and pay all taxes due in a timely manner.
2. An exemption so revoked shall be reinstated only with permission of the department.
3. If a partner, member, or shareholder who has been exempted from withholding does not file a return or pay the tax due, the department may require the pass-through entity to pay to the department the amount that should have been withheld, up to the amount of the partner's, member's, or shareholder's ownership interest in the entity.
4. The pass-through entity shall be entitled to recover a payment made pursuant to this paragraph from the partner, member, or shareholder on whose behalf the payment was made.
- (7) In determining the tax under this chapter, a resident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity shall take into account the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, deduction, and credit.
- (8) In determining the tax under this chapter, a nonresident individual, estate, or trust that is a partner, member, or shareholder in a pass-through entity required to file a return under subsection (1) of this section shall take into account:
- (a) 1. If the pass-through entity is doing business only in this state, the partner's, member's, or shareholder's total distributive share of the pass-through entity's items of income, loss, and deduction; or
2. If the pass-through entity is doing business both within and without this state, the partner's, member's, or shareholder's distributive share of the pass-through entity's items of income, loss, and deduction multiplied by the apportionment fraction of the pass-through entity as prescribed in subsection (11) of this section; and
- (b) The partner's, member's, or shareholder's total distributive share of credits of the pass-through entity.
- (9) A corporation that is subject to tax under KRS 141.040 and is a partner or member in a pass-through entity shall take into account the corporation's distributive share of the pass-through entity's items of income, loss, and deduction and:
- (a) 1. For taxable years beginning on or after January 1, 2007, but prior to January 1, 2018, shall include the proportionate share of the sales, property, and payroll of the limited liability pass-through entity or general partnership in computing its own apportionment factor; and
2. For taxable years beginning on or after January 1, 2018, shall include the proportionate share of the sales of the limited liability pass-through entity or general partnership in computing its own apportionment factor; and

- (b) Credits from the partnership.
- (10) (a) If a pass-through entity is doing business both within and without this state, the pass-through entity shall compute and furnish to each partner, member, or shareholder the numerator and denominator of each factor of the apportionment fraction determined in accordance with subsection (11) of this section.
- (b) For purposes of determining an apportionment fraction under paragraph (a) of this subsection, if the pass-through entity is:
1. Doing business both within and without this state; and
  2. A partner or member in another pass-through entity;
- then the pass-through entity shall be deemed to own the pro rata share of the property owned or leased by the other pass-through entity, and shall also include its pro rata share of the other pass-through entity's payroll and sales.
- (c) The phrases "a partner or member in another pass-through entity" and "doing business both within and without this state" shall extend to each level of multiple-tiered pass-through entities.
- (d) The attribution to the pass-through entity of the pro rata share of property, payroll and sales from its role as a partner or member in another pass-through entity will also apply when determining the pass-through entity's ultimate apportionment factor for property, payroll and sales as required under subsection (11) of this section.
- (11) (a) For taxable years beginning prior to January 1, 2018, a pass-through entity doing business within and without the state shall compute an apportionment fraction, the numerator of which is the property factor, representing twenty-five percent (25%) of the fraction, plus the payroll factor, representing twenty-five percent (25%) of the fraction, plus the sales factor, representing fifty percent (50%) of the fraction, with each factor determined in the same manner as provided in KRS 141.901, and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2).
- (b) For taxable years beginning on or after January 1, 2018, a pass-through entity doing business within and without the state shall compute an apportionment fraction as provided in KRS 141.120.
- (12) Resident individuals, estates, or trusts that are partners in a partnership, members of a limited liability company electing partnership tax treatment for federal income tax purposes, owners of single member limited liability companies, or shareholders in an S corporation which does not do business in this state are subject to tax under KRS 141.020 on federal net income, gain, deduction, or loss passed through the partnership, limited liability company, or S corporation.
- (13) An S corporation election made in accordance with Section 1362 of the Internal Revenue Code for federal tax purposes is a binding election for Kentucky tax purposes.
- (14) (a) Nonresident individuals shall not be taxable on investment income distributed by a qualified investment partnership. For purposes of this subsection, a "qualified investment partnership" means a pass-through entity that, during the taxable year, holds only investments that produce income that would not be taxable to a nonresident individual if held or owned individually.
- (b) A qualified investment partnership shall be subject to all other provisions relating to a pass-through entity under this section and shall not be subject to the tax imposed under KRS 141.040 or 141.0401.
- (15) (a) ~~1. A pass-through entity may file a composite income tax return on behalf of electing nonresident individual partners, members, or shareholders.~~
- ~~2. The pass-through entity shall report and pay on the composite income tax return income tax at the highest marginal rate provided in this chapter on any portion of the partners', members', or shareholders' pro rata or distributive shares of income of the pass-through entity from doing business in this state or deriving income from sources within this state. Payments made pursuant to subsection (5) of this section shall be credited against any tax due.~~
- ~~3. The pass-through entity filing a composite return shall still make estimated tax payments if required to do so by subsection (5) of this section, and shall remain subject to any penalty under KRS 141.044 and 141.305 for any underpayment of estimated tax determined under KRS 141.044 or 141.305.~~

4. ~~The partners', members', or shareholders' pro rata or distributive share of income shall include all items of income or deduction used to compute adjusted gross income on the Kentucky return that is passed through to the partner, member, or shareholder by the pass-through entity, including but not limited to interest, dividend, capital gains and losses, guaranteed payments, and rents.~~
- (b) ~~A nonresident individual partner, member, or shareholder whose only source of income within this state is distributive share income from one (1) or more pass-through entities may elect to be included in a composite return filed pursuant to this section.~~
- (c) ~~A nonresident individual partner, member, or shareholder that has been included in a composite return may file an individual income tax return and shall receive credit for tax paid on the partner's behalf by the pass-through entity.~~
- ~~(d)~~ A pass-through entity shall deliver to the department a return upon a form prescribed by the department showing the total amounts paid or credited to its ~~electing~~ nonresident individual partners, members, or shareholders, the amount paid in accordance with this subsection, and any other information the department may require.
- (b) A pass-through entity shall furnish to its nonresident partner, member, or shareholder annually, but not later than the fifteenth day of the fourth month after the end of its taxable year, a record of the amount of tax paid on behalf of the partner, member, or shareholder on a form prescribed by the department.

➔Section 10. KRS 141.207 is amended to read as follows:

- (1) ***For a nonresident individual partner, member, or shareholder***, the payment of estimated tax required by KRS 141.206 shall ~~be~~**contain the following information:**
- (a) ~~For a nonresident individual partner, member, or shareholder, the amount of estimated tax} calculated under KRS 141.020 and 141.305 for the taxable year}; and~~
- (b) ~~For a corporate partner or member that is doing business in Kentucky only through its ownership interest in a pass-through entity, the amount of estimated tax calculated under KRS 141.040 and 141.044 for the taxable year}.~~
- (2) The payment of estimated tax shall be made in installments by the pass-through entity in the same manner and at the same times as provided by ~~};~~
- (a) ~~}; KRS 141.305, for a nonresident individual partner, member, or shareholder}; and~~
- (b) ~~}; KRS 141.044, for a corporate partner or member}.~~
- (3) A pass-through entity required to make a payment of estimated tax shall be subject to the penalty provisions for any underpayment of estimated tax.

➔Section 11. KRS 224.60-142 is amended to read as follows:

- (1) To be eligible to participate in the fund, the owner of any petroleum storage tank containing motor fuels installed and placed in operation after July 15, 2004, shall register the petroleum storage tank with the cabinet as required by KRS 224.60-105 prior to applying for participation in the financial responsibility account.
- (2) The owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels by July 15, ~~2025~~~~[2024]~~. Owners or operators may submit affidavits and applications relevant to current petroleum storage tank accounts through July 15, 2025.

➔Section 12. KRS 141.390 is amended to read as follows:

- (1) As used in this section:
- (a) "Postconsumer waste" means any product generated by a business or consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, composting, and disposition and which does not include secondary waste material or demolition waste;
- (b) "Recycling equipment" means any machinery or apparatus used exclusively to process postconsumer waste material and manufacturing machinery used exclusively to produce finished products composed of substantial postconsumer waste materials;

- (c) "Composting equipment" means equipment used in a process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled, and used in ~~an~~<sup>a</sup> environmentally acceptable manner;
- (d) "Recapture period" means:
1. For qualified equipment with a useful life of five (5) or more years, the period from the date the equipment is purchased to five (5) full years from that date; or
  2. For qualified equipment with a useful life of less than five (5) years, the period from the date the equipment is purchased to three (3) full years from that date;
- (e) "Useful life" means the period determined under Section 168 of the Internal Revenue Code; and
- (f) "Major recycling project" means a project location where the taxpayer:
1. Invests more than ten million dollars (\$10,000,000) in recycling or composting equipment to be used exclusively in this state;
  2. Has ~~at least~~<sup>more than</sup> four hundred (400) full-time employees with an average hourly wage of more than three hundred percent (300%) of the federal minimum wage; and
  3. Has plant and equipment with a total cost of more than five hundred million dollars (\$500,000,000).
- (2) (a) 1. A taxpayer that purchases recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste materials shall be entitled to a credit against the:
- a. Income taxes under KRS 141.020 or 141.040; and
  - b. Limited liability entity tax under KRS 141.0401;
- with the ordering of the credits under KRS 141.0205.
2. The total tax credit shall be an amount equal to fifty percent (50%) of the installed cost of the recycling or composting equipment.
  3. The amount of credit claimed in the taxable year during which the recycling equipment is purchased shall not exceed:
    - a. Ten percent (10%) of the amount of the total credit allowable; or
    - b. Twenty-five percent (25%) of the total of each tax liability which would be otherwise due for that taxable year.
  4. The amount of credit claimed in a taxable year subsequent to the taxable year during which the recycling equipment is purchased shall not exceed twenty-five percent (25%) of the total of each tax liability, which would be otherwise due for that taxable year.
- (b) 1. For taxable years beginning after December 31, 2019, a taxpayer that has a major recycling project containing recycling or composting equipment to be used exclusively within this state for recycling or composting postconsumer waste material shall be entitled to a credit against the:
- a. Income taxes under KRS 141.020 or 141.040; and
  - b. Limited liability entity tax under KRS 141.0401;
- with the ordering of the credits under KRS 141.0205.
2. The total tax credit shall be an amount equal to twenty-five percent (25%) of the installed cost of the recycling or composting equipment.
  3. The credit described in this paragraph shall be limited to a period of thirty (30) years commencing with the approval of the recycling credit application.
  4. The amount of credit claimed in the taxable year during which the recycling equipment is purchased shall not exceed seventy-five percent (75%) of the total of each tax liability which would be otherwise due for that taxable year.

5. The amount of credit claimed in a taxable year subsequent to the taxable year during which the recycling equipment is purchased shall not exceed seventy-five percent (75%) of the total of each tax liability, which would be otherwise due for that taxable year.
- (c) A taxpayer with one (1) or more major recycling projects shall be entitled to a total credit including the amount computed in paragraph (a) of this subsection plus the amount of credit computed in paragraph (b) of this subsection, except that the total amount of credits under paragraphs (a) and (b) of this subsection claimed in a taxable year shall not exceed seventy-five percent (75%) of the total of each tax liability which would be otherwise due for that taxable year.
- (d) A taxpayer shall not be permitted to utilize a credit computed under paragraph (a) of this subsection and a credit computed under paragraph (b) of this subsection on the same recycling or composting equipment.
- (3) (a)
  1. ***Except as provided in subparagraph 2. of this paragraph***, application for a tax credit shall be made to the department on or before the first day of the seventh month following the close of the taxable year in which the recycling or composting equipment is purchased or placed in service.
  2. ***For taxable years beginning on or after January 1, 2020, but before January 1, 2024, application for a tax credit related to a major recycling project may be made to the department on or before the first day of the seventh month following either:***
    - a. ***The close of the taxable year in which the recycling or composting equipment is purchased or placed in service; or***
    - b. ***The close of the taxable year immediately following the taxable year in which the recycling or composting equipment is purchased or placed in service.***
- (b) The application shall include a description of each item of recycling equipment purchased, the date of purchase and the installed cost of the recycling equipment, a statement of where the recycling equipment is to be used, and any other information as the department may require to fulfill the reporting requirements under subsection (8) of this section.
- (c) The department shall review all applications received to determine whether expenditures for which credits are required meet the requirements of this section and shall advise the taxpayer of the amount of credit for which the taxpayer is eligible under this section.
- (4) (a) Except as provided in subsection (6) of this section, if a taxpayer that receives a tax credit under this section sells, transfers, or otherwise disposes of the qualifying recycling or composting equipment before the end of the recapture period, the tax credit shall be redetermined under subsection (5) of this section.
- (b) If the total credit taken in prior taxable years exceeds the redetermined credit, the difference shall be added to the taxpayer's tax liability under this chapter for the taxable year in which the sale, transfer, or disposition occurs.
- (c) If the redetermined credit exceeds the total credit already taken in prior taxable years, the taxpayer shall be entitled to use the difference to reduce the taxpayer's tax liability under this chapter for the taxable year in which the sale, transfer, or disposition occurs.
- (5) The total tax credit allowable under subsection (2) of this section for equipment that is sold, transferred, or otherwise disposed of before the end of the recapture period shall be adjusted as follows:
  - (a) For equipment with a useful life of five (5) or more years that is sold, transferred, or otherwise disposed of:
    1. One (1) year or less after the purchase, no credit shall be allowed.
    2. Between one (1) year and two (2) years after the purchase, twenty percent (20%) of the total allowable credit shall be allowed.
    3. Between two (2) and three (3) years after the purchase, forty percent (40%) of the total allowable credit shall be allowed.
    4. Between three (3) and four (4) years after the purchase, sixty percent (60%) of the total allowable credit shall be allowed.

5. Between four (4) and five (5) years after the purchase, eighty percent (80%) of the total allowable credit shall be allowed.
- (b) For equipment with a useful life of less than five (5) years that is sold, transferred, or otherwise disposed of:
  1. One (1) year or less after the purchase, no credit shall be allowed.
  2. Between one (1) year and two (2) years after the purchase, thirty-three percent (33%) of the total allowable credit shall be allowed.
  3. Between two (2) and three (3) years after the purchase, sixty-seven percent (67%) of the total allowable credit shall be allowed.
- (6) Subsections (4) and (5) of this section shall not apply to transfers due to death, or transfers due merely to a change in business ownership or organization as long as the equipment continues to be used exclusively in recycling or composting, or transactions to which Section 381(a) of the Internal Revenue Code applies.
- (7) The department may promulgate administrative regulations to carry out the provisions of this section.
- (8) (a) The purpose of expanding the tax credit for a major recycling project is to encourage more recycling and composting by businesses within the Commonwealth.
- (b) In order for the General Assembly to evaluate the fulfillment of the purpose stated in paragraph (a) of this subsection, the department shall provide the following information on a cumulative basis for each taxable year to provide a historical impact of the tax credit to the Commonwealth:
  1. A narrative for each major recycling project approved for a tax credit, describing:
    - a. The taxpayer claiming the tax credit;
    - b. The industry sector within which the taxpayer operates in this state, including the NAICS code for the taxpayer; and
    - c. The type of recycling or composting equipment purchased by the taxpayer;
  2. The location, by county, of the major recycling project;
  3. The installed cost of the recycling or composting equipment;
  4. The total amount of tax credit approved for the major recycling project;
  5. The amount of tax credit allowed for the major recycling project for each taxable year; and
  6.
    - a. In the case of all taxpayers other than corporations, based on ranges of adjusted gross income of no larger than five thousand dollars (\$5,000) for the taxable year, the total amount of tax credits claimed and the number of returns claiming a tax credit for each adjusted gross income range; and
    - b. In the case of all corporations, based on ranges of net income no larger than fifty thousand dollars (\$50,000) for the taxable year, the total amount of tax credit claimed and the number of returns claiming a tax credit for each net income range.
- (c) The report required by paragraph (b) of this subsection shall be submitted to the Interim Joint Committee on Appropriations and Revenue beginning no later than November 1, 2021, and no later than each November 1 thereafter, as long as the credit is claimed on any return processed by the department.

➔Section 13. A NEW SECTION OF SUBCHAPTER 20 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*During the review of applications under Subchapter 12, 22, 23, 24, 25, 26, 27, 28, 32, or 34 of KRS Chapter 154, the secretary of the Cabinet for Economic Development shall have the authority to consider a resident of one (1) of Kentucky's seven (7) contiguous bordering states as a qualified employee for a new, full-time position essential to an approved economic development project, as long as the development for the approved project is no more than twenty-five (25) miles from the boundary line of the bordering state.*

➔Section 14. A NEW SECTION OF KRS CHAPTER 67 IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any legal restrictions or limitations to the contrary, a tax district as defined in KRS 67.750(10) may share a refund application and any related information that is submitted to it by an employee seeking a refund of any amount of tax withheld and paid by his or her employer to the tax district under KRS 67.750 to 67.795 with any other tax district that is referenced in the refund application or related information.*

➔Section 15. KRS 190.030 is amended to read as follows:

- (1) (a) A motor vehicle dealer, new, used, or auction motor vehicle dealer, nonprofit motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, new recreational vehicle dealer, a salesperson of motor vehicles, or a salesperson of new recreational vehicles shall not engage in business in this state at any location without a license issued for that location as provided in KRS 190.010 to 190.080.
- (b) If a person *licensed as a motor vehicle dealer or new recreational vehicle dealer* acts as a motor vehicle salesperson or a new recreational vehicle salesperson, *that person*~~he~~ shall secure a motor vehicle salesperson's license or a new recreational vehicle salesperson's license in addition to a license for a motor vehicle dealer or for a new recreational vehicle dealer.
- (c) *In addition to the authority granted under subsection (6) of this section*, the motor vehicle commission may *promulgate*~~provide by~~ administrative *regulations under KRS Chapter 13A to establish licenses and appropriate fees*~~regulation~~ for other licensee activities~~and an appropriate fee~~.
- (2) A manufacturer of motor vehicles, recreational vehicles, factory branch, distributor, distributor branch, or wholesaler shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (3) A factory representative or distributor representative shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (4) Application for license shall be made to the licensor, at a time, in a form, and containing information the licensor shall require and shall be accompanied by the required fee. The licensor may require, *as part of*~~in~~ the application *process*~~or otherwise~~, information relating to the applicant's solvency,~~his~~ financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business. The information may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in this section.
- (5) All licenses shall be granted or refused within thirty (30) days after submission of a complete application and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted. If a complaint of unfair cancellation of dealer franchise is in the process of being heard, a replacement application for the franchise shall not be considered until a decision is rendered by the commission.
- (6) (a) *The commission shall promulgate administrative regulations under KRS Chapter 13A to establish license fees*~~fee~~ for:
  1. *New motor vehicle dealers;*
  2. *Used motor vehicle dealers;*
  3. *Motor vehicle leasing dealers;*
  4. *Restricted motor vehicle dealers;*
  5. *Motorcycle dealers;*
  6. *Motor vehicle manufacturers and factory branches;*
  7. *Distributors, motor vehicle auction dealers, and wholesalers;*
  8. *Motor vehicle or recreational vehicle salespersons;*
  9. *Factory representatives and distributor branch representatives;*
  10. *Automotive mobility dealers;*
  11. *Nonprofit motor vehicle dealers;*
  12. *Recreational vehicle manufacturers and distributors; and*
  13. *New recreational vehicle dealers.*



- (b) *The license fee imposed on motor vehicle or recreational vehicle salespersons shall be paid by the licensed dealer for every salesperson the dealer employs.*
- (c) *A license fee shall not be imposed on nonprofit motor vehicle dealer salespersons* [~~a calendar year, or part thereof, shall be as follows:~~
- (a) ~~For new motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof, plus one hundred dollars (\$100) for a supplemental license for each used car lot not immediately adjacent to the office or to a branch;~~
  - (b) ~~For used motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof;~~
  - (c) ~~For motor vehicle leasing dealers, one hundred dollars (\$100) for each office or branch or agent thereof;~~
  - (d) ~~For restricted motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof;~~
  - (e) ~~For motorcycle dealers, one hundred dollars (\$100) for each office, branch, or agent thereof;~~
  - (f) ~~For motor vehicle manufacturers, one hundred dollars (\$100); and for each factory branch in this state, one hundred dollars (\$100);~~
  - (g) ~~For distributors, motor vehicle auction dealers or wholesalers, the same as for dealers;~~
  - (h) ~~For motor vehicle or recreational vehicle salespersons, twenty dollars (\$20), to be paid by the licensed dealer for every salesperson the dealer employs;~~
  - (i) ~~For factory representatives, or distributor branch representatives, one hundred dollars (\$100);~~
  - (j) ~~For automotive mobility dealers, one hundred dollars (\$100);~~
  - (k) ~~For nonprofit motor vehicle dealers, one hundred dollars (\$100);~~
  - (l) ~~For nonprofit motor vehicle dealer salespersons, a license fee shall not be imposed;~~
  - (m) ~~For recreational vehicle manufacturers or distributors, one hundred dollars (\$100); and~~
  - (n) ~~For new recreational vehicle dealers, one hundred dollars (\$100)].~~
- (7) (a) The licenses of dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of the office or branch and shall be conspicuously displayed there. If the location is changed, the licensor shall endorse the change of location on the license. A licensee shall not be charged a fee for changing locations. A change of location shall require a new application.
- (b) 1. A motor vehicle dealer who is not a new motor vehicle dealer may conduct a temporary sale or display in the county where the dealer is licensed to conduct business.
2. A new motor vehicle dealer may conduct a temporary sale or display in the dealer's market as defined in KRS 190.047(6).
3. A recreational vehicle dealer may conduct a temporary sale or display in the county where the dealer is licensed to conduct business or in any other county where there is no licensed recreational vehicle dealer.
- (c) A temporary sale or display may be conducted under this subsection if the temporary sale or display is permitted under an enabling ordinance enacted by the city, county, urban-county, or consolidated local government within whose boundaries the temporary sale or display is to be conducted. A temporary sale or display shall be advertised as temporary in nature and shall consist of a representative sampling of the inventory of each participating licensee.
- (d) The provisions of this subsection shall not apply to a nonprofit motor vehicle dealer.
- (8) Every salesperson, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the salesperson shall immediately mail his license to the licensor who shall endorse the change on the license without charge.
- (9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the licensor may require the applicant or licensee to furnish and maintain a bond in a form, amount and with sureties up to one hundred thousand dollars (\$100,000),

conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee. The bonds shall be executed in the name of the State of Kentucky for the benefit of any aggrieved parties, but the penalty of the bond shall not be invoked except after a court adjudication. The commission may promulgate administrative regulations to permit the applicant to submit evidence, in lieu of posting bond, that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a bond complying with this subsection, for payment on conditions and indemnity set forth in this subsection. The bonding requirements of this subsection shall not apply to manufacturers, factory branches, and their agents.

- (10) Application for dealer's license shall be submitted to the commission and contain information the commission may require. A motor vehicle dealer, unless licensed under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use any motor vehicle registration plates.
- (11) Every motor vehicle dealer or new recreational vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at intervals and show information the licensor may require.

➔Section 16. KRS 141.383 is amended to read as follows:

- (1) As used in this section:
- (a) "Above-the-line production crew" *has the same meaning as in Section 17 of this Act* ~~means the same as defined in KRS 148.542;~~
  - (b) "Approved company" *has the same meaning as in Section 17 of this Act* ~~means the same as defined in KRS 148.542;~~
  - (c) *"Authority" has the same meaning as in Section 17 of this Act;*
  - (d) "Below-the-line production crew" *has the same meaning as in Section 17 of this Act* ~~means the same as defined in KRS 148.542;~~
  - ~~(d) "Cabinet" [means the same as defined in KRS 148.542;]~~
  - ~~(e) ["Office" means the same as defined in KRS 148.542;~~
  - ~~(f) "Qualifying expenditure" has the same meaning as in Section 17 of this Act~~ ~~means the same as defined in KRS 148.542;~~
  - ~~(f)(g) "Qualifying payroll expenditure" has the same meaning as in Section 17 of this Act~~ ~~means the same as defined in KRS 148.542;~~
  - ~~(g)(h) "Secretary" has the same meaning as in Section 17 of this Act~~ ~~means the same as defined in KRS 148.542;~~ and
  - ~~(h)(i) "Tax incentive agreement" has the same meaning as in Section 17 of this Act~~ ~~means the same as defined in KRS 148.542.~~
- (2) (a) There is hereby created a tax credit against the tax imposed under KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in KRS 141.0205.
- (b) The incentive available under paragraph (a) of this section is:
1. A refundable credit for applications approved prior to April 27, 2018; ~~and~~
  2. A nonrefundable and nontransferable credit for applications approved on or after April 27, 2018, *but before January 1, 2022; and*
  3. *A refundable credit for applications approved on or after January 1, 2022, if the provisions of paragraph (c) of this subsection are met.*
- (c) 1. ~~Beginning on April 27, 2018,~~ The total tax incentive approved under *Section 18 of this Act* ~~KRS 148.544~~ shall be limited to:
- a. One hundred million dollars (\$100,000,000) for calendar year 2018 and each calendar year *through the calendar year 2021; and* ~~thereafter.~~
  - b. *Seventy-five million dollars (\$75,000,000) for the calendar year 2022 and each calendar year thereafter.*
2. *Beginning January 1, 2022, to qualify for the refundable credit, all applicants shall:*

- a. *Begin production within six (6) months of filing an application with the authority; and*
  - b. *Complete production within two (2) years of their production start date.* ~~[On April 27, 2018, if applications have been approved during the 2018 calendar year which exceed the amount in subparagraph 1. of this paragraph, the Kentucky Film Office shall immediately cease in approving any further applications for tax incentives.]~~
- (3) *Beginning January 1, 2022*, an approved company may receive a refundable tax credit ~~[on and after July 1, 2010, but only for applications approved prior to April 27, 2018,]~~ if:
- (a) The *department* ~~[cabinet]~~ has received notification from the *authority* ~~[office]~~ that the approved company has satisfied all requirements of *Sections 18 and 19 of this Act* ~~[KRS 148.542 to 148.546]~~; and
  - (b) The approved company has provided a detailed cost report and sufficient documentation to the *authority* ~~[office]~~, which has been forwarded by the *authority* ~~[office]~~ to the *department* ~~[cabinet]~~, that:
    - 1. The purchases of qualifying expenditures were made after the execution of the tax incentive agreement; and
    - 2. The approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures.
- (4) Interest shall not be allowed or paid on any refundable credits provided under this section.
- (5) The *department* ~~may~~ ~~[cabinet shall]~~ promulgate administrative regulations *under* ~~[in accordance with]~~ KRS Chapter 13A to administer this section.
- (6) On or before September 1, 2010, and on or before each September 1 thereafter, for the immediately preceding fiscal year, the *department* ~~[cabinet]~~ shall report to the *authority and the Interim Joint Committee on Appropriations and Revenue* ~~[office]~~ the names of the approved companies and the amounts of refundable income tax credit claimed.
- (7) *No later than September 1, 2021, and by September 1 every four (4) years thereafter, the department and the Cabinet for Economic Development shall cooperatively provide historical data related to the tax credit allowed in this section and Sections 18 and 19 of this Act, including data items beginning with tax credits claimed for taxable years beginning on or after January 1, 2018:*
- (a) *The name of the taxpayer claiming the tax credit;*
  - (b) *The date that the application was approved and the date the filming or production was completed;*
  - (c) *The taxable year in which the taxpayer claimed the tax credit;*
  - (d) *The total amount of the tax credit, including any amount denied, any amount applied against a tax liability, any amount refunded, and any amount remaining that may be claimed on a return filed in the future;*
  - (e) *Whether the taxpayer is a Kentucky-based company as defined in Section 17 of this Act;*
  - (f) *Whether the taxpayer films or produces a:*
    - 1. *Feature-length film, television program, or industrial film;*
    - 2. *National touring production of a Broadway show; or*
    - 3. *Documentary;*
  - (g) *Whether the filming or production was performed:*
    - 1. *Entirely in an enhanced county; or*
    - 2. *In whole or in part in any Kentucky county other than in an enhanced incentive county;*
  - (h) *The amount of qualifying expenditures incurred by the taxpayer;*
  - (i) *The amount of qualifying payroll expenditures paid to:*
    - 1. *Resident below-the-line crew; and*
    - 2. *Nonresident below-the-line production crew;**including the number of crew members in each category;*

- (j) *The amount of qualifying payroll expenditures paid to:*
  - 1. *Resident above-the-line crew; and*
  - 2. *Nonresident above-the-line crew;**including the number of crew members in each category; and*
- (k) *A brief description of the type of motion picture or entertainment production project.*
- (8) *The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.*

➔SECTION 17. SUBCHAPTER 61 OF KRS CHAPTER 154 IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this subchapter:*

- (1) *"Above-the-line production crew" means employees involved with the production of a motion picture or entertainment production whose salaries are negotiated prior to commencement of production, such as actors, directors, producers, and writers;*
- (2) *"Animated production" means a nationally distributed feature-length film created with the rapid display of a sequence of images using 2-D or 3-D graphics of artwork or model positions in order to create an illusion of movement;*
- (3) *"Approved company" means an eligible company approved for incentives provided under Section 16 and Section 18 of this Act;*
- (4) *"Authority" means the Kentucky Economic Development Finance Authority created in KRS 154.20-010;*
- (5) *"Below-the-line production crew" means employees involved with the production of a motion picture or entertainment production except above-the-line production crew. "Below-the-line production crew" includes but is not limited to:*
  - (a) *Casting assistants;*
  - (b) *Costume design;*
  - (c) *Extras;*
  - (d) *Gaffers;*
  - (e) *Grips;*
  - (f) *Location managers;*
  - (g) *Production assistants;*
  - (h) *Set construction staff; and*
  - (i) *Set design staff;*
- (6) *"Commonwealth" means the Commonwealth of Kentucky;*
- (7) *"Compensation" means compensation included in adjusted gross income as defined in KRS 141.010;*
- (8) *"Documentary" means a production based upon factual information and not subjective interjections;*
- (9) *"Eligible company" means any person that intends to film or produce a motion picture or entertainment production in the Commonwealth;*
- (10) *"Employee" has the same meaning as in KRS 141.010;*
- (11) *"Enhanced incentive county" has the same meaning as in KRS 154.32-010;*
- (12) *"Feature-length film" means a live-action or animated production that is:*
  - (a) *More than thirty (30) minutes in length; and*
  - (b) *Produced for distribution in theaters or via digital format, including but not limited to DVD, Internet, or mobile electronic devices;*

- (13) *"Industrial film" means a business-to-business film that may be viewed by the public, including but not limited to videos used for training or for viewing at a trade show;*
- (14) *"Kentucky-based company" has the same meaning as in KRS 164.6011;*
- (15) (a) *"Motion picture or entertainment production" means:*
1. *The following if filmed in whole or in part, or produced in whole or in part, in the Commonwealth:*
    - a. *A feature-length film;*
    - b. *A television program;*
    - c. *An industrial film; or*
    - d. *A documentary; or*
  2. *A national touring production of a Broadway show produced in Kentucky.*
- (b) *"Motion picture or entertainment production" does not include the filming or production of obscene material or television coverage of news or athletic events;*
- (16) *"Obscene" has the same meaning as in KRS 531.010;*
- (17) *"Person" has the same meaning as in KRS 141.010;*
- (18) (a) *"Qualifying expenditure" means expenditures made in the Commonwealth for the following if directly used in or for a motion picture or entertainment production:*
1. *The production script and synopsis;*
  2. *Set construction and operations, wardrobe, accessories, and related services;*
  3. *Lease or rental of real property in Kentucky as a set location;*
  4. *Photography, sound synchronization, lighting, and related services;*
  5. *Editing and related services;*
  6. *Rental of facilities and equipment;*
  7. *Vehicle leases;*
  8. *Food; and*
  9. *Accommodations.*
- (b) *"Qualifying expenditure" does not include Kentucky sales and use tax paid by the approved company on the qualifying expenditure;*
- (19) *"Qualifying payroll expenditure" means compensation paid to above-the-line crew and below-the line crew while working on a motion picture or entertainment production in the Commonwealth if the compensation is for services performed in the Commonwealth;*
- (20) *"Resident" has the same meaning as in KRS 141.010;*
- (21) *"Secretary" means the secretary of the Cabinet for Economic Development;*
- (22) *"Tax incentive agreement" means the agreement entered into pursuant to Section 19 of this Act between the authority and the approved company; and*
- (24) *"Television program" means any live-action or animated production or documentary, including but not limited to:*
- (a) *An episodic series;*
  - (b) *A miniseries;*
  - (c) *A television movie; or*
  - (d) *A television pilot;*

*that is produced for distribution on television via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices.*

➔SECTION 18. A NEW SECTION OF SUBCHAPTER 61 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *The purposes of KRS 141.383 and this subchapter are to encourage:*
  - (a) *The film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;*
  - (b) *The development of a film and entertainment industry in Kentucky;*
  - (c) *Increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry; and*
  - (d) *The development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies.*
- (2) *The authority, together with the Department of Revenue, shall administer the tax credit established by KRS 141.383, this section, and Section 19 of this Act.*
- (3) *To qualify for the tax incentive provided in subsection (5) of this section, the following requirements shall be met:*
  - (a) *For an approved company that is also a Kentucky-based company that:*
    1. *Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred twenty-five thousand dollars (\$125,000);*
    2. *Produces a national touring production of a Broadway show in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars (\$20,000); or*
    3. *Films or produces a documentary in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be ten thousand dollars (\$10,000); and*
  - (b) *For an approved company that is not a Kentucky-based company that:*
    1. *Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred fifty thousand dollars (\$250,000); or*
    2. *Films or produces a documentary in whole or in part in the Commonwealth or that produces a national touring production of a Broadway show, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars (\$20,000).*
- (4) *Beginning on January 1, 2022, the total tax incentive approved under KRS 141.383 and this subchapter shall be limited to seventy-five million dollars (\$75,000,000) for calendar year 2022 and each calendar year thereafter.*
- (5) (a) *To qualify for the tax incentive available under KRS 141.383 and this subchapter all applicants shall:*
  1. *Begin filming or production within six (6) months of filing an application with the authority; and*
  2. *Complete filming or production within two (2) years of the filming or production start date.*
- (b) *The tax credit shall be against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, and shall be refundable as provided in KRS 141.383.*
- (c) 1. *For a motion picture or entertainment production filmed or produced in its entirety in an enhanced incentive county, the amount of the incentive shall be equal to thirty-five percent (35%) of the approved company's:*
  - a. *Qualifying expenditures;*

- b. *Qualifying payroll expenditures paid to resident and nonresident below-the-line production crew; and*
  - c. *Qualifying payroll expenditures paid to resident and nonresident above-the-line production crew not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee.*
- 2. a. *To the extent the approved company films or produces a motion picture or entertainment production in part in an enhanced incentive county and in part a Kentucky county that is not an enhanced incentive county, the approved company shall be eligible to receive the incentives provided in this paragraph for those expenditures incurred in the enhanced incentive county and all other expenditures shall be subject to the incentives provided in paragraph (d) of this subsection.*
  - b. *The approved company shall track the requisite expenditures by county. If the approved company can demonstrate to the satisfaction of the cabinet that it is not practical to use a separate accounting method to determine the expenditures by county, the approved company shall determine the correct expenditures by county using an alternative method approved by the cabinet.*
- (d) *For a motion picture or entertainment production filmed or produced in whole or in part in any Kentucky county other than in an enhanced incentive county, the amount of the incentive shall be equal to:*
- 1. *Thirty percent (30%) of the approved company's:*
    - a. *Qualifying expenditures;*
    - b. *Qualifying payroll expenditures paid to below-the-line production crew that are not residents; and*
    - c. *Qualifying payroll expenditures paid to above-the-line production crew that are not residents, not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee; and*
  - 2. *Thirty-five percent (35%) of the approved company's:*
    - a. *Qualifying payroll expenditures paid to resident below-the-line production crew; and*
    - b. *Qualifying payroll expenditures paid to resident above-the-line production crew not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee.*

➔SECTION 19. A NEW SECTION OF SUBCHAPTER 61 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *An eligible company shall, at least thirty (30) days prior to incurring any expenditure for which recovery will be sought, file an application for tax incentives with the authority. The application shall include:*
- (a) *The name and address of the applicant;*
  - (b) *Verification that the applicant is a Kentucky-based company;*
  - (c) *The production script or a detailed synopsis of the script;*
  - (d) *The locations where the filming or production will occur;*
  - (e) *The anticipated date on which filming or production shall begin;*
  - (f) *The anticipated date on which the production will be completed;*
  - (g) *The total anticipated qualifying expenditures;*
  - (h) *The total anticipated qualifying payroll expenditures for resident and nonresident above-the-line crew by county;*
  - (i) *The total anticipated qualifying payroll expenditures for resident and nonresident below-the-line crew by county;*
  - (j) *The address of a Kentucky location at which records of the production will be kept;*

- (k) *An affirmation that if not for the incentive offered under this subchapter, the eligible company would not film or produce the production in the Commonwealth; and*
- (l) *Any other information the authority may require.*
- (2) *The authority shall notify the eligible company within thirty (30) days after receiving the application of its status.*
- (3) *Upon receipt of the application and any additional information submitted, the authority shall consider all submitted information and, if appropriate, authorize the execution of a tax incentive agreement between the authority and the approved company, if the amount of anticipated tax credit from the application would not make the total tax credit approved for the calendar year exceed the annual tax credit cap under subsection (4) of Section 18 of this Act.*
- (4) *The tax incentive agreement shall include the following provisions:*

  - (a) *The duties and responsibilities of the parties;*
  - (b) *A detailed description of the motion picture or entertainment production for which incentives are requested;*
  - (c) *The anticipated qualifying expenditures and qualifying payroll expenditures for resident and nonresident above-the-line and below-the-line crews by county;*
  - (d) *The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for incentives;*
  - (e) *That the approved company shall:*

    - 1. *Begin production within six (6) months of filing an application with the authority; and*
    - 2. *Complete production within two (2) years of their production start date;*
  - (f) *That the motion picture or entertainment production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;*
  - (g) *That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;*
  - (h) *That the approved company shall submit to the authority within one hundred eighty (180) days of the completion of the motion picture or entertainment production a detailed cost report of the qualifying expenditures, qualifying payroll expenditures, and final script;*
  - (i) *That the approved company shall provide the authority with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under this subchapter is sought;*
  - (j) *That, if the authority determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:*

    - 1. *The authority may deny the incentives available to the approved company;*
    - 2. *Both the authority and the Department of Revenue may pursue any remedy provided under the tax incentive agreement;*
    - 3. *The authority may terminate the tax incentive agreement; and*
    - 4. *Both the authority and the Department of Revenue may pursue any other remedy at law to which it may be entitled;*
  - (k) *That the authority and the Department of Revenue shall monitor the tax incentive agreement;*
  - (l) *That the approved company shall provide to the authority and the Department of Revenue all information necessary to monitor the tax incentive agreement;*
  - (m) *That the authority may share information with the Department of Revenue and the Interim Joint Committee on Appropriations and Revenue or any other entity the authority determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;*



- (n) *That the motion picture or entertainment production shall contain an acknowledgment that the motion picture or entertainment production was produced or filmed in the Commonwealth of Kentucky;*
  - (o) *That the approved company shall include screen credits in its final production, indicating the approved company received tax incentives from the Commonwealth of Kentucky;*
  - (p) *Terms of default;*
  - (q) *The method and procedures by which the approved company shall request and receive the incentive provided under Section 16 and Section 18 of this Act;*
  - (r) *That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and*
  - (s) *Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement.*
- (5) *The authority may require the approved company to pay an administrative fee, the amount of which shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A. The administrative fee shall not exceed one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars (\$500), whichever is greater.*
- (6) *Prior to commencement of activity as provided in a tax incentive agreement, the tax incentive agreement shall be submitted to the Government Contract Review Committee established by KRS 45A.705 for review, as provided in KRS 45A.695, 45A.705, and 45A.725.*
- (7) *The authority shall notify the Department of Revenue upon approval of an approved company. The notification shall include the name of the approved company, the name of the motion picture or entertainment production, the estimated amount of qualifying expenditures, the estimated date on which the approved company will complete filming or production, and any other information required by the department.*
- (8) *Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the authority a detailed cost report of:*
- (a) *Qualifying expenditures;*
  - (b) *Qualifying payroll expenditures for resident and nonresident above-the-line crew by county;*
  - (c) *Qualifying payroll expenditures for resident and nonresident below-the-line crew by county; and*
  - (d) *The final script.*
- (9) (a) *The authority, together with the secretary, shall review all information submitted for accuracy and shall confirm that all relevant provisions of the tax incentive agreement have been met.*
- (b) *Upon confirmation that all requirements of the tax incentive agreement have been met, the authority and the secretary shall review the final script, and if they determine that the motion picture or entertainment production does not:*
- 1. *Contain visual or implied scenes that are obscene; or*
  - 2. *Negatively impact the economy or the tourism industry of the Commonwealth;*
- the authority shall forward the detailed cost report to the Department of Revenue for calculation of the refundable credit.*
- (10) *The Department of Revenue shall:*
- (a) *Verify that the approved company withheld the proper amount of income tax on qualifying payroll expenditures; and*
  - (b) *Notify the authority of the total amount of refundable credit available on qualifying expenditures and qualifying payroll expenditures.*

➔Section 20. KRS 131.190 is amended to read as follows:

- (1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the

Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

- (2) The prohibition established by subsection (1) of this section shall not extend to:
- (a) Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;
  - (b) Any matter properly entered upon any assessment record, or in any way made a matter of public record;
  - (c) Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
  - (d) Testimony provided by the commissioner or any employee of the department in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;
  - (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820, or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820, that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;
  - (f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10);
  - (g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;
  - (h) Statistics of gasoline and special fuels gallonage reported to the department under KRS 138.210 to 138.448;
  - (i) Providing any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on a confidential basis;
  - (j) Providing documents, data, or other information to a third party pursuant to an order issued by a court of competent jurisdiction; or
  - (k) Providing information to the Legislative Research Commission under:
    1. KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
    2. KRS 141.436 for purposes of the energy efficiency products credits;
    3. KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;
    4. *Section 16 of this Act* ~~KRS 148.544~~ for purposes of the film industry incentives;
    5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization tax credits and the job assessment fees;
    6. KRS 141.068 for purposes of the Kentucky investment fund;
    7. KRS 141.396 for purposes of the angel investor tax credit;
    8. KRS 141.389 for purposes of the distilled spirits credit;
    9. KRS 141.408 for purposes of the inventory credit;
    10. KRS 141.390 for purposes of the recycling and composting credit;

11. KRS 141.3841 for purposes of the selling farmer tax credit; and
  12. KRS 141.4231 for purposes of the renewable chemical production tax credit.
- (3) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
  - (4) Access to and inspection of information received from the Internal Revenue Service is for department use only, and is restricted to tax administration purposes. Information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department, or any other person.
  - (5) Statistics of crude oil as reported to the department ~~[of Revenue]~~ under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the department ~~[of Revenue]~~ under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Energy and Environment Cabinet, Department for Natural Resources.
  - (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

➔Section 21. KRS 45A.690 is amended to read as follows:

- (1) As used in KRS 45A.690 to 45A.725:
  - (a) "Committee" means the Government Contract Review Committee of the Legislative Research Commission;
  - (b) "Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for personal services. "Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;
  - (c) "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;
  - (d) "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65 that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:
    1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
    2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;
    3. Agreements between state agencies as required by federal or state law;
    4. Agreements between state agencies and state universities or colleges only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency to fill a position or perform a duty that an employee or employees of state government could perform if hired, and agreements between state universities or colleges and

- employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;
5. Agreements involving child support collections and enforcement;
  6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
  7. Nonfinancial agreements;
  8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
  9. Exchanges of confidential personal information between agencies;
  10. Agreements between state agencies and rural concentrated employment programs; or
  11. Any other agreement that the committee deems inappropriate for consideration;
- (e) "Motion picture or entertainment production" means the same as defined in *Section 17 of this Act* [KRS 448.542];
- (f) "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract;
- (g) "Nurse aide" means an individual who has successfully completed the nurse aide training and competency evaluation program and may include a nursing student, medication aide, or a person employed through a nursing pool who provides nursing or nursing-related services to a resident in a nursing facility, excluding:
- (a) An individual who is a licensed health professional;
  - (b) A volunteer who provides the nursing or nursing-related services without monetary compensation; or
  - (c) A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services.;
- (h) "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount. This definition does not apply to:
1. Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;
  2. Agreements with public utilities, foster care parents, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, individuals performing homemaker services, and transit authorities;
  3. Agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;
  4. Agreements between a state agency and rural concentrated employment programs;
  5. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board;
  6. Agreements between the Department of Public Advocacy and attorneys for the representation of indigent clients who are entitled to representation under KRS Chapter 31 and who, by reason of conflict or otherwise, cannot be represented by the department, subject to quarterly reports of all such agreements to the committee;

7. Agreements between the Office of Kentucky Veterans' Centers and licensed nurses and nurse aides in order to provide critically needed long-term care to Kentucky veterans who are residents in state veterans' nursing homes pursuant to KRS 40.325; or
  8. Any other contract that the committee deems inappropriate for consideration;
- (i) "Tax incentive agreement" means an agreement executed under *Section 19 of this Act* [KRS 148.546]; and
  - (j) "Tourism Development Finance Authority" means the authority established by KRS 148.850.
- (2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

➔Section 22. KRS 12.020 is amended to read as follows:

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

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

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

II. Program cabinets headed by appointed officers:

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

- (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Department of Public Advocacy.
- (2) Education and Workforce Development Cabinet:
- (a) Office of the Secretary.
    1. Governor's Scholars Program.
    2. Governor's School for Entrepreneurs Program.
    3. Office of the Kentucky Workforce Innovation Board.
    4. Foundation for Adult Education.
    5. Early Childhood Advisory Council.
  - (b) Office of Legal and Legislative Services.
    1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Administrative Services.
    1. Division of Human Resources.
    2. Division of Operations and Support Services.
    3. Division of Fiscal Management.
  - (e) Office of Technology Services.
  - (f) Office of Educational Programs.
  - (g) Office of the Kentucky Center for Statistics.
  - (h) Board of the Kentucky Center for Statistics.
  - (i) Board of Directors for the Center for School Safety.
  - (j) Department of Education.
    1. Kentucky Board of Education.
    2. Kentucky Technical Education Personnel Board.
  - (k) Department for Libraries and Archives.
  - (l) Department of Workforce Investment.
    1. Office of Vocational Rehabilitation.
      - a. Division of Kentucky Business Enterprise.
      - b. Division of the Carl D. Perkins Vocational Training Center.
      - c. Division of Blind Services.
      - d. Division of Field Services.
      - e. Statewide Council for Vocational Rehabilitation.
    2. Office of Unemployment Insurance.
    3. Office of Employer and Apprenticeship Services.
      - a. Division of Apprenticeship.

4. Office of Career Development.
  5. Office of Adult Education.
  6. Unemployment Insurance Commission.
  7. Kentucky Apprenticeship Council.
- (m) Foundation for Workforce Development.
- (n) Kentucky Workforce Investment Board.
- (o) Education Professional Standards Board.
1. Division of Educator Preparation.
  2. Division of Certification.
  3. Division of Professional Learning and Assessment.
  4. Division of Legal Services.
- (p) Kentucky Commission on the Deaf and Hard of Hearing.
- (q) Kentucky Educational Television.
- (r) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
- (a) Office of the Secretary.
1. Office of Legislative and Intergovernmental Affairs.
  2. Office of Legal Services.
    - a. Legal Division I.
    - b. Legal Division II.
  3. Office of Administrative Hearings.
  4. Office of Communication.
  5. Mine Safety Review Commission.
  6. Office of Kentucky Nature Preserves.
  7. Kentucky Public Service Commission.
- (b) Department for Environmental Protection.
1. Office of the Commissioner.
  2. Division for Air Quality.
  3. Division of Water.
  4. Division of Environmental Program Support.
  5. Division of Waste Management.
  6. Division of Enforcement.
  7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
1. Office of the Commissioner.
  2. Division of Mine Permits.
  3. Division of Mine Reclamation and Enforcement.
  4. Division of Abandoned Mine Lands.
  5. Division of Oil and Gas.

6. Division of Mine Safety.
7. Division of Forestry.
8. Division of Conservation.
9. Office of the Reclamation Guaranty Fund.
- (d) Office of Energy Policy.
  1. Division of Energy Assistance.
- (e) Office of Administrative Services.
  1. Division of Human Resources Management.
  2. Division of Financial Management.
  3. Division of Information Services.
- (4) Public Protection Cabinet.
  - (a) Office of the Secretary.
    1. Office of Communications and Public Outreach.
    2. Office of Legal Services.
      - a. Insurance Legal Division.
      - b. Charitable Gaming Legal Division.
      - c. Alcoholic Beverage Control Legal Division.
      - d. Housing, Buildings and Construction Legal Division.
      - e. Financial Institutions Legal Division.
      - f. Professional Licensing Legal Division.
    3. Office of Administrative Hearings.
    4. Office of Administrative Services.
      - a. Division of Human Resources.
      - b. Division of Fiscal Responsibility.
  - (b) Kentucky Claims Commission.
  - (c) Kentucky Boxing and Wrestling Commission.
  - (d) Kentucky Horse Racing Commission.
    1. Office of Executive Director.
      - a. Division of Pari-mutuel Wagering and Compliance.
      - b. Division of Stewards.
      - c. Division of Licensing.
      - d. Division of Enforcement.
      - e. Division of Incentives and Development.
      - f. Division of Veterinary Services.
  - (e) Department of Alcoholic Beverage Control.
    1. Division of Distilled Spirits.
    2. Division of Malt Beverages.
    3. Division of Enforcement.
  - (f) Department of Charitable Gaming.



1. Division of Licensing and Compliance.
2. Division of Enforcement.
- (g) Department of Financial Institutions.
  1. Division of Depository Institutions.
  2. Division of Non-Depository Institutions.
  3. Division of Securities.
- (h) Department of Housing, Buildings and Construction.
  1. Division of Fire Prevention.
  2. Division of Plumbing.
  3. Division of Heating, Ventilation, and Air Conditioning.
  4. Division of Building Code Enforcement.
- (i) Department of Insurance.
  1. Division of Insurance Product Regulation.
  2. Division of Administrative Services.
  3. Division of Financial Standards and Examination.
  4. Division of Agent Licensing.
  5. Division of Insurance Fraud Investigation.
  6. Division of Consumer Protection.
- (j) Department of Professional Licensing.
  1. Real Estate Authority.
- (5) Labor Cabinet.
  - (a) Office of the Secretary.
    1. Office of General Counsel.
      - a. Workplace Standards Legal Division.
      - b. Workers' Claims Legal Division.
    2. Office of Administrative Services.
      - a. Division of Human Resources Management.
      - b. Division of Fiscal Management.
      - c. Division of Professional Development and Organizational Management.
      - d. Division of Information Technology and Support Services.
    3. Office of Inspector General.
  - (b) Department of Workplace Standards.
    1. Division of Occupational Safety and Health Compliance.
    2. Division of Occupational Safety and Health Education and Training.
    3. Division of Wages and Hours.
  - (c) Department of Workers' Claims.
    1. Division of Workers' Compensation Funds.
    2. Office of Administrative Law Judges.
    3. Division of Claims Processing.

4. Division of Security and Compliance.
  5. Division of Information Services.
  6. Division of Specialist and Medical Services.
  7. Workers' Compensation Board.
- (d) Workers' Compensation Funding Commission.
  - (e) Occupational Safety and Health Standards Board.
  - (f) State Labor Relations Board.
  - (g) Employers' Mutual Insurance Authority.
  - (h) Kentucky Occupational Safety and Health Review Commission.
  - (i) Workers' Compensation Nominating Committee.
- (6) Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Project Development.
    2. Office of Project Delivery and Preservation.
    3. Office of Highway Safety.
    4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    1. Office of Local Programs.
    2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    1. Office of Public Affairs.
    2. Office for Civil Rights and Small Business Development.
    3. Office of Budget and Fiscal Management.
    4. Office of Inspector General.
  - (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.
  - (i) Office of Human Resource Management.
  - (j) Office of Information Technology.
  - (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
- (a) Office of the Secretary.
    1. Office of Legal Services.
    2. Department for Business Development.
    3. Department for Financial Services.
      - a. Kentucky Economic Development Finance Authority.
      - b. Finance and Personnel Division.

- c. IT and Resource Management Division.
  - d. Compliance Division.
  - e. Incentive Administration Division.
  - f. Bluegrass State Skills Corporation.
  - 4. Office of Marketing and Public Affairs.
    - a. Communications Division.
    - b. Graphics Design Division.
  - 5. Office of Workforce, Community Development, and Research.
  - 6. Office of Entrepreneurship.
    - a. Commission on Small Business Advocacy.
- (8) Cabinet for Health and Family Services:
- (a) Office of the Secretary.
    - 1. Office of the Ombudsman and Administrative Review.
    - 2. Office of Public Affairs.
    - 3. Office of Legal Services.
    - 4. Office of Inspector General.
    - 5. Office of Human Resource Management.
    - 6. Office of Finance and Budget.
    - 7. Office of Legislative and Regulatory Affairs.
    - 8. Office of Administrative Services.
    - 9. Office of Application Technology Services.
  - (b) Department for Public Health.
  - (c) Department for Medicaid Services.
  - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (e) Department for Aging and Independent Living.
  - (f) Department for Community Based Services.
  - (g) Department for Income Support.
  - (h) Department for Family Resource Centers and Volunteer Services.
  - (i) Office for Children with Special Health Care Needs.
  - (j) Office of Health Data and Analytics.
- (9) Finance and Administration Cabinet:
- (a) Office of the Secretary.
  - (b) Office of the Inspector General.
  - (c) Office of Legislative and Intergovernmental Affairs.
  - (d) Office of General Counsel.
  - (e) Office of the Controller.
  - (f) Office of Administrative Services.
  - (g) Office of Policy and Audit.
  - (h) Department for Facilities and Support Services.

- (i) Department of Revenue.
  - (j) Commonwealth Office of Technology.
  - (k) State Property and Buildings Commission.
  - (l) Office of Equal Employment Opportunity and Contract Compliance.
  - (m) Kentucky Employees Retirement Systems.
  - (n) Commonwealth Credit Union.
  - (o) State Investment Commission.
  - (p) Kentucky Housing Corporation.
  - (q) Kentucky Local Correctional Facilities Construction Authority.
  - (r) Kentucky Turnpike Authority.
  - (s) Historic Properties Advisory Commission.
  - (t) Kentucky Tobacco Settlement Trust Corporation.
  - (u) Kentucky Higher Education Assistance Authority.
  - (v) Kentucky River Authority.
  - (w) Kentucky Teachers' Retirement System Board of Trustees.
  - (x) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Tourism.
    - 1. Division of Tourism Services.
    - 2. Division of Marketing and Administration.
    - 3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - 1. Division of Information Technology.
    - 2. Division of Human Resources.
    - 3. Division of Financial Operations.
    - 4. Division of Facilities Management.
    - 5. Division of Facilities Maintenance.
    - 6. Division of Customer Services.
    - 7. Division of Recreation.
    - 8. Division of Golf Courses.
    - 9. Division of Food Services.
    - 10. Division of Rangers.
    - 11. Division of Resort Parks.
    - 12. Division of Recreational Parks and Historic Sites.
  - (c) Department of Fish and Wildlife Resources.
    - 1. Division of Law Enforcement.
    - 2. Division of Administrative Services.
    - 3. Division of Engineering, Infrastructure, and Technology.
    - 4. Division of Fisheries.

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

- 4. Division of Administration.
    - (q) Kentucky Center for the Arts.
      - 1. Division of Governor's School for the Arts.
    - (r) Kentucky Artisans Center at Berea.
    - (s) Northern Kentucky Convention Center.
    - (t) Eastern Kentucky Exposition Center.
  - (11) Personnel Cabinet:
    - (a) Office of the Secretary.
    - (b) Department of Human Resources Administration.
    - (c) Office of Employee Relations.
    - (d) Kentucky Public Employees Deferred Compensation Authority.
    - (e) Office of Administrative Services.
    - (f) Office of Legal Services.
    - (g) Governmental Services Center.
    - (h) Department of Employee Insurance.
    - (i) Office of Diversity, Equality, and Training.
    - (j) Office of Public Affairs.
  - III. Other departments headed by appointed officers:
    - (1) Council on Postsecondary Education.
    - (2) Department of Military Affairs.
    - (3) Department for Local Government.
    - (4) Kentucky Commission on Human Rights.
    - (5) Kentucky Commission on Women.
    - (6) Department of Veterans' Affairs.
    - (7) Kentucky Commission on Military Affairs.
    - (8) Office of Minority Empowerment.
    - (9) Governor's Council on Wellness and Physical Activity.
    - (10) Kentucky Communications Network Authority.
- ➔Section 23. KRS 148.522 is amended to read as follows:
- (1) The Tourism, Arts and Heritage Cabinet shall consist of the Office of the Secretary, the Office of Legal Affairs, the Office of Finance, the Office of Government Relations and Administration, the Office of Human Resources, the Office of Public Affairs and Constituent Services, the Office of Arts and Cultural Heritage, ~~the Office of Film and Tourism Development,~~ the Kentucky Department of Tourism, the Kentucky Department of Parks, the Tourism Development Finance Authority, and such other divisions and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet subject to the provisions of KRS Chapter 12.
  - ~~(2) The Tourism, Arts and Heritage Cabinet shall encourage the development of the film industry in Kentucky and shall perform all film promotional functions.~~
  - ~~(3)~~ The Office of Legal Affairs shall be headed by a general counsel appointed by the secretary pursuant to KRS 12.210, shall provide legal services for the cabinet, and shall be directly responsible to the secretary.

- (3)(4) The Kentucky Department of Tourism shall be headed by a commissioner appointed by the Governor pursuant to the provisions of KRS 12.040. The commissioner shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth.
- (4)(5) The Divisions of Tourism Services, Marketing and Administration, and Communications and Promotions are created within the Kentucky Department of Tourism. Each division shall be headed by a division director who shall be appointed by the commissioner of the department pursuant to the provisions of KRS 12.050.

➔Section 24. KRS 148.850 is amended to read as follows:

- (1) The Tourism Development Finance Authority is created within the Tourism, Arts and Heritage Cabinet. The authority shall consist of nine (9) members appointed by the Governor, ~~at least one (1) of whom shall represent the film industry and~~ at least one (1) of whom shall represent individuals with professional experience in financial management or economic development. The members of the authority shall serve without compensation but shall be entitled to reimbursement for their necessary expenses incurred in performing their duties. Of the members initially appointed to the authority, two (2) members shall be appointed for terms of one (1) year, three (3) members shall be appointed for terms of two (2) years, and two (2) members shall be appointed for terms of three (3) years. Thereafter, the members of the authority shall be appointed for terms of four (4) years.
- (2) The Governor shall appoint one (1) member as chairperson of the Tourism Development Finance Authority. The members of the authority may elect other officers as they deem necessary.
- (3) No member of the Tourism Development Finance Authority shall either directly or indirectly be a party to, or be in any manner interested in, any contract or agreement with the authority for any matter, cause, or thing that creates any liability or indebtedness against the authority.
- (4) The Tourism Development Finance Authority shall have the powers necessary to carry out the purposes of this section, KRS 139.536, and KRS 148.851 to 148.860, including but not limited to the power to:
  - (a) Employ fiscal consultants, attorneys, appraisers, and other agents on behalf of the authority whom the authority deems necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any project. The fees for the services provided by persons employed on behalf of the authority shall be paid by the beneficiary of a loan under this program directly to the person providing consultation, advisory, legal, or other services; and
  - (b) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees and charges.

➔Section 25. KRS 68.197 is amended to read as follows:

- (1) The fiscal court of each county having a population of thirty thousand (30,000) or more may by ordinance impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing.
- (2) License fees on business, trade, occupation, or profession for revenue purposes, except those of the common schools, may be imposed at a percentage rate not to exceed one percent (1%) of:
  - (a) Salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county;
  - (b) The net profits of self-employed individuals, partnerships, professional associations, or joint ventures resulting from trades, professions, occupations, businesses, or activities conducted in the county; and
  - (c) The net profits of corporations resulting from trades, professions, occupations, businesses, or activities conducted in the county.
- (3) In order to reduce administrative costs and minimize paperwork for employers, employees, and businesses, the fiscal court may provide:
  - (a) For an annual fixed amount license fee which a person may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on salaries, wages, commissions, and other compensation earned within the county for work done and services performed or rendered in the county; and

- (b) For an annual fixed amount license fee which an individual, partnership, professional association, joint venture, or corporation may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on net profits of businesses, trades, professions, or occupations from activities conducted in the county.
- (4) (a) Licenses imposed for regulatory purposes are not subject to limitations as to form and amount.
- (b) No public service company that pays an ad valorem tax is required to pay a license tax.
- (c) 1. It is the intent of the General Assembly to continue the exemption from local license fees and occupational taxes that existed on January 1, 2006, for providers of multichannel video programming services or communications services as defined in KRS 136.602 that were taxed under KRS 136.120 prior to the effective date of this section.
- 2. To further this intent, no company providing multichannel video programming services or communications services as defined in KRS 136.602 shall be required to pay a license tax. If only a portion of an entity's business is providing multichannel video programming services including products or services that are related to and provided in support of the multichannel video programming services or communications services, this exclusion applies only to that portion of the business that provides multichannel video programming services or communications services, including products or services that are related to and provided in support of the multichannel video programming services or communications services.
- (d) No license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust company, combined bank and trust company, combined trust, banking, and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license fee.
- (5) No license fee shall be imposed or collected on income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or on income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections, or upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor.
- (6) Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may, upon agreement between the county and the city, credit their city license fee against their county license fee. As used in this subsection, "city contained in the county" shall include a city that is in more than one (1) county.
- (7) The provisions of subsection (6) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee. As used in this subsection, "city contained in the county" shall include a city that is in more than one (1) county.
- (8) Notwithstanding any statute to the contrary, the provisions of subsection (7) of this section shall apply as follows from March 14, 2012, through July 15, 2014:
  - (a) Any set-off or credit of city license fees against county license fees that exists between a city and county as of March 15, 2012, shall remain in effect as it is on March 15, 2012; and
  - (b) The provisions of subsection (7) of this section shall not apply to a city and county unless both the city and the county have both levied and are collecting license fees on March 15, 2012.
- (9) A county that enacted an occupational license fee under the authority of KRS 67.083 shall not be required to reduce its occupational tax rate when it is determined that the population of the county exceeds thirty thousand (30,000).
- (10) Notwithstanding any statute to the contrary:
  - (a) In those counties where a license fee has been authorized by a public question approved by the voters, there shall be no credit of a city license fee against a county license fee except by agreement between the county and the city in accordance with subsection (6) of this section;



- (b) Notwithstanding any provision of the KRS to the contrary, no taxpayer shall be refunded or credited for any overpayment of a license tax paid to any county to the extent the overpayment is attributable to or derives from this section as it existed at any time subsequent to July 15, 1986, and the taxpayer seeks a credit for a license tax paid to a city located within such county, if such refund claim or amended tax return claim was filed or perfected after November 18, 2004, except by agreement between the city and county in accordance with subsection (6) of this section;
- (c) In those counties where a license fee has been authorized by a public question approved by the voters, the percentage rate of the license fee in effect on *or after* January 1, 2005, and any maximum salary limit upon which the license fee is calculated *may be increased or decreased in*~~shall remain unchanged for~~ subsequent fiscal years *with the approval of the fiscal court through the passage of an ordinance.*~~[A percentage rate higher than the percentage rate in effect on January 1, 2005, or any change in the maximum salary limit upon which a license fee is calculated shall be prohibited unless approved by the voters at a public referendum.]~~ The percentage rate of a license fee in such counties shall at no time exceed one percent (1%) *and the maximum salary limit shall at no time exceed an amount equal to the maximum Social Security contribution and benefit base established under subsection (b) of 42 U.S.C. sec. 430. Notwithstanding subsection (7) of this section, there shall be no credit of any license fee increased or decreased under this paragraph except by agreement between the county and the city in accordance with subsection (6) of this section.*~~[Any question to be placed before the voters as a result of this paragraph shall be placed on the ballot at a regular election or nominating primary].~~
- (d) This subsection shall have retroactive application; and
- (e) If any provision of this subsection or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this section that can be given effect without the invalid provision or application, and to this end the provisions of this subsection are severable.
- (11) Pursuant to this section, no fiscal court shall regulate any aspect of the manner in which any duly ordained, commissioned, or denominationally licensed minister of religion may perform his or her duties and activities as a minister of religion. Duly ordained, commissioned, or denominationally licensed ministers of religion shall be subject to the same license fees imposed on others in the county on salaries, wages, commissions, and other compensation earned for work done and services performed or rendered.

➔Section 26. KRS 243.029 is amended to read as follows:

- (1) For purposes of this section, "taxes" associated with the purchase of alcoholic beverages includes any applicable:
- Sales tax;
  - Use tax;
  - Excise tax;
  - Wholesale tax equivalent at the rate set out in KRS 243.884. If a wholesale price is not readily available, the direct shipper licensee shall calculate the wholesale cost to be seventy percent (70%) of the retail price of the alcoholic beverages;
  - Regulatory license fees; and
  - Other assessments.
- (2) For purposes of this section and for other tax purposes, each sale and delivery of alcoholic beverages under a direct shipper license is a sale occurring at the address of the consumer. For each tax remittance or collected group of tax remittances, the direct shipper licensee shall include its federal tax identification number.
- (3) *Except for the regulatory license fee imposed under Section 27 of this Act, the applicable taxes shall be collected by the direct shipper licensee from the consumer. The regulatory license fee and all other applicable taxes shall be separately stated on the invoice, bill of sale, or similar document given to the consumer.*~~[A direct shipper licensee that sells alcoholic beverages under its direct shipper license for shipment to a consumer shall charge the consumer all applicable taxes and shall sell the alcoholic beverages with all applicable taxes included in the selling price. The applicable taxes shall be separately identified on the consumer's invoice. The taxes shall be collected by the direct shipper licensee from the consumer].~~

- (4) The amount of the taxes to be paid by the direct shipper licensee under this section shall be calculated based on the sale of the alcoholic beverages occurring at the location identified as the consumer's address on the shipping label.
- (5) For taxes owed by a direct shipper licensee under this section, the direct shipper licensee shall meet the standards of the destination state, including filing a return that contains its license number and federal tax identification number.

➔Section 27. KRS 243.075 is amended to read as follows:

- (1)
  - (a) A city with a population of less than twenty thousand (20,000) based upon the most recent federal decennial census, or a county that does not contain a city with a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census, that is wet through a local option election held under KRS Chapter 242 is authorized to impose a regulatory license fee not to exceed five percent (5%) upon the gross receipts of the sale of alcoholic beverages of each establishment located in the city or county licensed to sell alcoholic beverages.
  - (b) The regulatory license fee may be levied at the beginning of each budget period at a percentage rate that is reasonably estimated to fully reimburse the local government for the estimated costs of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the city and county.
  - (c) The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, except:
    - 1. A credit against a regulatory license fee shall be allowed in an amount equal to any licenses or fees imposed by the city or county pursuant to KRS 243.060 or 243.070; and
    - 2. In a county in which the city and county both levy a regulatory license fee, the county license fee shall only be applicable outside the jurisdictional boundaries of those cities which levy a license fee.
- (2)
  - (a) A city or county that is moist through a local option election held under KRS 242.1244 may by ordinance impose a regulatory license fee upon the gross receipts of the sale of alcoholic beverages of each establishment located in the city or county and licensed to sell alcoholic beverages by the drink for consumption on the premises.
  - (b) The regulatory license fee may be levied annually at a rate that is reasonably estimated to fully reimburse the city or county for the estimated costs for any additional policing, regulatory, or administrative related expenses.
  - (c) The regulatory license fee shall be in addition to any other taxes, fees, or licenses permitted by law, but a credit against the fee shall be allowed in an amount equal to any licenses or fees imposed by the city or county pursuant to KRS 243.060 or 243.070.
  - (d) In a county in which the city and county both levy a regulatory license fee, the county license fee shall only be applicable outside the jurisdictional boundaries of those cities which levy a license fee.
- (3) For any election held after July 15, 2014, any new fee authorized under subsection (1) or (2) of this section shall be enacted by the city or county no later than two (2) years from the date of the local option election held under KRS Chapter 242.
- (4) After July 15, 2014, any fee authorized under subsections (1) and (2) of this section shall be established at a rate that will generate revenue that does not exceed the total of the reasonable expenses actually incurred by the city or county in the immediately previous fiscal year for the additional cost, as demonstrated by reasonable evidence, of:
  - (a) Policing;
  - (b) Regulation; and
  - (c) Administration;
 as a result of the sale of alcoholic beverages within the city or county.
- (5)
  - (a) The Alcoholic Beverage Control Board shall promulgate administrative regulations which set forth the process by which a city or county, in the first year following the discontinuance of prohibition, may estimate any additional policing, regulation, and administrative expenses by a city or county directly

and solely related to the discontinuance of prohibition. This subsection shall apply to any discontinuance of prohibition occurring after the promulgation of administrative regulations required by this subsection.

- (b) After the first year, the regulatory license fee for each subsequent year shall conform to the requirements of subsection (4) of this section.
- (6) The revenue received from the imposition of the regulatory license fee authorized under subsections (1) and (2) of this section shall be:
- (a) Deposited into a segregated fund of the city or county;
  - (b) Spent only in accordance with the requirements of subsections (1) and (2) of this section; and
  - (c) Audited under an annual audit performed pursuant to KRS 43.070, 64.810, and 91A.040.
- (7) Any city or county found by a court to have violated the provisions of this section shall:
- (a) Provide a refund as determined by the court to any licensee that has been harmed in an amount equal to its prorated portion of the excess revenues collected by the city or county that are directly attributable to a violation occurring after July 15, 2014;
  - (b) Be responsible for the payment of the reasonable attorney fees directly incurred by a party to a litigation in an amount ordered by the court upon its finding of an intentional and willful violation of this section by a city or county occurring after July 15, 2014; and
  - (c) Upon the finding by a court of a second intentional and willful violation of the provisions of this section, lose the ability to impose the regulatory fee provided by this section for a period of five (5) years and, upon the finding by a court of a third intentional and willful violation, forfeit the right to impose the regulatory license fee authorized by this section.
- (8) Any party bringing suit against a city or county for an alleged violation of this section occurring after July 15, 2014, shall be responsible for the payment of the reasonable attorney fees of the city or county in an amount determined by the court upon a finding by the court that the city or county did not violate this section.
- (9) (a) Any city that does not meet the population requirements of subsection (1) of this section, and any county that has a city exceeding the population requirements of subsection (1) of this section, that imposed a regulatory license fee pursuant to this section as of January 1, 2019, shall be deemed to meet the requirements for doing so set out in this section and may continue to impose the regulatory license fee previously established pursuant to this section.
- (b) Any city or county that is authorized to impose the regulatory license fee under subsection (1) of this section, or under paragraph (a) of this subsection, that imposed the regulatory license fee at a rate higher than five percent (5%) prior to June 27, 2019, may continue to impose the regulatory license fee at a rate that exceeds five percent (5%). The rate shall continue to be calculated annually pursuant to the requirements of this section and shall not exceed the rate that was imposed by the city or county on January 1, 2019.
- (10) A direct shipper licensee shall **be subject to collect** and remit the regulatory license fee imposed by this section as though it were an establishment located in a city or county licensed to sell alcoholic beverages. This fee shall be considered a tax as defined in KRS 243.029.
- (11) Any city or county imposing a regulatory license fee under this section shall file with the department a report showing the applicable fee amount and remittance address for each affected license type in its jurisdiction on or before August 1, 2020. Any adoption of this fee after July 15, 2020, or modification of the applicable fee amount or remittance address for each affected licensee shall be reported to the department within thirty (30) days of adoption by the city or county imposing the fee. Within twenty (20) days after receipt of the information, the department shall compile and publish the information so that it is readily available to the public.

➔Section 28. KRS 139.010 is amended to read as follows:

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

- (1) (a) "Admissions" means the fees paid for:
  - 1. The right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment or amusement event or venue; and

2. The privilege of using facilities or participating in an event or activity, including but not limited to:
  - a. Bowling centers;
  - b. Skating rinks;
  - c. Health spas;
  - d. Swimming pools;
  - e. Tennis courts;
  - f. Weight training facilities;
  - g. Fitness and recreational sports centers; and
  - h. Golf courses, both public and private;

regardless of whether the fee paid is per use or in any other form, including but not limited to an initiation fee, monthly fee, membership fee, or combination thereof.
- (b) "Admissions" does not include:
  1. Any fee paid to enter or participate in a fishing tournament; or
  2. Any fee paid for the use of a boat ramp for the purpose of allowing boats to be launched into or hauled out from the water;
- (2) "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;
- (3) "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;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Department" means the Department of Revenue;
- (6) (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;
- (7) (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;
- (8) (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;
- (9) (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;
- (10) (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;
- (11) (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.
- (c) "Direct mail" does not include multiple items of printed material delivered to a single address;
- (12) "Directly used in the manufacturing or industrial processing process" means the process that commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends when the finished product is packaged and ready for sale;
- (13) (a) "Extended warranty services" means services provided through a service contract agreement between the contract provider and the purchaser where the purchaser agrees to pay compensation for the contract and the provider agrees to repair, replace, support, or maintain tangible personal property or digital property according to the terms of the contract if:
1. The service contract agreement is sold or purchased on or after July 1, 2018; and
  2. The tangible personal property or digital property for which the service contract agreement is provided is subject to tax under this chapter or under KRS 138.460.
- (b) "Extended warranty services" does not include the sale of a service contract agreement for tangible personal property to be used by a small telephone utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in KRS 65.7621 to deliver communications services as defined in KRS 136.602 or broadband as defined in KRS 278.5461;
- (14) (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;
- (15) (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, digital property, or services 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;
  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; and
  6. The amount charged for labor or services rendered in installing or applying the tangible personal property, digital property, or service sold.
- (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; ~~and~~

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. ***Local alcohol regulatory license fees authorized under Section 27 of this Act that are 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;
- (16) "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;
- (17) "Industrial processing" includes:
- (a) Refining;
  - (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
  - (c) Mining, quarrying, fabricating, and industrial assembling;
  - (d) The processing and packaging of raw materials, in-process materials, and finished products; and
  - (e) The processing and packaging of farm and dairy products for sale;
- (18) (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;
- (19) (a) "Machinery for new and expanded industry" means machinery:
1. Directly used in the manufacturing or industrial processing process of:
    - a. Tangible personal property at a plant facility;
    - b. Distilled spirits or wine at a plant facility or on the premises of a distiller, rectifier, winery, or small farm winery licensed under KRS 243.030 that includes a retail establishment on the premises; or
    - c. Malt beverages at a plant facility or on the premises of a brewer or microbrewery licensed under KRS 243.040 that includes a retail establishment;
  2. Which is incorporated for the first time into:
    - a. A plant facility established in this state; or
    - b. Licensed premises located in this state; and
  3. Which does not replace machinery in the plant facility or licensed premises 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) "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 seller as a condition of sale or as a condition of warranty;
- (20) "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;
- (21) "Marketplace" means any physical or electronic means through which one (1) or more retailers may advertise and sell tangible personal property, digital property, or services, or lease tangible personal property or digital property, such as a catalog, Internet Web site, or television or radio broadcast, regardless of whether the tangible personal property, digital property, or retailer is physically present in this state;
- (22) (a) "Marketplace provider" means a person, including any affiliate of the person, that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this paragraph as follows:
1. The person directly or indirectly:
    - a. Lists, makes available, or advertises tangible personal property, digital property, or services for sale by a marketplace retailer in a marketplace owned, operated, or controlled by the person;
    - b. Facilitates the sale of a marketplace retailer's product through a marketplace by transmitting or otherwise communicating an offer or acceptance of a retail sale of tangible personal property, digital property, or services between a marketplace retailer and a purchaser in a forum including a shop, store, booth, catalog, Internet site, or similar forum;
    - c. Owns, rents, licenses, makes available, or operates any electronic or physical infrastructure or any property, process, method, copyright, trademark, or patent that connects marketplace retailers to purchasers for the purpose of making retail sales of tangible personal property, digital property, or services;
    - d. Provides a marketplace for making retail sales of tangible personal property, digital property, or services, or otherwise facilitates retail sales of tangible personal property, digital property, or services, regardless of ownership or control of the tangible personal property, digital property, or services, that are the subject of the retail sale;
    - e. Provides software development or research and development activities related to any activity described in this subparagraph, if the software development or research and development activities are directly related to the physical or electronic marketplace provided by a marketplace provider;
    - f. Provides or offers fulfillment or storage services for a marketplace retailer;
    - g. Sets prices for a marketplace retailer's sale of tangible personal property, digital property, or services;
    - h. Provides or offers customer service to a marketplace retailer or a marketplace retailer's customers, or accepts or assists with taking orders, returns, or exchanges of tangible personal property, digital property, or services sold by a marketplace retailer; or
    - i. Brands or otherwise identifies sales as those of the marketplace provider; and
  2. The person directly or indirectly:
    - a. Collects the sales price or purchase price of a retail sale of tangible personal property, digital property, or services;



- b. Provides payment processing services for a retail sale of tangible personal property, digital property, or services;
  - c. Through terms and conditions, agreements, or arrangements with a third party, collects payment in connection with a retail sale of tangible personal property, digital property, or services from a purchaser and transmits that payment to the marketplace retailer, regardless of whether the person collecting and transmitting the payment receives compensation or other consideration in exchange for the service; or
  - d. Provides a virtual currency that purchasers are allowed or required to use to purchase tangible personal property, digital property, or services.
- (b) "Marketplace provider" includes but is not limited to a person that satisfies the requirements of this subsection through the ownership, operation, or control of a digital distribution service, digital distribution platform, online portal, or application store;
- (23) "Marketplace retailer" means a seller that makes retail sales through any marketplace owned, operated, or controlled by a marketplace provider;
- (24) (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;
- (25) (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 nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including but not limited to newsletters and informational pieces.
- (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;
- (26) "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;
- (27) "Permanent," as the term applies to digital property, means perpetual or for an indefinite or unspecified length of time;
- (28) "Plant facility" means a single location that is exclusively dedicated to manufacturing or industrial processing activities. A location shall be deemed to be exclusively dedicated to manufacturing or industrial processing activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing or industrial processing activities occurring at the location. The term "plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment;
- (29) (a) "Prewritten computer software" means:

1. Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser;
  2. 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
  3. 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, unless there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement.
- (b) 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.
- (c) 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;
- (30) (a) "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:
1. Tangible personal property;
  2. An extended warranty service;
  3. Digital property transferred electronically; or
  4. Services included in KRS 139.200;
- for a consideration.
- (b) "Purchase" includes:
1. 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;
  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 customer, or of any publication;
- (31) "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;
- (32) "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;
- (33) "Remote retailer" means a retailer with no physical presence in this state;
- (34) (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;
- (35) (a) "Retailer" means:
1. Every person engaged in the business of making retail sales of tangible personal property, digital property, or furnishing any services in a retail sale 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, digital property, or services included in KRS 139.200 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, digital property, or services 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;
- (36) "Retail sale" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent;
- (37) (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;
- (38) (a) "Sale" means:
1. The furnishing of any services included in KRS 139.200;
  2. Any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of:
    - a. Tangible personal property; or
    - b. Digital property transferred electronically;
 for a consideration.
  - (b) "Sale" includes but is not limited to:
    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.
- (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;
- (39) "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;
- (40) (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;
- (41) "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;
- (42) "Taxpayer" means any person liable for tax under this chapter;
- (43) "Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media; and
- (44) (a) "Use" includes the exercise of:
1. 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; or
  2. Any right or power to benefit from extended warranty services.
- (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 29. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to June 30, 2022, the council may award one (1) major certified rehabilitation for a certified historic structure, allowing a tax credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in Section 31 of this Act.*
- (2) *The major certified rehabilitation shall contain the following characteristics:*
- (a) *The certified historic structure was individually listed on the National Register of Historic Places on or before December 31, 1981;*
  - (b) *The size of the certified historic structure exceeds three hundred thousand (300,000) square feet;*
  - (c) *The total project costs exceed fifty million dollars (\$50,000,000);*
  - (d) *Substantial rehabilitation of the certified historic structure begins prior to December 31, 2021; and*
  - (e) *The application for preliminary approval reflects that following the substantial rehabilitation, the certified historic structure will be used as a hotel, tourism destination, or other use supporting or relating to the promotion of tourism to and within the Commonwealth.*
- (3) (a) *The credit shall:*

1. *Equal the percentage of qualified rehabilitation expenses as provided in KRS 171.397(1)(a);*
2. *Only apply to the first thirty million dollars (\$30,000,000) of qualified rehabilitation expenses; and*
3. *Be refundable and transferable.*

*(b) The project approved for a credit under this section:*

1. *Shall not be subject to the maximum credits which may be claimed with regard to owner-occupied residential property or other property that is not owner-occupied residential property established by KRS 171.397; but*
2. *Shall be considered in determining whether the certified rehabilitation credit cap in Section 30 of this Act has been met.*

*(4) Any taxpayer seeking the credit shall file the application for preliminary determination and final determination as provided by KRS 171.397(2).*

*(5) The total approved credit shall be available over a four (4) year period and the maximum credit which may be claimed in a taxable year shall not exceed twenty-five percent (25%) of the total approved credit.*

*(6) The provisions of KRS 171.397(9) to (14) shall also apply to this section.*

➔Section 30. KRS 171.396 is amended to read as follows:

As used in this section and KRS 171.3961 and 171.397:

- (1) "Certified historic structure" means a structure that is located within the Commonwealth of Kentucky that is:
  - (a) Listed individually on the National Register of Historic Places; or
  - (b) Located in a historic district listed on the National Register of Historic Places and is certified by the council as contributing to the historic significance of the district;
- (2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified historic structure that the council certifies meets the United States Secretary of the Interior's Standards for Rehabilitation;
- (3) "Certified rehabilitation credit cap" means an annual amount of:
  - (a) Three million dollars (\$3,000,000) for applications received prior to April 30, 2010; and
  - (b) Five million dollars (\$5,000,000) for applications received on or after April 30, 2010, *but before April 30, 2022; and*
  - (c) *One hundred million dollars (\$100,000,000) for applications received on or after April 30, 2022, allocated with:*
    1. *Twenty-five percent (25%) of the credit cap awarded to owner-occupied residential property; and*
    2. *Seventy-five percent (75%) of the credit cap awarded to property other than owner-occupied residential property, which includes the major certified rehabilitation allowed under Section 29 of this Act;*

plus any amount added to the certified rehabilitation credit cap pursuant to KRS 171.397(2)(c);

- (4) "Council" means the Kentucky Heritage Council;
- (5) "Disqualifying work" means work that is performed within three (3) years of the completion of the certified rehabilitation that, if performed as part of the rehabilitation certified under KRS 171.397, would have made the rehabilitation ineligible for certification;
- (6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of the Internal Revenue Code, any political subdivision of the Commonwealth, any state or local agency, board, or commission, or any quasi-governmental entity;
- (7) "Local government" means a city, county, urban-county, charter county, or consolidated local government;
- (8) "Owner-occupied residential property" means a building or portion thereof, condominium, or cooperative occupied by the owner as his or her principal residence;

- (9) "Qualified rehabilitation expense" means any amount that is properly chargeable to a capital account, whether or not depreciation is allowed under Section 168 of the Internal Revenue Code, and is expended in connection with the certified rehabilitation of a certified historic structure. It shall include the cost of restoring landscaping and fencing that contributes to the historic significance of this structure, but shall not include the cost of acquisition of a certified historic structure, enlargement of or additions to an existing building, or the purchase of personal property;
- (10) "Substantial rehabilitation" means rehabilitation of a certified historic structure for which the qualified rehabilitation expenses, during a twenty-four (24) month period selected by the taxpayer or exempt entity, ending with or within the taxable year, exceed:
- (a) Twenty thousand dollars (\$20,000) for an owner-occupied residential property; or
  - (b) For all other property, the greater of:
    1. The adjusted basis of the structure; or
    2. Twenty thousand dollars (\$20,000);
- (11) "Taxpayer" means any individual, corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted that:
- (a) Elects to claim the credit on a return and receive a refund as provided in KRS 171.397(2)(b)2.a.; or
  - (b) Is the recipient of a credit which is transferred as provided in KRS 171.397(2)(b)2.b.; and
- (12) "Qualified purchased historic home" means any substantially rehabilitated certified historic structure if:
- (a) The taxpayer claiming the credit authorized under KRS 171.397 is the first purchaser of the structure after the date of completion of the substantial rehabilitation;
  - (b) The structure or a portion thereof will be the principal residence of the taxpayer; and
  - (c) No credit was allowed to the seller under this section.

A qualified purchased historic home shall be deemed owner-occupied residential property for purposes of this section.

➔Section 31. KRS 141.0205 is amended to read as follows:

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

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The limited liability entity tax credit permitted by KRS 141.0401;
  - (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
  - (c) The qualified farming operation credit permitted by KRS 141.412;
  - (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (e) The health insurance credit permitted by KRS 141.062;
  - (f) The tax paid to other states credit permitted by KRS 141.070;
  - (g) The credit for hiring the unemployed permitted by KRS 141.065;
  - (h) The recycling or composting equipment credit permitted by KRS 141.390;
  - (i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (j) The research facilities credit permitted by KRS 141.395;
  - (k) The employer High School Equivalency Diploma program incentive credit permitted under KRS 151B.402;
  - (l) The voluntary environmental remediation credit permitted by KRS 141.418;

- (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (n) The clean coal incentive credit permitted by KRS 141.428;
  - (o) The ethanol credit permitted by KRS 141.4242;
  - (p) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (q) The energy efficiency credits permitted by KRS 141.436;
  - (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (s) The Endow Kentucky credit permitted by KRS 141.438;
  - (t) The New Markets Development Program credit permitted by KRS 141.434;
  - (u) The distilled spirits credit permitted by KRS 141.389;
  - (v) The angel investor credit permitted by KRS 141.396;
  - (w) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018, *but before January 1, 2022*;
  - (x) The inventory credit permitted by KRS 141.408; and
  - (y) The renewable chemical production credit permitted by KRS 141.4231.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual credits permitted by KRS 141.020(3);
  - (b) The credit permitted by KRS 141.066;
  - (c) The tuition credit permitted by KRS 141.069;
  - (d) The household and dependent care credit permitted by KRS 141.067; and
  - (e) The income gap credit permitted by KRS 141.066.
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual withholding tax credit permitted by KRS 141.350;
  - (b) The individual estimated tax payment credit permitted by KRS 141.305;
  - (c) The certified rehabilitation credit permitted by KRS 171.3961, ~~and~~ 171.397(1)(b), *and Section 29 of this Act*; and
  - (d) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018, *or on or after January 1, 2022*.
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
  - (b) The qualified farming operation credit permitted by KRS 141.412;
  - (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (d) The health insurance credit permitted by KRS 141.062;
  - (e) The unemployment credit permitted by KRS 141.065;
  - (f) The recycling or composting equipment credit permitted by KRS 141.390;
  - (g) The coal conversion credit permitted by KRS 141.041;

- (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
  - (i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (j) The research facilities credit permitted by KRS 141.395;
  - (k) The employer High School Equivalency Diploma program incentive credit permitted by KRS 151B.402;
  - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (n) The clean coal incentive credit permitted by KRS 141.428;
  - (o) The ethanol credit permitted by KRS 141.4242;
  - (p) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (q) The energy efficiency credits permitted by KRS 141.436;
  - (r) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
  - (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (t) The railroad expansion credit permitted by KRS 141.386;
  - (u) The Endow Kentucky credit permitted by KRS 141.438;
  - (v) The New Markets Development Program credit permitted by KRS 141.434;
  - (w) The distilled spirits credit permitted by KRS 141.389;
  - (x) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018, **but before January 1, 2022**;
  - (y) The inventory credit permitted by KRS 141.408; and
  - (z) The renewable chemical production tax credit permitted by KRS 141.4231.
- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
- (a) The corporation estimated tax payment credit permitted by KRS 141.044;
  - (b) The certified rehabilitation credit permitted by KRS 171.3961, ~~and~~ 171.397(1)(b), **and Section 29 of this Act**; and
  - (c) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018, **or on or after January 1, 2022**.

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

- (1) ***An emergency disaster relief account is hereby created in the road fund.***
- (2) ***The account shall contain moneys directly appropriated by the General Assembly from the road fund.***
- (3) ***Moneys in the emergency disaster relief account shall only be expended on projects specifically designated by the General Assembly in a regular or special session.***
- (4) ***Interest earned on moneys in the account shall accrue to the account.***
- (5) ***All sums appropriated or deposited to the account shall not lapse at the close of the fiscal year but shall carry forward into the next fiscal year.***

➔SECTION 33. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

- (1) ***A veteran service organization may qualify as an institution of purely public charity, as expressed in Section 170 of the Kentucky Constitution, if over fifty percent (50%) of its annual net income is expended on behalf of military veterans and other charitable causes.***



- (2) *If a veteran service organization meets the qualifications in subsection (1) of this section, its property assessed on January 1, 2022, shall not be subject to ad valorem taxation from the state, county, city, school, or other taxing district in which it has a taxable situs. This subsection does not apply to real property which is owned by the veteran service organization and occupied by another entity or person for compensation.*

➔Section 34. KRS 132.010 is amended to read as follows:

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

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

shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and

- (i) The value of improvements to real property previously under assessment moratorium.

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

- (9) "Agricultural land" means:

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

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

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

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

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

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

- (14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner;

- (15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property;

- (16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure;

- (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by

another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home. *As used in this subsection:*

- (a) "Travel trailer" *means* a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms;
  - (b) "Camping trailer" *means* a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use;
  - (c) "Truck camper" *means* a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck; *and*
  - (d) "Motor home" *means* a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle;
- (18) "Hazardous substances" shall have the meaning provided in KRS 224.1-400;
- (19) "Pollutant or contaminant" shall have the meaning provided in KRS 224.1-400;
- (20) "Release" shall have the meaning as provided in either or both KRS 224.1-400 and KRS 224.60-115;
- (21) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.1-400 and 224.1-405, or 224.60-135 where the Energy and Environment Cabinet has made a determination that:
- (a) All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products at the property occurred prior to the property owner's acquisition of the property;
  - (b) The property owner has made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices prior to the acquisition of the property;
  - (c) The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
  - (d) The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;
  - (e) The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and
  - (f) The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.1-400, 224.1-405, or 224.60-135, through:
    - 1. Direct or indirect familial relationship;
    - 2. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
    - 3. Reorganization of a business entity that was potentially liable;
- (22) "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property;
- (23) (a) "County" means any county, consolidated local government, urban-county government, unified local government, or charter county government;
- (b) "Fiscal court" means the legislative body of any county, consolidated local government, urban-county government, unified local government, or charter county government; and

- (c) "County judge/executive" means the chief executive officer of any county, consolidated local government, urban-county government, unified local government, or charter county government;
- (24) "Taxing district" means any entity with the authority to levy a local ad valorem tax, including special purpose governmental entities;
- (25) "Special purpose governmental entity" shall have the same meaning as in KRS 65A.010, and as used in this chapter shall include only those special purpose governmental entities with the authority to levy ad valorem taxes, and that are not specifically exempt from the provisions of this chapter by another provision of the Kentucky Revised Statutes;
- (26) (a) "Broadcast" means the transmission of audio, video, or other signals, through any electronic, radio, light, or similar medium or method now in existence or later devised over the airwaves to the public in general.
- (b) "Broadcast" shall not apply to operations performed by multichannel video programming service providers as defined in KRS 136.602 or any other operations that transmit audio, video, or other signals, exclusively to persons for a fee;
- (27) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, and any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species;
- (28) "Heavy equipment rental agreement" means the short-term rental contract under which qualified heavy equipment is rented without an operator for a period:
- (a) Not to exceed three hundred sixty-five (365) days; or
- (b) That is open-ended under the terms of the contract with no specified end date;
- (29) "Heavy equipment rental company" means an entity that is primarily engaged in a line of business described in Code 532412 or 532310 of the North American Industry Classification System Manual in effect on January 1, 2019; ~~and~~
- (30) "Qualified heavy equipment" means machinery and equipment, including ancillary equipment and any attachments used in conjunction with the machinery and equipment, that is:
- (a) Primarily used and designed for construction, mining, forestry, or industrial purposes, including but not limited to cranes, earthmoving equipment, well-drilling machinery and equipment, lifts, material handling equipment, pumps, generators, and pollution-reducing equipment; and
- (b) Held in a heavy equipment rental company's inventory for:
1. Rental under a heavy equipment rental agreement; or
  2. Sale in the regular course of business; *and*
- (31) ***"Veteran service organization" means an organization wholly dedicated to advocating on behalf of military veterans and providing charitable programs in honor and on behalf of military veterans.***

➔Section 35. The following KRS sections are repealed:

148.542 Definitions for KRS 148.542 to 148.546.

148.544 Purposes of KRS 141.383 and 148.542 to 148.546 -- Kentucky Film Office -- Eligibility for refundable motion picture or entertainment production tax incentives -- Incentives available.

148.546 Application for motion picture or entertainment production tax incentives -- Tax incentive agreement -- Required terms -- Administrative fee -- Review -- Verification of expenditure reports -- Annual reports.

148.548 Kentucky Film Commission -- Functions and purpose -- Members -- Meetings -- Nonvoting ex officio members.

➔Section 36. On January 1, 2022, the affairs of the Kentucky Film Office and the Kentucky Film Commission shall be concluded. Any records, files, documents, equipment, staff, supporting budgets, and any and all unexpended funds associated with the Kentucky Film Office and the Kentucky Film Commission, and all historical files and records related to the motion picture or entertainment production tax incentives shall be transferred to the Secretary of the Kentucky Economic Development Cabinet for the transition to the Kentucky Economic Development Finance Authority. All administrative regulations, decisions, and actions promulgated, made, or taken

by the Kentucky Film Office or the Kentucky Film Commission that have not been repealed or rescinded shall continue in effect after January 1, 2022.

➔Section 37. Sections 3 to 8 and 26 to 28 of this Act take effect July 1, 2021.

➔Section 38. Sections 9 and 10 apply to taxable years beginning on or after January 1, 2022.

➔Section 39. Section 35 of this Act takes effect on January 1, 2022.

➔Section 40. Whereas an appropriation is required to be made to the emergency disaster relief account created in Section 32 of this Act in the current fiscal year, an emergency is declared to exist, and Section 32 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Veto overridden March 29, 2021.**

## CHAPTER 157

### ( HB 258 )

AN ACT relating to the Teachers' Retirement System.

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

➔SECTION 1. A NEW SECTION OF KRS 161.220 TO 161.710 IS CREATED TO READ AS FOLLOWS:

- (1) *Individuals who become nonuniversity members of the Teachers' Retirement System on or after January 1, 2022, shall be provided a foundational plan, which shall be known as the foundational benefit component, a supplemental benefit component established by Section 3 of this Act, and retiree health benefits as provided by KRS 161.675. For purposes of this section, the foundational benefit component includes all benefits provided by KRS 161.220 to 161.716 for individuals who become nonuniversity members of the Teachers' Retirement System on or after January 1, 2022, with the exception of the supplemental benefit component established by Section 3 of this Act and retiree health benefits established by KRS 161.675.*
- (2) *Notwithstanding KRS 161.220 to 161.716, the actuary designated by the board of trustees under Section 12 of this Act shall, as part of the annual valuation of the pension fund, assess the funding levels, unfunded liabilities, and the actuarially required employer contribution rates payable solely on behalf of individuals who first become nonuniversity members on or after January 1, 2022. Computation of the employer contribution rate payable shall be based upon amortizing unfunded liabilities using the level-dollar amortization method.*
- (3) *If, on the basis of the valuation assessment required under subsection (2) of this section, the funding level for the foundational benefit component payable on behalf of individuals who first become nonuniversity members on or after January 1, 2022, falls below ninety percent (90%), the board shall, notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, make one (1) or more of the following changes to maintain the funding level and to contain pension and life insurance benefit costs within the maximum statutory employer contribution rate for the foundational benefit component of eight percent (8%) of annual compensation as provided by subsection (1)(d)1. of Section 8 of this Act:*
  - (a) *Utilize moneys from the stabilization reserve account for nonuniversity membership and employers established by subsection (10)(a) of Section 13 of this Act;*
  - (b) *Utilize prospective mandatory employee and employer contributions to the supplemental benefit component as provided by Section 3 of this Act to provide funding for the foundational benefit component; or*
  - (c) *Prospectively adjust for individuals who become nonuniversity members on or after January 1, 2022, one (1) or more of the following parts of the foundational benefit component:*
    1. *Regular interest rate established by subsection (13)(c) of Section 6 of this Act;*
    2. *The retirement factors established by subsection (1)(f) of Section 10 of this Act;*
    3. *The age and service requirements to retire as established by subsection (2) of Section 9 of this Act;*

4. *The cost-of-living adjustment established by subsection (2) of Section 10 of this Act; or*
5. *The age and service requirements and the retirement allowance provided during the entitlement period under Section 37 of this Act.*

*Notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, the board of trustees may utilize any and all of the above adjustments at any time on all individuals who become nonuniversity members on or after January 1, 2022, in order to maintain the funding level of the foundational benefit component and employer costs as provided by this subsection.*

- (4) *For purposes of this section, "funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the system's actuary in the system's actuarial valuation.*
- (5) *This section shall only apply to individuals who became nonuniversity members of the Teachers' Retirement System on or after January 1, 2022.*
- (6) *The provisions of this section shall not be construed to authorize the board to retroactively restore benefits or eligibility for benefits in the foundational benefit component or supplemental benefit that were previously reduced by the board pursuant to subsection (3)(b) and (c) of this section.*

➔SECTION 2. A NEW SECTION OF KRS 161.220 TO 161.710 IS CREATED TO READ AS FOLLOWS:

- (1) *Individuals who become university members of the Teachers' Retirement System on or after January 1, 2022, shall be provided a foundational plan, which shall be known as the foundational benefit component, a supplemental benefit component established by Section 4 of this Act, and retiree health benefits as provided by KRS 161.675. For purposes of this section, the foundational benefit component includes all benefits provided by KRS 161.220 to 161.716 for individuals who become university members of the Teachers' Retirement System on or after January 1, 2022, with the exception of the supplemental benefit component established by Section 4 of this Act and retiree health benefits established by KRS 161.675.*
- (2) *Notwithstanding KRS 161.220 to 161.716, the actuary designated by the board of trustees under Section 12 of this Act shall, as part of the annual valuation of the pension fund, assess the funding levels, unfunded liabilities, and the actuarially required employer contribution rates payable solely on behalf of individuals who first become university members on or after January 1, 2022. Computation of the employer contribution rate payable shall be based upon amortizing unfunded liabilities using the level-dollar amortization method.*
- (3) *If, on the basis of the valuation assessment required under subsection (2) of this section, the funding level for the foundational benefit component payable on behalf of individuals who first become university members on or after January 1, 2022, falls below ninety percent (90%), the board shall, notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, make one (1) or more of the following changes to maintain the funding level and to contain pension and life insurance benefit costs within the maximum statutory employer contribution rate for the foundational benefit component of five and seven hundred seventy-five thousandths percent (5.775%) of annual compensation as provided by subsection (1)(e)I. of Section 8 of this Act:*
  - (a) *Utilize moneys from the stabilization reserve account for university membership and employers established by subsection (10)(b) of Section 13 of this Act;*
  - (b) *Utilize prospective mandatory employee and employer contributions to the supplemental benefit component as provided by Section 4 of this Act to provide funding for the foundational benefit component; or*
  - (c) *Prospectively adjust for individuals who become university members on or after January 1, 2022, one (1) or more of the following parts of the foundational benefit component:*
    1. *Regular interest rate established by subsection (13)(c) of Section 6 of this Act;*
    2. *The retirement factors established by subsection (1)(g) of Section 10 of this Act;*
    3. *The age and service requirements to retire as established by subsection (2) of Section 9 of this Act;*
    4. *The cost-of-living adjustment established by subsection (2) of Section 10 of this Act; or*

**5. *The age and service requirements and the retirement allowance provided during the entitlement period under Section 37 of this Act.***

*Notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary, the board of trustees may utilize any and all of the above adjustments at any time on all individuals who become university members on or after January 1, 2022, in order to maintain the funding level of the foundational benefit component and employer costs as provided by this subsection.*

- (4) *For purposes of this section, "funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the system's actuary in the system's actuarial valuation.*
- (5) *This section shall only apply to individuals who became university members of the Teachers' Retirement System on or after January 1, 2022.*
- (6) *The provisions of this section shall not be construed to authorize the board to retroactively restore benefits or eligibility for benefits in the foundational benefit component or supplemental benefit that were previously reduced by the board pursuant to subsection (3)(b) and (c) of this section.*

➔SECTION 3. A NEW SECTION OF KRS 161.220 TO 161.710 IS CREATED TO READ AS FOLLOWS:

- (1) *An individual who becomes a nonuniversity member of the Teachers' Retirement System on or after January 1, 2022, shall receive the retirement benefits provided by this section in addition to the retirement benefits provided under Section 10 of this Act. The retirement benefits provided by this section shall be known as the supplemental benefit component.*
- (2) *The supplemental benefit component shall provide a benefit based upon a member's accumulated account balance which shall include:*
  - (a) *Mandatory contributions made by the member as provided by subsection (1)(c)2. of Section 7 of this Act;*
  - (b) *Voluntary contributions made by the member, which may include lump-sum payments;*
  - (c) *Mandatory contributions made by the employer as provided by subsection (1)(d)2. of Section 8 of this Act;*
  - (d) *Voluntary employer contributions; and*
  - (e) *Regular interest, which shall be credited to the member's account annually on June 30 of each fiscal year, by multiplying the member's accumulated account balance in the supplemental benefit component on June 30 of the preceding fiscal year by the regular interest rate.*
- (3) (a) *Member contributions and employer contributions as provided by subsection (2)(a) to (d) of this section shall be credited to the member's account at least monthly as contributions are reported and posted to the system in accordance with KRS 161.560.*
  - (b) *No employer contributions or interest shall be provided to a member who has taken a refund of his or her accumulated account balance as provided by Section 14 of this Act or who has retired and annuitized his or her accumulated account balance as authorized by this section.*
- (4) (a) *Upon termination of employment, a member who has less than five (5) years of service credited under Section 16 of this Act, who elects to take a refund of his or her accumulated account balance as provided by Section 14 of this Act, shall forfeit the accumulated employer contribution, and shall only receive a refund of his or her accumulated contributions.*
  - (b) *Upon termination of employment, a member who has five (5) or more years of service credited under Section 16 of this Act, who elects to take a refund of his or her accumulated account balance as provided by Section 14 of this Act, shall receive a full refund of his or her accumulated account balance.*
- (5) *A nonuniversity member eligible to retire under subsection (2) of Section 9 of this Act may upon retirement, in addition to the other benefits provided by Section 10 of this Act, elect to:*
  - (a) *Have his or her accumulated account balance in the supplemental benefit component annuitized into a lifetime monthly retirement allowance by the system in accordance with the actuarial assumptions and actuarial methods adopted by the board for the supplemental benefit component and in effect on the member's retirement date;*

- (b) *Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options established by the board pursuant to Section 36 of this Act;*
- (c) *Take a distribution of the accumulated account balance in the supplemental benefit component over a period certain as authorized by the board; or*
- (d) *Take a full or partial refund of his or her accumulated account balance as provided by Section 14 of this Act.*

*A member participating in the supplemental benefit component shall not be required to take a distribution or annuitize his or her accumulated account balance in the supplemental benefit component when he or she begins drawing a retirement allowance from the foundational benefit component and may instead choose to begin drawing a distribution or annuitize his or her accumulated account balance in the supplemental benefit component at any date following his or her retirement date from the foundational benefit component.*

- (6) *This section only applies to individuals who become nonuniversity members of the Teachers' Retirement System on or after January 1, 2022.*
- (7) *The board of trustees shall have the authority to utilize or establish any plan or plans authorized under the Internal Revenue Code to provide the benefits set forth in this section.*

➔SECTION 4. A NEW SECTION OF KRS 161.220 TO 161.710 IS CREATED TO READ AS FOLLOWS:

- (1) *An individual who becomes a university member of the Teachers' Retirement System on or after January 1, 2022, shall receive the retirement benefits provided by this section in addition to the retirement benefits provided under Section 10 of this Act. The retirement benefits provided by this section shall be known as the supplemental benefit component.*
- (2) *The supplemental benefit component shall provide a benefit based upon a member's accumulated account balance which shall include:*
  - (a) *Mandatory contributions made by the member as provided by subsection (1)(d)2. of Section 7 of this Act;*
  - (b) *Voluntary contributions made by the member, which may include lump-sum payments;*
  - (c) *Mandatory contributions made by the employer as provided by subsection (1)(e)2. of Section 8 of this Act;*
  - (d) *Voluntary employer contributions; and*
  - (e) *Regular interest, which shall be credited to the member's account annually on June 30 of each fiscal year, by multiplying the member's accumulated account balance in the supplemental benefit component on June 30 of the preceding fiscal year by the regular interest rate.*
- (3) (a) *Member contributions and employer contributions as provided by subsection (2)(a) to (d) of this section shall be credited to the member's account at least monthly as contributions are reported and posted to the system in accordance with KRS 161.560.*
  - (b) *No employer contributions or interest shall be provided to a member who has taken a refund of his or her accumulated account balance as provided by Section 14 of this Act or who has retired and annuitized his or her accumulated account balance as authorized by this section.*
- (4) (a) *Upon termination of employment, a member who has less than five (5) years of service credited under Section 16 of this Act, who elects to take a refund of his or her accumulated account balance as provided by Section 14 of this Act, shall forfeit the accumulated employer contribution, and shall only receive a refund of his or her accumulated contributions.*
  - (b) *Upon termination of employment, a member who has five (5) or more years of service credited under Section 16 of this Act, who elects to take a refund of his or her accumulated account balance as provided by Section 14 of this Act, shall receive a full refund of his or her accumulated account balance.*
- (5) *A university member eligible to retire under subsection (2) of Section 9 of this Act may upon retirement, in addition to the other benefits provided by Section 10 of this Act, elect to:*



- (a) *Have his or her accumulated account balance in the supplemental benefit component annuitized into a lifetime monthly retirement allowance by the system in accordance with the actuarial assumptions and actuarial methods adopted by the board for the supplemental benefit component and in effect on the member's retirement date;*
- (b) *Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options established by the board pursuant to Section 36 of this Act;*
- (c) *Take a distribution of the accumulated account balance in the supplemental benefit component over a period certain as authorized by the board; or*
- (d) *Take a full or partial refund of his or her accumulated account balance as provided by Section 14 of this Act.*

*A member participating in the supplemental benefit component shall not be required to take a distribution or annuitize his or her accumulated account balance in the supplemental benefit component when he or she begins drawing a retirement allowance from the foundational benefit component and may instead choose to begin drawing a distribution or annuitize his or her accumulated account balance in the supplemental benefit component at any date following his or her retirement date from the foundational benefit component.*

- (6) *This section only applies to individuals who become university members of the Teachers' Retirement System on or after January 1, 2022.*
- (7) *The board of trustees shall have the authority to utilize or establish any plan or plans authorized under the Internal Revenue Code to provide the benefits set forth in this section.*

➔Section 5. KRS 161.155 is amended to read as follows:

- (1) As used in this section:
  - (a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;
  - (b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;
  - (c) "Immediate family" shall mean the teacher's or employee's spouse, children including stepchildren and foster children, grandchildren, daughters-in-law and sons-in-law, brothers and sisters, parents and spouse's parents, and grandparents and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's or employee's home;
  - (d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers or employees for use by teachers or employees who have exhausted all sick leave and other available paid leave days; and
  - (e) "Assault" shall mean an act that intentionally causes injury so significant that the victim is determined to be, by certification of a physician or surgeon duly qualified under KRS Chapter 342, incapable of performing the duties of his or her job.
- (2) Each district board of education shall allow to each teacher and full-time employee in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher or employee if he or she presents a personal affidavit or a certificate of a physician stating that the teacher or employee was ill, that the teacher or employee was absent for the purpose of attending to a member of his or her immediate family who was ill, or for the purpose of mourning a member of his or her immediate family. The ten (10) days of sick leave granted in this subsection may be taken by a teacher or employee on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher or employee under the provisions of subsection (4) of this section.
- (3) A school district shall coordinate among the income and benefits from workers' compensation, temporary disability retirement, and district payroll and benefits so that there is no loss of income or benefits to a teacher or employee for work time lost because of an assault while performing the teacher's or employee's assigned duties for a period of up to one (1) year after the assault. In the event a teacher or employee suffers an assault while performing his or her assigned duties that results in injuries that qualify the teacher or employee for

workers' compensation benefits, the district shall provide leave to the teacher or employee for up to one (1) year after the assault with no loss of income or benefits under the following conditions:

- (a) The district shall pay the salary of the teacher or employee between the time of the assault and the time the teacher's or employee's workers' compensation income benefits take effect, or the time the teacher or employee is certified to return to work by a physician or surgeon duly qualified under KRS Chapter 342, whichever is sooner;
  - (b) The district shall pay, for up to one (1) year from the time of the assault, the difference between the salary of the teacher or employee and any workers' compensation income benefits received by the teacher or employee resulting from the assault. Payments by the district shall include payments for intermittent work time missed as a result of the assault during the one (1) year period. If the teacher's or employee's workers' compensation income benefits cease during the one (1) year period after the assault, the district shall also cease to make payments under this paragraph;
  - (c) The Commonwealth, through the Kentucky Department of Education, shall make the employer's health insurance contribution during the period that the district makes payments under paragraphs (a) and (b) of this subsection;
  - (d) The Commonwealth, through the Kentucky Department of Education, shall make the employer's contribution to the retirement system in which the teacher or employee is a member during the period that the district makes payments under paragraphs (a) and (b) of this subsection; and
  - (e) Payments to a teacher or employee under paragraphs (a) and (b) of this subsection shall be coordinated with workers' compensation benefits under KRS Chapter 342, disability retirement benefits for teachers under KRS 161.661 to 161.663, and disability retirement benefits for employees under KRS 61.600 to 61.621 and 78.545 so that the teacher or employee receives income equivalent to his or her full contracted salary, but in no event shall the combined payments exceed one hundred percent (100%) of the teacher's or employee's full contracted salary.
- (4) Days of sick leave not taken by an employee or a teacher during any school year shall accumulate without limitation and be credited to that employee or teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow employees or teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to an employee or a teacher shall remain so credited in the event he or she transfers his or her place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district.
  - (5) Accumulated days of sick leave shall be granted to a teacher or employee if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher or employee is unable to commence his or her duties on the opening day of the school year, but will be able to assume his or her duties within a period of time that the board determines to be reasonable.
  - (6) Any school teacher or employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.
  - (7) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher or employee may annually contribute to the bank and limitations upon the number of days a teacher or employee may annually draw from the bank. Only those teachers or employees who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher or employee. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.
  - (8) (a) A district board of education shall establish a sick leave donation program to permit teachers or employees to voluntarily contribute sick leave to teachers or employees in the same school district who are in need of an extended absence from school. A teacher or employee who has accrued more than fifteen (15) days' sick leave may request the board of education to transfer a designated amount of sick leave to another teacher or employee who is authorized to receive the sick leave donated. A teacher or employee may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

- (b) A teacher or employee may receive donations of sick leave if:
1. a. The teacher or employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher or employee to be absent for at least ten (10) days; or
    - b. The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;
  2. The teacher's or employee's need for the absence and use of leave are certified by a licensed physician for leave requested under subparagraph 1.a. of this subsection;
  3. The teacher or employee has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and
  4. The teacher or employee has complied with the school district's policies governing the use of sick leave.
- (c) While a teacher or employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.
- (d) Any sick leave that remains unused, is not needed by a teacher or employee, and will not be needed in the future shall be returned to the teacher or employee donating the sick leave.
- (e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.
- (9) A teacher or employee may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.
- (10) (a) After July 1, 1982, ~~and except as otherwise provided by this subsection,~~ a district board of education may compensate, at the time of retirement or upon the death of a member in active contributing status at the time of death who was eligible to retire by reason of service, an employee or a teacher, or the estate of an employee or teacher, for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%).
- (b) ***Except as provided in paragraph (c) of this subsection,*** payment for unused sick leave days ***under this subsection*** ~~not to exceed the amount based upon the unused sick leave days accrued as of December 31, 2018,~~ shall be incorporated into the ***annual salary*** ~~annual compensation~~ of the final year of service for inclusion in the calculation of the employee's or teacher's retirement allowance only at the time of his or her initial retirement, ~~if~~ provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.
- (c) ***For a teacher or employee who becomes a nonuniversity member of the Teachers' Retirement System on or after January 1, 2022, as provided by Section 6 of this Act, payment for unused sick leave days under this subsection shall not be incorporated into the annual compensation used to calculate the teacher's or employee's retirement allowance in the foundational benefit component as described by Section 1 of this Act but may be deposited into the nonuniversity member's supplemental benefit component as provided by Section 3 of this Act.***
- ~~(d)(b)~~ For a teacher or employee who begins employment with a local school district on or after July 1, 2008, the maximum amount of unused sick leave days a district board of education may recognize in calculating the payment of compensation to the teacher or employee under this subsection shall not exceed three hundred (300) days.
- (11) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (10) of this section.

(12) The death benefit provided in subsection (10) of this section may be cited as the Baughn Benefit.

➔Section 6. KRS 161.220 is repealed, reenacted, and amended to read as follows:

As used in KRS 161.220 to 161.716 and 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, employees participating in the system pursuant to KRS 196.167(3)(b)1., and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
  - (a) Local boards of education;
  - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;
  - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
  - (d) The Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;
  - (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
  - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included, ~~except as limited by KRS 161.612~~. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;
  - (g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;
  - (h) The Office of Career and Technical Education, except that the executive director shall not be a member;
  - (i) The Office of Vocational Rehabilitation;
  - (j) The Kentucky Educational Collaborative for State Agency Children;
  - (k) The Governor's Scholars Program;
  - (l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member, except that any person who *becomes a member* ~~retires~~ on or after January 1, ~~2022~~~~2019~~, **and subsequently draws a monthly lifetime retirement allowance**, shall upon reemployment after retirement not earn a second retirement account;

- (m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;
  - (n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS ~~161.235,~~ 161.540~~1,~~ and 161.620;
  - (o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000;
  - (p) Employees of the Kentucky Department of Education only who are graduates of a four (4) year college or university, notwithstanding a substitution clause within a job classification, and who are serving in a professional job classification as defined by the department;
  - (q) The Governor's School for Entrepreneurs Program; and
  - (r) Employees of the Office of Adult Education within the Department of Workforce Investment in the Education and Workforce Development Cabinet who were employees of the Council on Postsecondary Education, Kentucky Adult Education Program and who were members of the Kentucky Teachers' Retirement System at the time the Program was transferred to the cabinet pursuant to Executive Orders 2019-0026 and 2019-0027.
- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
  - (6) "New teacher" means any member not a present teacher;
  - (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
  - (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
  - (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for *individuals who become* members *prior to January 1, 2022*, who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement *for individuals who become members prior to January 1, 2022, or within the five (5) years immediately prior to the date of the member's retirement for individuals who become members on or after January 1, 2022*, the amount of salary to be included for each of those three (3) years *or five (5) years, as applicable*, for the purpose of calculating the final average salary shall be limited to the lesser of:

- (a) The member's actual salary; or
- (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years *or five (5) years, as applicable*, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave if the individual becomes a member before July 1, 2008, or accrued sick leave which is authorized by statute and which shall, *for individuals subject to subsection (10) of Section 5 of this Act who became nonuniversity members of the system prior to January 1, 2022*, be included as part of a retiring member's annual compensation for the member's last year of active service ~~[as provided by KRS 161.155]~~;

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;
- (13) "Regular interest" means:
  - (a) *For an individual who becomes a member prior to July 1, 2008*, interest at three percent (3%) per annum; ~~[except]~~;
  - (b) ~~[(a)]~~ For an individual who becomes a member on or after July 1, 2008, but prior to January 1, 2022~~[2019]~~, ~~["regular interest" means]~~ interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment; and
  - (c) ~~[(b)]~~ For an individual who becomes a member on or after January 1, 2022~~[2019]~~, ~~[who is participating in the hybrid cash-balance plan, "regular interest" means]~~ *the rolling five (5) year yield on a thirty (30) year United States Treasury bond as of the end of May prior to the most recently completed fiscal year, except that:*
    - 1. *Once the member has at least sixty (60) months of service in the system it shall mean interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to employee contributions in the foundational benefit component or any other contributions made by the employee to the foundational benefit component that are refundable to the employee upon termination of employment; and*

2. *The board shall have the authority to adjust the regular interest rate for individuals who become members on or after January 1, 2022, in accordance with Sections 1 and 2 of this Act*~~[the regular interest credited to the member's accumulated account balance as provided by KRS 161.235];~~

- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;
- (21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;
- (22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400;
- (23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick leave~~[authorized by KRS 161.155]~~, annual, personal, and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1, 2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation;
- (24) "Participant" means a member, as defined by subsection (4) of this section, or an annuitant, as defined by subsection (15) of this section;
- (25) "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;
- (26) "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;
- (27) "University member" means an individual who becomes a member through employment with an employer specified in subsection (4)(b) and (n) of this section;
- (28) "Nonuniversity member" means an individual who becomes a member through employment with an employer specified under subsection (4) of this section, except for those members employed by an employer specified in subsection (4)(b) and (n) of this section;
- (29) "Accumulated employer *contribution*~~[credit]~~" means the employer *contribution*~~[pay credit]~~ deposited to a ~~the~~ member's account *through the supplemental benefit component* and regular interest credited on such

amounts as provided by *Section 3 of this Act for nonuniversity members and Section 4 of this Act for university members*~~[KRS 161.235]; [and]~~

- (30) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, ~~2022~~[2019], the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, ~~2022~~[2019], ~~in the hybrid cash balance plan as provided by KRS 161.235,~~ the combined sum of the member's accumulated contributions and the member's accumulated employer ~~contributions~~~~[credit]~~;
- (31) *"Foundational benefit component" means the benefits provided by KRS 161.220 to 161.716 to individuals who become members on or after January 1, 2022, except for the supplemental benefit component and retiree health benefits set forth in KRS 161.675; and*
- (32) *"Supplemental benefit component" means:*
- (a) *The benefit established pursuant to Section 3 of this Act for individuals who become nonuniversity members on or after January 1, 2022; or*
  - (b) *The benefit established pursuant to Section 4 of this Act for individuals who become university members on or after January 1, 2022.*

➔Section 7. KRS 161.540 is repealed, reenacted, and amended to read as follows:

- (1) (a) ~~[Effective January 1, 2019, ]~~Each individual who *becomes*~~[is]~~ a contributing nonuniversity member *prior to January 1, 2022*, shall contribute to the retirement system twelve and eight hundred fifty-five thousandths percent (12.855%) of annual compensation, of which:
1. Nine and one hundred five thousandths percent (9.105%) of annual compensation shall be used to fund pension benefits; and
  2. Three and three-quarters percent (3.75%) of annual compensation shall be used to fund retiree health benefits.
- (b) ~~[Effective January 1, 2019, ]~~Each individual who *becomes*~~[is]~~ a contributing university member *prior to January 1, 2022*, shall contribute to the retirement system ten and four-tenths percent (10.4%) of annual compensation, of which:
1. Seven and six hundred twenty-five thousandths percent (7.625%) of annual compensation shall be used to fund pension benefits; and
  2. Two and seven hundred seventy-five thousandths percent (2.775%) of annual compensation shall be used to fund retiree health benefits.
- (c) *Each individual who becomes a contributing nonuniversity member on or after January 1, 2022, shall contribute to the retirement system fourteen and three-quarters percent (14.75%) of annual compensation, of which:*
1. *Nine percent (9%) of annual compensation shall be used to fund pension benefits in the foundational benefit component as described by Section 1 of this Act. The contribution provided by this subparagraph shall not be used to fund the supplemental benefit account as provided by Section 3 of this Act;*
  2. *Two percent (2%) of annual compensation shall fund the required employee contribution in the supplemental benefit component in Section 3 of this Act, except that the board may direct these contributions on a prospective basis into the pension and life insurance funds to contain costs of the foundational benefit component within the provisions of Section 1 of this Act; and*
  3. *Three and three-quarters percent (3.75%) of annual compensation shall be used to fund retiree health benefits.*
- (d) *Each individual who becomes a contributing university member on or after January 1, 2022, shall contribute to the retirement system nine and seven hundred seventy-five thousandths percent (9.775%) of annual compensation, of which:*
1. *Five percent (5%) of annual compensation shall be used to fund pension benefits in the foundational benefit component as described by Section 2 of this Act. The contribution*



*provided by this subparagraph shall not be used to fund the supplemental benefit account as provided by Section 4 of this Act;*

2. *Two percent (2%) of annual compensation shall fund the required employee contribution in the supplemental benefit component in Section 4 of this Act, except that the board may direct these contributions on a prospective basis into the pension and life insurance funds to contain costs of the foundational benefit component within the provisions of Section 2 of this Act; and*
3. *Two and seven hundred and seventy-five thousandths percent (2.775%) of annual compensation shall be used to fund retiree health benefits.*

~~(e)(c)~~ When the medical insurance fund established under KRS 161.420(5) achieves a sufficient prefunded status as determined by the retirement system's actuary, the board of trustees shall recommend to the General Assembly that the contributions required under paragraph (a)2., ~~(b)2., (c)3., or (d)3.~~ of this subsection shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated.

~~(f)(d)~~ Payments authorized by statute that are made to retiring members, who became members of the system before July 1, 2008, for not more than sixty (60) days of unused accrued annual leave shall be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. The contribution of members shall not exceed these applicable percentages on annual compensation. When a member retires, if it is determined that he has made contributions on a salary in excess of the amount to be included for the purpose of calculating his final average salary, any excess contribution shall be refunded to him in a lump sum at the time of the payment of his first retirement allowance. In the event a member is awarded a court-ordered back salary payment the employer shall deduct and remit the member contribution on the salary payment, plus interest to be paid by the employer, to the retirement system unless otherwise specified by the court order.

- (2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010. The picked-up member contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.

➔Section 8. KRS 161.550 is repealed, reenacted, and amended to read as follows:

- (1) ~~[(a) — Effective July 1, 2020, and for each fiscal year occurring thereafter, ]~~Each employer, except as provided under KRS 161.555, shall contribute annually to the Teachers' Retirement System a ~~base~~ permanent employer contribution *rate on behalf of each employee it employs* equal to:

~~(a)1.]~~ Thirteen and one hundred five thousandths percent (13.105%) of the total annual compensation of nonuniversity members *who become members prior to July 1, 2008. Of this permanent employer contribution rate* ~~[it employs, of which]:~~

~~1a.]~~ Twelve and three hundred fifty-five thousandths percent (12.355%) of the total annual compensation shall be used to fund pension and life insurance benefits; and

~~2b.]~~ Three-quarters of a percent (0.75%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under KRS 161.420(5). If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subparagraph in that trust fund; ~~and~~

~~(b)~~ *Fourteen and one hundred five thousandths percent (14.105%) of the total annual compensation of nonuniversity members who become members on or after July 1, 2008, but prior to January 1, 2022. Of this permanent employer contribution rate:*

1. *Thirteen and three hundred fifty-five thousandths percent (13.355%) of the total annual compensation shall be used to fund pension and life insurance benefits; and*

2. *Three-quarters of a percent (0.75%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under subsection (5) of Section 13 of this Act. If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subparagraph in that trust fund;*
- (c)~~2.~~ *Thirteen and sixty-five hundredths percent (13.65%) of the total annual compensation of university members who become members prior to January 1, 2022. Of this permanent employer contribution rate*~~[of the retirement system it employs, of which]:~~
- 1~~a.~~ *Ten and eight hundred seventy-five thousandths percent (10.875%) of the total annual compensation shall be used to fund pension and life insurance benefits; and*
- 2~~b.~~ *Two and seven hundred seventy-five thousandths percent (2.775%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under KRS 161.420(5). If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subparagraph in that trust fund*~~];~~
- (d) *Ten and three-quarters percent (10.75%) of the total annual compensation of nonuniversity members who become members on or after January 1, 2022. Of this permanent employer contribution rate:*
1. *Eight percent (8%) of the total annual compensation shall be used to fund pension and life insurance benefits. The contribution provided by this subparagraph shall not be used to fund the supplemental benefit account as provided by Section 3 of this Act;*
2. *Two percent (2.0%) of the total annual compensation shall be used to fund the mandatory employer contribution of the supplemental benefit component, except that the board may direct these contributions on a prospective basis into the pension and life insurance funds to contain costs within the provisions of Section 1 of this Act; and*
3. *Three-quarters of one percent (0.75%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under subsection (5) of Section 13 of this Act. If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subdivision in that trust fund; and*
- (e) *Nine and seven hundred seventy-five thousandths percent (9.775%) of total annual compensation of university members who become members on or after January 1, 2022. Of this permanent employer contribution rate:*
1. *Five and seven hundred seventy-five thousandths percent (5.775%) of the total annual compensation shall be used to fund pension and life insurance benefits. The contribution provided by this subparagraph shall not be used to fund the supplemental benefit account as provided by Section 4 of this Act;*
2. *Two percent (2.0%) of the total annual compensation shall be used to fund the mandatory employer contribution of the supplemental benefit component, except that the board may direct these contributions on a prospective basis into the pension and life insurance funds to contain costs within the provisions of Section 2 of this Act; and*
3. *Two percent (2.0%) of annual compensation shall be used to provide funding to the medical insurance fund as provided under subsection (5) of Section 13 of this Act. If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution provided in this subparagraph in that trust fund.*
- ~~(b) Effective July 1, 2020, and for each year thereafter, each employer shall pay the additional contributions needed to fund the Teachers' Retirement System pension fund and life insurance fund on an actuarially sound basis as determined by the system's actuarial valuation completed in accordance with KRS 161.400 and as specified by this section. The amount payable under the provisions of this paragraph shall:~~
1. ~~Be in addition to the amounts provided under paragraph (a)1.a. and (a)2.a. of this subsection;~~
2. ~~Not include the cost or funding of benefits established by KRS 161.553; and~~
3. ~~Shall be prorated to each employer based upon the individual employer's average percentage of the total compensation reported by all employers in the system in fiscal years 2014-2015, 2015-~~

~~2016, and 2016-2017, except that the amount shall be paid by state appropriation only for those employers who cover memberships specified by KRS 161.220(4)(a).~~

- ~~(c) The contributions payable under paragraphs (a)1.a., (a)2.a., and (b) of this subsection by employers and the state shall be equal to the sum of the "normal cost" contribution and the "actuarially accrued liability contribution," except that the minimum contribution to fund pension and life insurance benefits shall not be less than the combined employer contribution to fund pension and life insurance benefits specified by paragraph (a) of this subsection and subsection (3) of this section.~~
- ~~(d) For purposes of this subsection, the normal cost contribution shall be computed as a percentage of payroll and shall be an annual amount that is sufficient when combined with employee contributions to fund pension and life insurance benefits earned during the year, including costs for members participating in the hybrid cash balance plan.~~
- ~~(e) For purposes of this subsection, the actuarially accrued liability contribution shall be an annual amount that is sufficient to amortize the total unfunded actuarially accrued liability over a closed period of thirty (30) years using:
 
  - ~~1. The level percentage of payroll amortization method in the 2018 actuarial valuation with a payroll growth assumption of two and six hundred twenty five thousandths percent (2.625%);~~
  - ~~2. The level percentage of payroll amortization method in the 2019 actuarial valuation with a payroll growth assumption of one and seventy five hundredths percent (1.75%);~~
  - ~~3. The level percentage of payroll amortization method in the 2020 actuarial valuation with a payroll growth assumption of eight hundred seventy five thousandths percent (0.875%); and~~
  - ~~4. The level dollar amortization method in the 2021 actuarial valuation and for each valuation occurring thereafter.~~

~~— The amortization period shall be reset to a new thirty (30) year closed period beginning with the 2018 actuarial valuation.~~~~
- ~~(f) Effective with the 2018 actuarial valuation, which determines the employer rates payable on or after July 1, 2020, the employer contributions computed under this section shall be determined using:
 
  - ~~1. The entry age normal cost funding method;~~
  - ~~2. An asset smoothing method that smooths gains and losses over a five (5) year period; and~~
  - ~~3. Other funding methods and assumptions established by the board in accordance with KRS 161.400.]~~~~

- (2) In addition to the required contributions in subsection (1) of this section, the state shall contribute annually to the ~~[Kentucky]~~ Teachers' Retirement System a percentage of the total salaries of the state-funded and federally funded members it employs to pay the cost of health insurance coverage for retirees who are not eligible for Medicare and who retire on or after July 1, 2010, less the amounts that are otherwise required to be paid by the retirees under KRS 161.675. ~~[The Kentucky Teachers' Retirement System may also request an additional amount necessary to ensure payment of medical insurance costs through fiscal year 2015-2016 which shall not be subject to the limitations of paragraph (c) of this subsection.]~~ The board shall deposit funds in the medical insurance fund unless the board of trustees has established a trust fund under 26 U.S.C. sec. 115 for this purpose. In this case, the board may deposit the employer contribution in that trust fund. This contribution shall be known as the state medical insurance fund stabilization contribution. The percentage to be contributed by the state under this subsection:
- (a) Shall be determined by the retirement system's actuary for each biennial budget period;
  - (b) May be suspended or adjusted by the General Assembly if in its judgment the welfare of the Commonwealth so demands; and
  - (c) Shall not exceed the lesser of the actual benefit cost for retirees not eligible for Medicare who retire on or after July 1, 2010, or the amount contributed by employers under subsection (3) of this section.

- (3) ~~Effective January 1, 2019,~~ All employers who employ nonuniversity members shall make a contribution for each payroll on behalf of their active employees who participate in the Teachers' Retirement System in an amount equal to:
- ~~(a) — three percent (3%) of payroll of those active employees. The contribution specified by this subsection [paragraph that is paid on or after January 1, 2019,] shall be used to fund retiree health benefits [; and~~
- ~~(b) — Two percent (2%) of payroll for those members who participate in the hybrid cash balance plan as provided by KRS 161.235. The amount of funding provided by this paragraph shall be used to offset any additional costs paid under subsection (1)(b) of this section].~~
- (4) *When the medical insurance fund established under subsection (5) of Section 13 of this Act achieves a sufficient prefunded status as determined by the Teachers' Retirement System's actuary, the board of trustees shall recommend to the General Assembly that the contributions required under subsections (1)(c)2. and (e)3. and (3) of this section shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated. The decrease, suspension, or elimination in contributions required under subsection (1)(c)2. of this section shall not exceed two and twenty-five thousandths percent (2.025%) of annual compensation. The decrease, suspension, or elimination in contributions required under subsection (1)(e)3. of this section shall not exceed one and twenty-five hundredths percent (1.25%) of annual compensation.*
- (5) *Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of Sections 5, 17(4), 18, 22, 32, and 33 and KRS 161.168, 161.553, and 161.620(1), (3), (5), (6), and (7). In the event an annual appropriation [for the amounts specified by subsection (1)(a)1. of this section] is less than the amount of these requirements, the state shall make up the deficit in the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members. **This subsection shall not apply to costs applicable to individuals who become members on or after January 1, 2022.***

➔Section 9. KRS 161.600 is repealed, reenacted, and amended to read as follows:

- (1) ~~Effective July 1, 1988,~~ **An individual who becomes** a member of the retirement system **prior to January 1, 2022,** may qualify for service retirement by meeting one (1) of the following requirements:
- (a) Attainment of age sixty (60) years and completion of five (5) years of Kentucky service;
- (b) 1. For an individual who becomes a member before July 1, 2008, attainment of age fifty-five (55) years and completion of a minimum of five (5) years of Kentucky service with an actuarial reduction of the basic allowance of five percent (5%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than twenty-seven (27), whichever is the lesser number; and
2. For an individual who becomes a member on or after July 1, 2008, attainment of age fifty-five (55) years and completion of a minimum of ten (10) years of Kentucky service with an actuarial reduction of the basic retirement allowance of six percent (6%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than twenty-seven (27), whichever is the lesser number;
- (c) Completion of twenty-seven (27) years of Kentucky service. Out-of-state service earned in accordance with the provisions of KRS 161.515(2) may be used to meet this requirement; or
- (d) Completion of the necessary years of service under provisions of KRS 61.559(2)(c) if the member is retiring under the reciprocity provisions of KRS 61.680. A member retiring under this paragraph who has not attained age fifty-five (55) shall incur an actuarial reduction of the basic allowance determined by the system's actuary for each year the member's service credit is less than twenty-seven (27).
- (2) **An individual who becomes a member of the retirement system on or after January 1, 2022, shall, except as adjusted by the board pursuant to Section 1 or 2 of this Act, as applicable, be eligible to retire upon attainment of:**
- (a) **Age sixty-five (65) and completion of a minimum of five (5) years of Kentucky service;**
- (b) **Age sixty (60) and completion of a minimum of ten (10) years of Kentucky service;**

- (c) *Age fifty-seven (57) and completion of a minimum of thirty (30) years of Kentucky service; or*
- (d) *Age fifty-seven (57) and completion of a minimum of ten (10) years of Kentucky service with an actuarial reduction of the basic retirement allowance of six percent (6%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than thirty (30), whichever is the lesser number.*
- (3) Any person who has been a member in Kentucky for twenty-seven (27) years or more and who withdraws from covered employment may continue to pay into the fund each year until the end of the fiscal year in which he reaches the age of sixty-five (65) years, the current contribution rate based on the annual compensation received during the member's last full year in covered employment, less any payment received for accrued sick leave or accrued leave from an employer. The member shall be entitled to receive a retirement allowance as provided in KRS 161.620 at any time after withdrawing from covered employment and payment of contributions under this subsection. No member shall make contributions as provided for in this subsection if the member is at the same time making contributions to another retirement system in Kentucky supported wholly or in part by public funds.
- ~~(4)(3)~~ Service credit in the Kentucky Employees Retirement System, the State Police Retirement System, the Legislators' Retirement Plan, the County Employees Retirement System, or the Judicial Retirement System may be used in meeting the service requirements of *subsections*~~subsection~~ (1)(a) ~~to~~ ~~(b), and~~ (c) *and* (2) of this section, provided the service is subsequent to July 1, 1956.
- ~~(5)(4)~~ Upon death, disability, or service retirement, a member's accounts under all state supported retirement systems shall be consolidated, as provided by this section and by KRS 61.680, for the purpose of determining eligibility and amount of benefits, which shall include medical benefits. Upon determination of benefits, each system shall pay the applicable percentage of total benefits. The effective date of retirement under this subsection shall be determined by each retirement system for the portion of the payments that will be made.
- ~~(6)(5)~~ No retirement annuity shall be effective until written application and option election forms are filed with the retirement office in accordance with administrative regulations of the board of trustees. A member may withdraw his or her retirement application, postpone his or her effective retirement date, or change his or her retirement option if these elections are made no later than the fifteenth day of the month in which the member has made application for retirement.
- ~~(7)(6)~~ The surviving spouse of an active contributing member, if named as beneficiary of the member's account, may purchase retirement credit that the member was eligible to purchase prior to the member's death.
- ~~(7) Effective January 1, 2019, subsections (1) to (3) of this section do not apply to individuals who become members of the Teachers' Retirement System on or after January 1, 2019. Individuals who become members of the Teachers' Retirement System on or after January 1, 2019, shall receive the retirement benefits prescribed by KRS 161.235.~~

➔Section 10. KRS 161.620 is repealed, reenacted, and amended to read as follows:

- (1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:
- (a) For retirements effective July 1, 1998, and thereafter, except as otherwise provided by this section, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all nonuniversity members. ***Except as otherwise provided by this section,*** the annual retirement allowance for each year of service performed by members of the Teachers' Retirement System who are university members shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as provided in this section;
- (b) For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, who upon retirement have earned less than ten (10) full years of service credit, the retirement allowance shall be two percent (2%) of the member's final average salary for each year of service. For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, and who upon retirement have earned at least ten (10) full years of service credit, the annual allowance for each year of service shall be two and one-half percent (2.5%) of the member's final average salary;

- (c) The board of trustees may approve for members who initially retire on or after July 1, 2004, and who become nonuniversity members before July 1, 2008, a retirement allowance of three percent (3%) of the member's final average salary for each year of service credit earned in excess of thirty (30) years.

This three percent (3%) factor shall be in lieu of the two and one-half percent (2.5%) factor provided for in paragraph (b) of this subsection for every year or fraction of a year of service in excess of thirty (30) years. Upon approval of this three percent (3%) retirement factor, the board of trustees may establish conditions of eligibility regarding the type of service credit that will qualify for meeting the requirements of this subsection. This subsection is optional with the board of trustees and shall not be subject to KRS 161.714;

- (d) For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2008, **but prior to January 1, 2022**, the retirement allowance shall be:

1. a. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;
- b. Two percent (2%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
- c. Two and three-tenths percent (2.3%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or
- d. Two and one-half percent (2.5%) of the member's final average salary for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and
2. Three percent (3%) of the member's final average salary for each year of service earned in excess of thirty (30) years of service at retirement subject to the same terms and conditions as set forth in paragraph (c)2. of this subsection;

- (e) For individuals who become university members of the Teachers' Retirement System on or after July 1, 2008, **but prior to January 1, 2022**, the retirement allowance shall be:

1. One and one-half percent (1.5%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;
2. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
3. One and eighty-five hundredths percent (1.85%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but less than twenty-seven (27) years of service at retirement; or
4. Two percent (2%) of the member's final average salary for each year of service if the member has earned twenty-seven (27) or more years of service at retirement;

- (f) ***For individuals who become nonuniversity members of the Teachers' Retirement System on or after January 1, 2022, the retirement allowance shall, except as adjusted by the board pursuant to Section 1 of this Act, be the following percentage of the member's final average salary for each year of service:***

1. ***One and seven-tenths percent (1.7%), which shall be increased incrementally each month the member's age at retirement is greater than sixty (60) so that the incremental increase is four one-hundredths of one percent (0.04%) for each complete additional year of age at retirement in excess of sixty (60), not to exceed a value of one and nine-tenths percent (1.9%) at age sixty-five (65) or greater; plus***
2. a. ***One-quarter of one percent (0.25%), if the member has earned at least twenty (20) but less than thirty (30) years of service at retirement; or***
- b. ***One-half of one percent (0.50%), if the member has earned thirty (30) or more years of service at retirement;***

(g) *For individuals who become university members of the Teachers' Retirement System on or after January 1, 2022, the retirement allowance shall, except as adjusted by the board pursuant to Section 2 of this Act, be the following percentage of the member's final average salary for each year of service:*

1. *Seven-tenths of one percent (0.7%), which shall be increased incrementally each month the member's age at retirement is greater than sixty (60) so that the incremental increase is four one-hundredths of one percent (0.04%) for each complete additional year of age in excess of sixty (60), not to exceed a value of nine-tenths of one percent (0.9%) at age sixty-five (65) or greater; plus*
2. *a. One-quarter of one percent (0.25%), if the member has earned at least twenty (20) but less than thirty (30) years of service at retirement; or*  
*b. One-half of one percent (0.50%), if the member has earned thirty (30) or more years of service at retirement; and*

~~(h)(4)~~ The retirement allowance of a member at retirement, as measured on a life annuity, shall not exceed the member's last yearly salary or the member's final average salary, whichever is the greater amount. For purposes of this section, "yearly salary" means the compensation earned by a member during the most recent period of contributing service, either consecutive or nonconsecutive, preceding the member's effective retirement date and shall be subject to the provisions of KRS 161.220(9) and (10).

*This paragraph shall not apply to the supplemental benefit component.*

- (2) Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. ***This subsection shall not apply to benefits from the supplemental benefit component, and the board may adjust this value for individuals who become members on or after January 1, 2022, as provided by Section 1 or 2 of this Act, as applicable.***
- (3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than four hundred dollars (\$400) effective July 1, 2002, and not less than four hundred forty dollars (\$440) effective July 1, 2003, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection, except the following:
  - (a) Individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008; or
  - (b) Members whose retirement allowance payment is reduced below the minimum allowance as a result of its division in a qualified domestic relations order or any other provision permitted under KRS 161.700.
- (4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.
- (5) Effective July 1, 2008, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed three and one-half percent (3.5%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.
- (6) Effective July 1, 2009, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed seven-tenths of one percent (0.7%) of the

monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.

- (7) Effective July 1, 1990, monthly payments of two hundred dollars (\$200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.
- (8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code.
- (9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall not be used in determining a member's retirement annuity. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

~~[(10) Effective January 1, 2019, subsections (1) to (7) of this section do not apply to individuals who become members of the Teachers' Retirement System on or after January 1, 2019.]~~

➔Section 11. KRS 161.655 is repealed, reenacted, and amended to read as follows:

- (1) Effective July 1, 2000, the Teachers' Retirement System shall~~[for those individuals who became members prior to January 1, 2019]:~~
  - (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, ***except that the minimum amount for an individual who becomes a member on or after January 1, 2022, and retires for service or disability shall be ten thousand dollars (\$10,000).*** 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, ***except that the minimum amount for an individual who becomes a member on or after January 1, 2022, and is an active contributing member shall be five thousand dollars (\$5,000).*** 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 12. KRS 161.400 is repealed, reenacted, and amended to read as follows:

- (1)
  - (a) The board of trustees shall designate as actuary a competent person who shall be a fellow of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries. He shall be the technical adviser of the board on matters regarding the operation of the funds of the system and shall perform such other duties as are required in connection therewith.
  - (b) At least once in each five (5) year period, the actuary shall make an actuarial investigation into the actuarial assumptions and funding methods used, including but not limited to mortality, investment rate of return, and service and compensation of the members and beneficiaries of the retirement system, relative to the actuarial assumptions and funding methods previously adopted by the board. The actuarial investigation shall include at a minimum a summary of the changes in actuarial assumptions and funding methods recommended in the investigation and the projected impact of the recommended changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a twenty (20) year period.
  - (c) At least annually the actuary shall make an actuarial valuation of the retirement system. The valuation shall include:
    1. A description of the actuarial assumptions used, and the assumptions shall be reasonably related to the experience of the system and represent the actuary's best estimate of anticipated experience;
    2. A description of any funding methods utilized or required by state law in the development of the actuarial valuation results;
    3. A description of any changes in actuarial assumptions and methods from the previous year's actuarial valuation;
    4. The actuarially recommended contribution rate for employers for the upcoming budget periods;
    5. A twenty (20) year projection of the funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers based upon the actuarial assumptions, funding methods, and experience of the system as of the valuation date; and
    6. A sensitivity analysis that evaluates the impact of changes in system assumptions, including but not limited to the investment return assumption, payroll growth assumption, and medical inflation rates, on employer contribution rates, funding levels, and unfunded liabilities.
  - (d) On the basis of the results of the valuations, the board of trustees shall make necessary changes in the retirement system within the provisions of law and shall establish the contributions payable by employers and the state specified in KRS 161.550, ***including changes prescribed by Sections 1, 2, 3, and 4 of this Act, as applicable.***
  - (e) For any change in actuarial assumptions, funding methods, retiree health insurance premiums and subsidies, or any other decisions made by the board that impact system liabilities and actuarially recommended contribution rates for employers and that are not made in conjunction with the actuarial investigation required by paragraph (b) of this subsection, an actuarial analysis shall be completed showing the projected impact of the changes on funding levels, unfunded liabilities, and actuarially recommended contribution rates for employers over a twenty (20) year period.
- (2) Actuarial factors and actuarial cost factor tables in use by the retirement system for all purposes shall be determined by the actuary of the retirement system and approved by the board of trustees by resolution and implemented without the necessity of an administrative regulation.

- (3) A copy of each five (5) year actuarial investigation, actuarial analysis, and valuation required by subsection (1) of this section shall be forwarded electronically to the Legislative Research Commission no later than ten (10) days after receipt by the board, and the Legislative Research Commission shall distribute the information received to the committee staff and co-chairs of any committee that has jurisdiction over the  ~~Kentucky Teachers' Retirement System~~. The actuarial valuation required by subsection (1)(c) of this section shall be submitted no later than November 15 following the close of the fiscal year.

→Section 13. KRS 161.420 is repealed, reenacted, and amended to read as follows:

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

- (1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the dividends and interest income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;
- (2) (a) The teachers' savings fund shall consist of:
1. The contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund  ~~or established by KRS 161.235, as applicable~~; and
  2. For individuals who become members of the Teachers' Retirement System on or after January 1,  ~~2019~~ **2022**, who are participating in the *supplemental benefit component*  ~~hybrid cash balance plan~~, the employer *contributions paid into the supplemental benefit component*  ~~pay credit~~ and regular interest *on those contributions*  ~~to the hybrid cash balance plan~~ as provided by *Sections 3 and 4 of this Act*  ~~KRS 161.235~~ that is assigned by the board of trustees from the guarantee fund.
- For individuals who become members on or after January 1, 2022, the system shall account for funds in the teachers' savings fund attributable to the nonuniversity members foundational benefit component, nonuniversity members supplemental benefit component, university members foundational benefit component, and university members supplemental benefit component.*
- (b) A member may not borrow any amount of his or her accumulated account balance in the teachers' savings fund, or any regular interest earned thereon.
- (c) The accumulated contributions or accumulated account balance of a member which are returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund.
- (d) Any accumulated account balance in the teachers' savings fund forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from this fund to the guarantee fund.
- (e) *Except as provided by paragraph (f) of this subsection*  ~~For an individual who becomes a member of the Teachers' Retirement System prior to January 1, 2019~~, the accumulated account balance of a member in the teachers' savings fund shall be transferred from this fund to the allowance reserve fund in the event of retirement by reason of service or disability.
- (f) For an individual who becomes a member of the Teachers' Retirement System on or after January 1,  ~~2019~~ **2022**, who is participating in the *supplemental benefit component*  ~~hybrid cash balance plan~~ who elects to annuitize his or her accumulated account balance *in the supplemental benefit component* as prescribed by *subsection (5)(a) or (b) of Section 3 of this Act or subsection (5)(a) or (b) of Section 4 of this Act*  ~~KRS 161.235(7)(a) or (b)~~, the member's accumulated account balance *in the supplemental benefit component* shall be transferred *from this fund* to the allowance reserve fund;
- (3) The state accumulation fund shall consist of funds paid by employers and appropriated by the state for the purpose of providing annuities and survivor benefits, including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be

sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520 and 161.525. There shall also be transferred from the state accumulation fund to the teachers' savings fund, the amount needed to fund the **mandatory** employer **contributions** ~~credits~~ required by **Sections 3 and 4 of this Act** ~~[KRS 161.235]~~;

- (4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520 and 161.525. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;
- (5) (a) ~~Effective January 1, 2019,~~ The medical insurance fund, which is an account established according to 26 U.S.C. sec. 401(h), shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675, including:
  1. The member contributions required by KRS 161.540(1)(a)2., ~~and (1)(b)2., (c)3., and (d)3.~~;
  2. The employer contribution required by **subsections (1)(a)2., (b)2., (c)2., (d)3., and (e)3. and (3) of Section 8 of this Act** ~~[KRS 161.550(1)(a)1.b., (1)(a)2.b., and (3)(a)]~~;
  3. State appropriations as set forth in KRS 161.550(2), unless the contributions are made to a trust fund under 26 U.S.C. sec. 115 established by the board for this purpose; and
  4. Interest income from the investments of the fund from contributions received by the fund under subparagraphs 1. to 3. of this paragraph, and from income earned on those investments.
- (b) All claims for benefits under KRS 161.675 shall be paid from this fund or from any trust fund under 26 U.S.C. sec. 115 as established by the board for this purpose. Any amounts deposited to the fund that are not required to meet current costs shall be maintained as a reserve in the fund for these benefits. The board shall take the necessary and appropriate steps, including promulgating administrative regulations and procedures to maintain the status of the medical insurance fund as an account subject to 26 U.S.C. sec. 401(h);
- (6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund;
- (7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of Section 403(b) of the Internal Revenue Code by a ~~retired~~ member of the Teachers' Retirement System with accounts that existed on or after July 1, 1996. The contributions shall not be picked up as provided in KRS 161.540(2). Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program;
- (8) The supplemental retirement benefit fund shall consist of those funds contributed by the employer for the purpose of constituting a qualified government excess benefit plan as described in Section 415 of the Internal Revenue Code for accounts that existed on or after July 1, 1996. The board of trustees shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program; ~~and~~
- (9) The life insurance benefit fund shall consist of amounts accumulated for the purpose of providing benefits provided under KRS 161.655. The board of trustees may allocate to this fund a percentage of the employer and state contributions as provided under KRS 161.550. The allocation to this fund will be in an amount that the actuary determines necessary to fund the obligation of providing the benefits provided under KRS 161.655; **and** ~~]~~
- (10) **The stabilization reserve account shall consist of amounts in two (2) separate accounts:**

- (a) *One (1) that includes employer contributions as provided by subsection (1)(d)1. and 2. of Section 8 of this Act that exceeds the combined actuarially required employer contribution for the foundational benefit component and the mandatory employer contribution to the supplemental benefit component as provided by Sections 1 and 3 of this Act for those individuals who become nonuniversity members on or after January 1, 2022; and*
- (b) *One (1) that includes employer contributions as provided by subsection (1)(e)1. and 2. of Section 8 of this Act that exceeds the combined actuarially required employer contribution for the foundational benefit component and the mandatory employer contribution to the supplemental benefit component as provided by Sections 2 and 4 of this Act for those individuals who become university members on or after January 1, 2022.*

***Notwithstanding any other statute to the contrary, funds in these accounts shall only be used to pay off the unfunded liability of the pension and life insurance funds.***

➔Section 14. KRS 161.470 is repealed, reenacted, and amended to read as follows:

- (1) The membership of the retirement system shall consist of all new members, all present teachers, and all persons participating under the retirement system as of June 30, 1986, except as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29. The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.
- (2) Service credit shall be forfeited upon withdrawal. If a member again enters service it shall be as a new member, except that any teacher who withdraws by claiming his deposits may repay the system the amount withdrawn plus interest and reestablish his service credit as provided in subsection (3) of this section.
- (3) Effective July 1, 1988, and thereafter, an active contributing member of the retirement system with contributing service equal to one (1) year may regain service credit by depositing in the teachers' savings fund the amount withdrawn with interest at the rate to be set by the board of trustees, and computed from the first of the month of withdrawal and including the month of redeposit. ~~[Service credit regained pursuant to this subsection on or after January 1, 2019, shall not be used to determine the date the individual purchasing the service became a member of the Teachers' Retirement System.]~~
- (4) Effective July 1, 1974, any active contributing member with at least two (2) years of contributing service credit who declined membership as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29, may secure service credit for prior service, and for any subsequent service prior to date of membership, by depositing in the teachers' savings fund contributions for each year of subsequent service prior to date of membership, with interest at the rate of eight percent (8%) compounded annually to the date of deposit.
- (5) Membership in the retirement system shall be terminated:
  - (a) By retirement for service;
  - (b) By death;
  - (c) By withdrawal of the member's accumulated account balance;
  - (d) When a member, having less than five (5) years of Kentucky service is absent from service for more than three (3) consecutive years; or
  - (e) For persons hired on or after August 1, 2000, when a member is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment as provided in subparagraphs 1. and 2. of this paragraph.
    1. Notwithstanding any provision of law to the contrary, a member hired on or after August 1, 2000, who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions.
    2. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefits shall be forfeited.

Except for paragraph (e) of this subsection, upon termination of member accounts under this subsection, funds in the account shall be transferred to the guarantee fund. Inactive members may apply for refunds of these

funds at any time. The terminated service shall be reinstated, if not withdrawn by the member, in the event that the member returns to active contributing service.

- (6) In case of withdrawal from service prior to eligibility for retirement, the board of trustees shall on request of the member return all of his accumulated account balance, including any payments made by the member to the state accumulation fund, but the member shall have no claim on any contributions made by the state or employer with a view to his retirement, except as provided by *Sections 3 and 4 of this Act* ~~[KRS 161.235]~~, or to contributions made to the medical insurance fund. If the member is eligible for an immediate service retirement allowance as provided in KRS 161.600, no withdrawal and refund shall be permitted, unless the allowance would prohibit the member from qualifying for Social Security benefits or the member elects to withdraw part or all of his service for the purpose of obtaining credit in another retirement plan. Requests for refund of contributions by the member must be filed on forms prescribed by the Teachers' Retirement System and the employer shall be financially responsible for all information that is certified on the prescribed form. A member may not withdraw any part of his or her accumulated account balance in the retirement system except as provided by this subsection.
- (7) Except as provided in KRS 161.520 and 161.525, in case of death prior to retirement, the board of trustees shall pay to the estate of the deceased member, unless a beneficiary was otherwise applicably designated by the deceased member, then to the beneficiary, all of his accumulated account balance, including any payments made by the member to the state accumulation fund, but the estate or beneficiary shall have no claim on any contributions made by the state or employer with a view to the retirement of the member, except as provided by *Sections 3 and 4 of this Act* ~~[KRS 161.235]~~, or to contributions made to the medical insurance fund.
- (8) Any active contributing member of the Kentucky Employees Retirement System, the County Employees Retirement System, the State Police Retirement System, or the Judicial Retirement System may use service, under that retirement system for the purpose of meeting the service requirement of subsections (3) and (4) of this section.

➔Section 15. KRS 161.480 is repealed and reenacted to read as follows:

Each person, upon becoming a member of the retirement system, shall file a detailed statement as required by the board of trustees and shall designate a primary beneficiary or two (2) or more cobeneficiaries to receive any benefits accruing from the death of the member. A contingent beneficiary may be designated in addition to the primary beneficiary or cobeneficiaries. The member may name more than one (1) contingent 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 Kentucky Teachers' Retirement System, except in the event of subsequent marriage or divorce. Subsequent marriage by the member shall void the primary beneficiary and any cobeneficiary designation, even that of a trust, and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. A final divorce decree shall terminate an ex-spouse's status as either primary beneficiary, cobeneficiary, or contingent beneficiary, unless subsequent to divorce the member redesignates the former spouse as primary beneficiary, cobeneficiary, or contingent beneficiary. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of a member's accumulated account balance in the retirement system as provided under KRS 161.470(7). A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust. 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. 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. The provisions of this section shall be retroactive as they relate to election of beneficiaries by members still in active status on the effective date of this section. The provisions of this section shall not apply to any account from which a member is drawing a retirement allowance or to the life insurance benefit available under KRS 161.655.

➔Section 16. KRS 161.500 is repealed, reenacted, and amended to read as follows:

- (1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event ~~[an individual who became a member prior to January 1, 2019,]~~ is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall

have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.

- (2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.
- (3) Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.
- (4) No service credit shall be granted in the Teachers' Retirement System for service that has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

➔Section 17. KRS 161.507 is repealed, reenacted, and amended to read as follows:

- (1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, ~~the provisions of this section as applicable,~~ and the administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the employment of a member in a position covered by the retirement system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) **or subsection (2) of Section 9 of this Act** unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.
- (2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.
- (3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.
- (4) (a) ~~[An individual who became]~~A member **receiving** ~~[prior to January 1, 2019, who desires to receive]~~ retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall pay to the retirement system the full actuarial cost of the service credit purchased as provided under KRS 161.220(22). These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.
- (b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid. Members participating in the **supplemental benefit component** ~~[hybrid cash balance plan as provided by KRS 161.235]~~ who make the regular member contribution required by this

paragraph, shall *also* receive *the mandatory* employer *contributions in the supplemental benefit component*~~[credits]~~ for the period of service purchased.

- (5) An active contributing member of the Teachers' Retirement System~~[who became a member of the system prior to January 1, 2019]~~ may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) months of service in the reserves or the National Guard. Notwithstanding any other statute, regulation, or policy to the contrary, the system shall provide a member, upon request, the estimated actuarial cost of the National Guard or military reserves service purchase based upon the information available at the time of the request. The member shall be entitled to enter into a contract with the system at the time of the request to purchase the National Guard or military reserve service by paying to the system the estimated actuarial cost, either by installments or in lump sum. The member shall pay the full actuarial cost of this service in the military reserves or the National Guard as provided in KRS 161.220(22). Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) *or subsection (2) of Section 9 of this Act*. The payment shall not be picked up by the employer, as described in KRS 161.540(2).

➔Section 18. KRS 161.515 is repealed, reenacted, and amended to read as follows:

- (1) For the purposes of this section, "out-of-state service" shall mean service in any state in a comparable position on a full-time basis, which would be covered if in Kentucky.
- (2) (a) An active contributing member who has been a contributing member of the retirement system for at least one (1) full scholastic year subsequent to the latest out-of-state service, may present for credit service rendered out of state, not to exceed ten (10) years actually taught as a certified or licensed teacher. All members who elect to purchase this service shall pay to the retirement system the full actuarial cost as provided under KRS 161.220(22). For each year of which the retirement system shall accept payment, one (1) year of service credit shall be given. For members who purchased this service under the cost formula as it existed under this subsection on June 30, 2005, this credit may not be used to meet the service requirements of KRS 161.525, 161.600, or 161.661, except as provided in subsection (2)(c) of this section. No credit shall be granted for service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.
- (b) A member of the retirement system having teaching service in the elementary or secondary schools operated by the United States overseas or in this country, or in a public college or university in Kentucky, not included in the Teachers' Retirement System of the State of Kentucky, may present this service for credit in the retirement system on the same basis as provided above for out-of-state service credit; however, no service may be presented which shall be used as a basis for retirement benefits in any program supported wholly or in part by a public institution or governmental agency. This service when added to service credited under subsection (2)(a) of this section shall not exceed a total of ten (10) years' service credit.
- (c) A member having service referred to in subsection (2)(a) or (2)(b) of this section who purchased this service under the cost formula as it existed under those subsections on June 30, 2005, may elect to use this service for meeting the requirements of KRS 161.600(1)(c) by making an additional contribution to the state accumulation fund equal to a member contribution rate of eight percent (8%) for each year so used. These payments shall not be picked up as described in KRS 161.540(2). The salary base to be used in determining this additional contribution shall be the final average salary which is used in calculating the member's regular retirement annuity.
- (3) Members entering the Teachers' Retirement System for the first time, July 1, 1976, and after this date, shall not receive credit for service defined in subsections (2)(a) or (2)(b) of this section in excess of one (1) year of credit for each two (2) years of Kentucky service in a covered position or ten (10) years, whichever is the lesser number.
- (4) A member, having completed service as a volunteer in the Kentucky Peace Corps created by KRS 154.1-720, may purchase service credit for the time served in the corps on the same basis as provided in this section for the purchase of out-of-state service credit. A member, having completed service as a federal Peace Corps volunteer, may purchase up to two (2) years of service credit for time served in the Peace Corps on the same basis as provided in this section for the purchase of out-of-state service credit.

- (5) Service purchased under this section by members *shall be credited based upon the retirement factor established by Section 10 of this Act, as applicable* ~~[who at the time of purchase are employed by employers other than those described in KRS 161.220(4)(b) or (n) shall be credited, as described in KRS 161.620(1)(a) and (b), with a retirement factor of two and one half percent (2.5%) for each year of service that was originally performed on or after July 1, 1983, and two percent (2.0%) for each year of service performed before July 1, 1983. Service purchased under this section by members who at the time of purchase are employed by employers described in KRS 161.220(4)(b) or (n) shall be credited, as described in KRS 161.620(1)(a), with a retirement factor of two percent (2.0%) for each year of service, regardless of when the service was performed].~~

~~[(6) Effective January 1, 2019, this section does not apply to individuals who become members on or after January 1, 2019.]~~

➔Section 19. KRS 161.520 is repealed, reenacted, and amended to read as follows:

Upon the death of an active contributing member or upon the death of a member retired for disability, except as provided in KRS 161.661(6), the survivors of the deceased member in the following named order, may elect to receive a survivor's benefit payable as follows:

- (1) Where there is a surviving widow or widower who is named as the primary beneficiary of the member's retirement account, the benefit shall be:
  - (a) One hundred eighty dollars (\$180) per month with no restriction on other income;
  - (b) Two hundred forty dollars (\$240) per month when the surviving widow or widower's total income from all sources does not exceed six thousand six hundred dollars (\$6,600) per year or five hundred fifty dollars (\$550) per month; or
  - (c) If the deceased member has a minimum of ten (10) years of service credit with the Teachers' Retirement System, the surviving widow or widower may apply for an annuity actuarially equivalent to the annuity that would have been paid to the deceased member when eligibility conditions were met. Eligibility for payments would begin at the time the age of the deceased member would have met the requirements of KRS ~~[161.235(6) or ]~~161.600(1) *or subsection (2) of Section 9 of this Act*, as applicable. In exercising this right, the surviving widow or widower shall be entitled to receive an annuity for life, except as provided in subsection (6) of this section. This subsection applies to surviving spouses of members who die on or after July 1, 1978. A surviving widow or widower of a member who dies after July 1, 1978, shall be eligible for benefit payments provided under paragraphs (a) and (b) of this subsection until they begin receiving payments under this provision;
- (2)
  - (a) Where there are surviving unmarried children under age eighteen (18) or under age nineteen (19) if a full-time student in high school, the benefit shall be two hundred dollars (\$200) per month in the case of one (1) child, three hundred forty dollars (\$340) per month in the case of two (2) children, four hundred dollars (\$400) per month in the case of three (3) children, and four hundred forty dollars (\$440) per month in the case of four (4) or more children. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (3) of this section.
  - (b) Notwithstanding any provision of law to the contrary, the surviving spouse may elect to receive a lump-sum refund of the member's accumulated account balance in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section only if the surviving spouse is designated as the primary beneficiary and:
    1. Is a biological or adoptive parent of all children eligible for a benefit under this subsection and has not had his or her parental rights terminated; or
    2. Has been appointed as legal guardian of all of the children eligible under paragraph (a) of this subsection.
  - (c) To elect a lump-sum refund of the member's accumulated account balance under paragraph (b) of this subsection, the surviving spouse who is designated as the primary beneficiary must sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsection (1) of this section. The surviving spouse shall not waive the survivorship benefits available under this subsection or subsections (1) and (6) of this section if any of the member's children have attained age eighteen (18) or older unless all of those children consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection;



- (3) (a) Where the survivor is a child age eighteen (18) or older whose mental or physical condition is sufficient to cause his dependency on the deceased member at the time of the member's death, the benefit shall be two hundred dollars (\$200) per month, payable for the life of the child or until the time as the mental or physical condition creating the dependency no longer exists or the child marries. The mental or physical condition of the adult child shall be revealed by a competent examination by a licensed physician and shall be approved by a majority of a medical review committee as defined in KRS 161.661(14). Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (2) of this section.
- (b) Notwithstanding any provision of law to the contrary, the surviving spouse shall not elect to receive a lump-sum refund of the member's accumulated account balance in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section unless:
1. The surviving spouse is designated as the primary beneficiary;
  2. The surviving spouse has been appointed by the court as guardian, conservator, or other fiduciary with sufficient general or specific authority to waive the survivorship benefits available under this subsection for any child or children age eighteen (18) or older who have been adjudicated incompetent to make decisions on their own behalf by a court of law; and
  3. Any child or children age eighteen (18) or older who are mentally competent to make decisions on their own behalf as attested to by two (2) physicians' statements consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection.
- (c) If eligible to elect a lump-sum refund of the member's accumulated account balance, the surviving spouse shall sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsections (1) and (2) of this section;
- (4) Where the sole eligible survivors are dependent parents aged sixty-five (65) or over, the benefit shall be two hundred dollars (\$200) per month for one (1) parent or two hundred ninety dollars (\$290) per month for two (2) parents. Dependency of a parent shall be established as of the date of the death of the member;
- (5) Where the sole eligible survivor is a dependent brother or sister, the benefit shall be one hundred sixty five dollars (\$165) per month. In order to qualify the brother or sister must have been a resident of the deceased member's household for at least one (1) full year prior to the member's death or must have been receiving care in a hospital, nursing home, or other institution at the member's expense for same period;
- (6) The benefit to a child as defined in subsection (2) of this section shall terminate upon the attainment of age eighteen (18) or upon reaching age nineteen (19), if a full-time student in high school, or upon marriage, except that benefits shall continue until the attainment of age twenty-three (23) for an unmarried child who is a full-time student in a recognized educational program beyond the high school level. The benefit to a widow, widower, dependent parent, or dependent brother or sister or dependent child age eighteen (18) or older shall terminate upon marriage, or upon termination of the condition creating the dependency;
- (7) The board of trustees shall be the sole judge of eligibility or dependency of any beneficiary, and may require formal application or information relating to eligibility or dependency, including proof of annual income satisfactory to the board. The board of trustees may subpoena records and individuals whenever it deems this action necessary;
- (8) No payment of benefits shall be made unless the board of trustees authorizes the payment. The board shall promulgate administrative regulations for the administration of the provisions in this section and in every case the decision of the board of trustees shall be final as to eligibility, dependency, or disability, and the amount of benefits payable;
- (9) In the event that there are no eligible survivors as defined in subsections (1) to (5) of this section, or in the event that the surviving spouse elects not to receive survivorship benefits on his or her own behalf or on behalf of any of the member's children as permitted under subsections (2) and (3) of this section, the board of trustees shall pay to the estate or the designated beneficiaries of the deceased member a refund of his accumulated account balance as provided in KRS 161.470(7). If the benefits paid or payable under subsections (1) to (5) of this section and KRS 161.661 shall amount to a sum less than the member's accumulated account balance at the time of death, the board of trustees shall pay to the estate or designated beneficiaries of the deceased member the balance of the accumulated account balance;

- (10) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits; and
- (11) Benefits under subsections (2) and (3) of this section shall apply to a child who is a legally adopted survivor at the time of the death of the member. This provision shall be retroactive to include a child who was born after January 1, 1990, and is a legally adopted survivor of a member whose death occurred prior to July 15, 2008.

➔Section 20. KRS 161.522 is amended to read as follows:

Upon the death of a member retired for disability who had a minimum of twenty-seven (27) years of service at the time of death, except as provided in KRS 161.661(6), the spouse, if named as the primary beneficiary of the member's account, shall be entitled to elect, in lieu of a refund of the member's account, an annuity actuarially equivalent to the annuity that would have been paid to the deceased member had retirement for service been effective on the day immediately preceding the member's death. This option shall be available only during the entitlement period described under KRS 161.661(3) and (4) prior to the recalculation of the member's disability allowance under KRS 161.661(5). In selecting this right, the spouse shall be limited to selecting an option providing a straight life annuity with refundable balance or a term certain option. There shall be a monthly minimum allowance of three hundred dollars (\$300) as the basic straight life annuity. This section applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1988, and to surviving spouses of members who die on or after July 1, 1984, except that the member shall have been retired for disability with a minimum of thirty (30) years of service if either of these two (2) conditions were met prior to July 1, 1990. ~~[This section does not apply to individuals who become members on or after January 1, 2019.]~~

➔Section 21. KRS 161.525 is repealed, reenacted, and amended to read as follows:

- (1) Upon death of a member in active contributing status at the time of death, who was eligible to retire by reason of service, the spouse, if named as the primary beneficiary of the member's retirement account, or in the absence of an eligible spouse a legal dependent of the member, if named as the primary beneficiary, shall be entitled to elect, in lieu of a refund of the member's accumulated account balance or benefits provided in KRS 161.520, an annuity actuarially equivalent at the attained age of the beneficiary to the annuity that would have been paid to the deceased member had retirement been effective on the day immediately preceding the member's death. Under the provisions of KRS 61.680, benefits shall be processed as if the member retired for service. In exercising this right the spouse or legal dependent shall be limited to selecting an option providing either a straight life annuity with refundable balance or a term certain option. A spouse may receive the annuity provided by this section at the same time as children are qualifying for survivors' benefits under the provisions of KRS 161.520; however, a legal dependent, other than a spouse, may not receive these payments if children have qualified for benefits under that section.
- (2) A spouse qualifying for an annuity under subsection (1) of this section may defer the payments in order to reduce the actuarial discounts to be applied due to age.
- (3) Upon death of a member in active contributing status at the time of his death, who had a minimum of twenty-seven (27) years of service, the spouse, if named as the primary beneficiary of the member's account shall be entitled to a monthly minimum allowance of three hundred dollars (\$300) as the basic straight life annuity. This provision applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1986, and to surviving spouses of members who die on or after July 1, 1986. ~~[This subsection does not apply to individuals who become members on or after January 1, 2019.]~~

➔Section 22. KRS 161.545 is amended to read as follows:

- (1) (a) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees if contributions were not otherwise made as a result of the service. ~~[This paragraph does not apply to members who retired on or after January 1, 2019, and are reemployed on or after January 1, 2019.]~~
- (b) Members placed on leave of absence during a period of full-time employment as defined in KRS 161.220(21) may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided

in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

- (2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence during a period of full-time employment as defined in KRS 161.220(21) since July 1, 1964, for reasons of health as defined under the Federal Family Medical Leave Act of 1993, 29 U.S.C. secs. 2601 et seq., child rearing, or to improve their educational qualifications, and did not purchase the leave of absence as provided in subsection (1) of this section may obtain credit for the leave of absence as provided under the administrative regulations of the board of trustees and under the following conditions:
- (a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence or by other documentation that was generated contemporaneously with the leave that is determined by the retirement system to reasonably establish that a leave of absence was granted; and
  - (b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing in the state accumulation fund an amount equal to this total.
  - (c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.
- (3) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).
- (4) Notwithstanding any other provisions of this section to the contrary, purchase of service credit under subsection (2) of this section ~~is~~

~~[(a) — ] for individuals who become members on or after July 1, 2008, but prior to January 1, 2019, shall be purchasable only at the full actuarial cost; and~~

~~(b) — Shall not apply to individuals who become members on or after January 1, 2019.~~

➔Section 23. KRS 161.5465 is amended to read as follows:

On or after August 1, 1998, a member of the Teachers' Retirement System in active contributing status who has a minimum of twenty (20) years of service credit may purchase up to a maximum of five (5) years of service credit that is not otherwise purchasable under any of the provisions of KRS 161.220 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The member shall pay the full actuarial cost of the service credit as provided in KRS 161.220(22). The payment shall not be picked up by the employer as described in KRS 161.540(2), and the member's payment shall be credited to the member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by installment payments as provided in KRS 161.597. Notwithstanding any other statute to the contrary, the Kentucky Teachers' Retirement System shall recognize nonqualified service credit purchased with another retirement system only to the extent that the member had an equivalent number of full months of active employment in the position covered by the other retirement system during the period that the nonqualified service was purchased. This section shall not apply to ~~;~~

~~(1) — ] individuals who become members on or after July 1, 2008, but prior to January 1, 2019, except that a teacher of a local school board may purchase up to ten (10) months of service under this section if the teacher is retiring and has completed the prior school year with at least twenty-six (26) years and two (2) months of service but less than twenty-seven (27) years of service; and~~

~~(2) — Individuals who become members on or after January 1, 2019.~~

➔Section 24. KRS 161.547 is amended to read as follows:

~~[An individual who became ]~~A member of the retirement system *having* ~~[prior to January 1, 2019, who has]~~ service as a Kentucky legislator which is not credited by any retirement system administered by the Commonwealth of Kentucky may present such service, not to exceed four (4) years, for credit in the retirement system by paying the full actuarial cost of the service as determined by the system actuary. The member may purchase all or part of his service as a legislator, but no less than one (1) year of service. The entire payment shall be placed in the teachers' saving fund.

➔Section 25. KRS 161.548 is amended to read as follows:

~~{An individual who became}~~ A member of the Teachers' Retirement System ~~{prior to January 1, 2019,}~~ who is in an active contributing status with the system, and who was formerly employed in a regional community service program for mental health and individuals with an intellectual disability, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system, may obtain credit for the period of his service in the regional community program for mental health and individuals with an intellectual disability by paying to the Teachers' Retirement System the full actuarial cost of the service credit purchased, as provided in KRS 161.220(22). The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) **or subsection (2) of Section 9 of this Act**. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

→Section 26. KRS 161.549 is amended to read as follows:

~~{An individual who became}~~ A member of the Teachers' Retirement System ~~{prior to January 1, 2019,}~~ who is in an active contributing status with the system, and who was formerly employed by a Federal Head Start agency, operated under 42 U.S.C. secs. 9831 et seq., which does not participate in a state-administered retirement system, may obtain credit for the period of the member's service in the Head Start program by purchasing this service credit under the same conditions that out-of-state service credit may be purchased under KRS 161.515. The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a), **subsection (2) of Section 9 of this Act**, or 161.661(1). Payment for the service credit purchased may be made in installments in lieu of a lump-sum payment. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

→Section 27. KRS 161.568 is amended to read as follows:

- (1) Eligibility to participate in the optional retirement plan shall be determined by the board of regents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b). The employees of these institutions of higher education who are initially employed on or after the implementation date of the optional retirement plan may make an election to participate in the optional retirement plan within thirty (30) days after their employment date. This election shall be irrevocable except as otherwise provided in this subsection. No member of the Kentucky Teachers' Retirement System who terminates employment and is subsequently reemployed by the same or another public postsecondary education institution which participates in the Kentucky Teachers' Retirement System may be eligible to elect to participate in the optional retirement plan unless the date of reemployment is at least six (6) months after the date of termination. All elections made under this subsection shall be in writing and shall be filed with the appropriate officer of the employer institution. Persons who originally elected to participate in the optional retirement plan may later change their elections only as follows:
  - (a) Any person otherwise eligible for membership in the Kentucky Teachers' Retirement System may irrevocably elect one (1) time during his or her lifetime to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System. This election to change from the optional retirement plan to Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the system. Any person exercising this election shall not be entitled to purchase as service credit in the Kentucky Teachers' Retirement System any prior service with his or her postsecondary education institution employer;
  - (b) Any person otherwise eligible for membership in the Kentucky Teachers' Retirement System who previously elected to participate in the optional retirement plan may irrevocably elect one (1) time within his or her first six (6) years and six (6) months of continuous service in any one (1) or more of the institutions identified in KRS 161.220(4)(b), to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System and also become eligible to purchase as service credit his or her prior service with his or her postsecondary education employer. This election to change from the optional retirement plan to the Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the retirement system. Persons electing to change from the optional retirement plan to the Kentucky Teachers' Retirement System may purchase service credit only for their prior years of service for a postsecondary education institution identified in KRS 161.220(4)(b) during which they participated in the optional retirement plan. The election to purchase prior service as service credit shall be received in the retirement system's office on forms prescribed by the retirement system within the six (6) year and six (6) month period provided to make the election to begin participation in the Kentucky Teachers' Retirement System. The cost of purchasing this service shall be calculated by adding both the employer

and member contributions that would have been paid to the Kentucky Teachers' Retirement System had the individual purchasing this service participated in the Kentucky Teachers' Retirement System instead of the optional retirement plan, less the amount contributed to the Kentucky Teachers' Retirement System by the postsecondary education institution as provided by KRS 161.569(5), or KRS 161.569(5)(a)2. as it existed on June 30, 2007. Interest at Kentucky Teachers' Retirement System's actuarially assumed rate shall be paid on these net contributions by the person electing to change to the Kentucky Teachers' Retirement System from the optional retirement plan. These payments shall not be picked up as described in KRS 161.540(2). Persons who elect to change from the optional retirement plan to the Kentucky Teachers' Retirement System may elect to purchase as service credit, beginning with the most recent years, any portion of their prior years of service during which time they participated in the optional retirement plan, or none of those years. Members may purchase service credit for prior years of service by rolling over funds from their optional retirement plan account as provided under KRS 161.5461, or by rolling over or transferring other plan funds as permitted by the rules set forth in the Internal Revenue Code, or by making an after-tax lump-sum cash payment. ~~This paragraph does not apply to individuals who become members on or after January 1, 2019;~~

- (c) Effective July 1, 2008, persons otherwise eligible for membership in the Kentucky Teachers' Retirement System may irrevocably elect one (1) time to change their election and to prospectively participate in the Kentucky Teachers' Retirement System and purchase service credit for their prior years of service during which they participated in the optional retirement plan. This election shall be filed in writing with the Kentucky Teachers' Retirement System no later than December 31, 2008. Persons who change their election prior to July 1, 2008, to prospectively participate in the Kentucky Teachers' Retirement System may purchase service credit for their prior years of service during which they participated in the optional retirement plan. The purchase of prior years of service under this paragraph shall be subject to the same conditions and purchase costs as described in paragraph (b) of this subsection, except that the election to purchase service credit shall be on file with the Kentucky Teachers' Retirement System no later than December 31, 2008. ~~This paragraph does not apply to individuals who become members on or after January 1, 2019;~~ and
  - (d) Persons electing to change to the Kentucky Teachers' Retirement System under paragraphs (a), (b), and (c) of this subsection shall be eligible to participate, based upon their age and allowable service credit, in the disability, survivorship, and medical insurance programs under the conditions and in the degree as they exist on the date that they file their election with the retirement system, but shall be subject to any changes to those programs from that date forward, including any changes that may affect their eligibility for or degree of participation in those programs. Prior service purchased as service credit as permitted under paragraphs (b) and (c) of this subsection shall not be considered for meeting eligibility requirements or determining the extent of participation in these programs. Persons electing to change to the Kentucky Teachers' Retirement System shall not be eligible for the survivorship or disability programs based upon medical conditions that existed prior to the filing of their elections.
- (2) Elections of eligible employees hired on or after the implementation date of the optional retirement plan at their employer institution shall be effective on the date of their employment. If an eligible employee hired subsequent to the implementation date at the employer institution fails to make the election provided for in this section, the employee shall become a member of the regular retirement plan of the Kentucky Teachers' Retirement System.

➔Section 28. KRS 161.580 is repealed and reenacted to read as follows:

- (1) The board of trustees shall provide for the maintenance of an individual account for each member showing the amount of the member's accumulated account balance. Such individual accounts shall be identified in the records of the system by name, date of birth, and Social Security number. It shall collect and keep in convenient form such data as is necessary for the preparation of the required mortality and service tables and for the compilation of such other information as is required for the actuarial valuation of the assets and liabilities of the various funds of the retirement system.
- (2) The board shall prepare and furnish to all active contributing members a summary plan description, written in a manner calculated to be understood by the average member or annuitant, and sufficiently accurate and comprehensive to reasonably apprise them of their rights and obligations under the Teachers' Retirement System. The board may furnish the summary plan description by posting it on the retirement system's Web site.
- (3) The summary plan description shall include:

- (a) The name of the retirement system, the name and address of the executive secretary, and the name, address, and title of each member of the board of trustees;
  - (b) The name and address of the person designated for the service of legal process;
  - (c) The system's requirements for participation and benefits;
  - (d) A description of retirement formulas for normal, early, and disability retirement, and survivor benefits;
  - (e) A description of the requirements for vesting of pension benefits;
  - (f) A list of circumstances which would result in disqualification, ineligibility, or denial or loss of benefits;
  - (g) The sources of financing retirement benefits, and statutory requirements for funding;
  - (h) A statement after each actuarial valuation as to whether funding requirements are being met; and
  - (i) The procedures to be followed in presenting claims for benefits under the plan, and the remedies available under the plan for the redress of claims which are denied in whole or in part.
- (4) The board may publish the summary plan description in the form of a comprehensive pamphlet or booklet, or in the form of periodic newsletters which shall incorporate all the information required in the summary plan description within a period of two (2) years. Any changes in statutory requirements or administrative practices which alter the provisions of the plan as described in the summary plan description shall be summarized as required in subsection (2) of this section and furnished to active contributing members in the form of a supplement to a comprehensive booklet, or reported in the periodic newsletter.
- (5) The board shall provide to annuitants so much of the summary plan description as they need to understand changes in benefits which apply to them.

➔Section 29. KRS 161.585 is repealed and reenacted to read as follows:

- (1) Each member's or annuitant's account shall be administered in a confidential manner, and specific data regarding a member or annuitant shall not be released for publication, except that:
- (a) The member or annuitant may authorize the release of his or her account information;
  - (b) The board of trustees may release member or annuitant account information to the employer or to other state and federal agencies as it deems necessary or in response to a lawful subpoena or order issued by a court of law; or
  - (c) 1. Upon request by any person, the system shall release the following information from the accounts of any member or annuitant of the Kentucky Teachers' Retirement System, if the member or annuitant is a current or former officeholder in the Kentucky General Assembly:
    - a. The first and last name of the member or annuitant;
    - b. The status of the member or annuitant, including but not limited to whether he or she is a contributing member, a member who is not contributing but has not retired, a retiree receiving a monthly retirement allowance, or a retiree who has returned to work following retirement with an agency participating in the system;
    - c. If the individual is an annuitant, the monthly retirement allowance that he or she was receiving at the end of the most recently completed fiscal year;
    - d. If the individual is a member who has not yet retired, the estimated monthly retirement allowance that he or she is eligible to receive on the first date he or she would be eligible for an unreduced retirement allowance, using his or her service credit, accumulated account balance, and final average salary at the end of the most recently completed fiscal year; and
    - e. The current or last participating employer of the member or annuitant, if applicable.
  - 2. No information shall be disclosed under this paragraph from an account that is paying benefits to a beneficiary due to the death of a member or annuitant.
- (2) The release of information under subsection (1)(c) of this section shall not constitute a violation of the Open Records Act, KRS 61.870 to 61.884.

- (3) Medical records which are included in a member's or annuitant's file maintained by the Teachers' Retirement System are confidential and shall not be released unless authorized by the member or annuitant in writing or as otherwise provided by law or in response to a lawful subpoena or order issued by a court of law.
- (4) (a) When a subpoena is served upon any employee of the Kentucky Teachers' Retirement System requiring the production of any data, information, or records, it is sufficient if the employee of the Kentucky Teachers' Retirement System charged with the responsibility of being custodian of the original, or his or her designated staff, delivers within five (5) working days by certified mail or by personal delivery to the person specified in the subpoena either of the following:
1. Legible and durable copies of records certified by the employee or designated staff; or
  2. An affidavit stating the information required by the subpoena.
- (b) The production of records or an affidavit shall be in lieu of any personal testimony of any employee of the Kentucky Teachers' Retirement System unless, after the production of records or an affidavit, a separate subpoena is served upon the retirement system specifically directing the testimony of an employee of the retirement system. When a subpoena is served on any employee of the retirement system requiring the employee to give testimony or produce records for any purpose, in the absence of a court order requiring the testimony of or production of records by a specific employee, the system may designate an employee to give testimony or produce records upon the matter referred to in the subpoena. The board of trustees may promulgate an administrative regulation for the recovery of reasonable travel and administrative expenses for those occasions when an employee of the retirement system is required to travel from his or her home or office to provide testimony or records. Recoverable expenses may include the wages, salary, and overtime paid to the employee by the retirement system for the period of time that the employee is away from the office. The cost of these expenses shall be borne by the party issuing the subpoena compelling the employee's travel. The board of trustees may also promulgate an administrative regulation establishing a reasonable fee for the copying, compiling, and mailing of requested records.
- (c) The certification required by this subsection shall be signed before a notary public by the employee and shall include the full name of the member or annuitant, the member or annuitant identification number assigned to the member or annuitant by the retirement system, and a legend substantially to the following effect: "The records are true and complete reproductions of the original, microfiched, or electronically stored records which are housed in the retirement system's office. This certification is given in lieu of the undersigned's personal appearance."
- (d) When an affidavit or copies of records are personally delivered, a receipt shall be presented to the person receiving the records for his or her signature and shall be immediately signed and returned to the person delivering the records. When an affidavit or copies of records are sent via certified mail, the receipt used by the postal authorities shall be sufficient to prove receipt of the affidavit or copies of records.
- (e) When the affidavit or copies of records are delivered to a party for use in deposition they shall, after termination of the deposition, be delivered personally or by certified mail to the clerk of the court or other body before which the action or proceeding is pending.
- (f) Upon completion of delivery by the retirement system of copies of records by their deposit in the mail or by their personal delivery to the requesting party, the retirement system shall cease to have any responsibility or liability for the records and their continued maintenance in a confidential manner.
- (g) Records of the Kentucky Teachers' Retirement System that are susceptible to reproduction may be proved as to foundation, identity, and authenticity without preliminary testimony, by use of legible and durable copies, certified in accordance with the provisions of this subsection.
- (h) The provisions of this subsection shall not be construed to prohibit the Kentucky Teachers' Retirement System from asserting any exemption, exception, or relief provided under the Kentucky Rules of Civil Procedure or other applicable law.
- (5) For purposes of this section, "records" includes retirement estimates, affidavits, and other documents prepared by the Kentucky Teachers' Retirement System in response to information requested in a lawful subpoena or order issued by a court of law.

➔Section 30. KRS 161.590 is amended to read as follows:

- (1) At retirement the total service credited to a teacher shall consist of prior and subsequent service rendered by him for which service credit has been allowed.
- (2) Kentucky service, presented at the time of retirement, may not be used in calculating benefits under KRS ~~161.235,~~ 161.525, 161.620, or 161.661, if such service has been used to increase benefits in another retirement system, not including Old Age and Survivors Insurance Benefits under the Social Security Administration.
- (3) No service credit shall be added to a member's account after the effective date of retirement for service.

→Section 31. KRS 161.595 is amended to read as follows:

- (1) Upon service retirement, ~~an individual who becomes a~~ member of the Teachers' Retirement System ~~prior to January 1, 2019,~~ may obtain credit for all or any part of the service otherwise creditable under the Kentucky Employees Retirement System, the County Employees Retirement System, or in the service of the United States government for which service credit is not otherwise given, upon the payment by the member of the full actuarial cost of the service credit purchased as defined in KRS 161.220(22). Such payments shall not be picked up, as described in KRS 161.540(2).
- (2) The amount paid under this section shall be considered as accumulated contributions of the individual member.
- (3) No person shall be allowed credit for the same period of service in more than one (1) of these three (3) retirement systems.

→Section 32. KRS 161.605 is repealed, reenacted, and amended to read as follows:

Any member retired by reason of service may return to work in a position covered by the Kentucky Teachers' Retirement System and continue to receive his or her retirement allowance under the following conditions:

- (1) Any member who is retired with thirty (30) or more years of service may return to work in a full-time or a part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of seventy-five percent (75%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is seventy-five percent (75%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered. Members who were retired on or before June 30, 2002, shall be entitled to return to work under the provisions of this section as if they had retired with thirty (30) years of service. Nonqualified service credit purchased under the provisions of KRS 161.5465 or elsewhere with any state-administered retirement system shall not be used to meet the thirty (30) year requirement set forth in this subsection. Out-of state teaching service provided in public schools for kindergarten through grade twelve (12) may count toward the thirty (30) year requirement set forth in this subsection even if it is not purchased as service credit, if the member obtains from his or her out-of-state employer certification of this service on forms prescribed by the retirement system;
- (2) Any member who is retired with less than thirty (30) years of service after June 30, 2002, may return to work in a full-time or part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of sixty-five percent (65%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is sixty-five percent (65%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered;
- (3) Reemployment of a retired member under subsection (1) or (2) of this section in a full-time teaching or nonteaching position in a local school district shall be permitted only if the employer certifies to the Kentucky Teachers' Retirement System that there are no other qualified applicants available to fill the teaching or nonteaching position. The employer may use any source considered reliable including but not limited to data provided by the Education Professional Standards Board and the Department of Education to determine whether other qualified applicants are available to fill the teaching or nonteaching position. The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to determine whether other qualified applicants are available to fill a teaching or nonteaching position and, if not, for filling the position with a retired member who will then be permitted to return to work in that position under subsection (1) or (2) of this section. The administrative regulations shall assure that a retired member shall not be hired in a teaching or nonteaching position by a local school district until the superintendent of the school district



assures the Kentucky Teachers' Retirement System that every reasonable effort has been made to recruit other qualified applicants for the position on an annual basis;

- (4) Under this section, an employer may employ full-time a number of retired members not to exceed three percent (3%) of the membership actively employed full-time by that employer. The board of trustees may reduce this three percent (3%) cap upon recommendation of the retirement system's actuary if a reduction is necessary to maintain the actuarial soundness of the retirement system. The board of trustees may increase the three percent (3%) cap upon a determination that an increase is warranted to help address a shortage in the number of available teachers and upon the determination of the retirement system's actuary that the proposed cap increase allows the actuarial soundness of the retirement system to be maintained. For purposes of this subsection, "full-time" means the same as defined by KRS 161.220(21). A local school district may exceed the quota established by this subsection by making an annual written request to the Kentucky Department of Education which the department may approve on a year-by-year basis if the statewide quota has not been met. A district's written request to exceed its quota shall be submitted no sooner than two (2) weeks after the start of the school year;
- (5)
  - (a) Except as provided by subsection (10) of this section, a member returning to work in a full-time or part-time position under subsection (1) or (2) of this section will contribute to an account with the retirement system that will be administered independently from and with no reciprocal impact with the member's original retirement account, or any other account from which the member is eligible to draw a retirement allowance.
  - (b) Except as provided by subsection (10) of this section, a member returning to work under subsection (1) or (2) of this section shall make contributions to the retirement system at the rate provided under KRS 161.540. The new account shall independently meet the five (5) year vesting requirement as well as all other conditions set forth in KRS 161.600(1) *or* (2), *as applicable*, before any retirement allowance is payable from this account. The retirement allowance accruing under this new account shall be calculated pursuant to KRS 161.620~~(1)(b)~~. This new account shall not entitle the member to a duplication of the benefits offered under KRS 161.620(7) or 161.675, nor shall this new account provide the benefits offered by KRS 161.520, 161.525, 161.620(3), 161.655, 161.661, or 161.663.
  - (c) A member returning to work under subsection (1) or (2) of this section shall waive his or her medical insurance with the Kentucky Teachers' Retirement System during the period of reemployment and shall receive the medical insurance coverage that is generally provided by the member's active employer to the other members of the retirement system that the active employer employs. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member.
  - (d) A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit for any service provided after the member's effective date of retirement but prior to the date that the member returns to work. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit that the member would have otherwise been eligible to purchase prior to the member's initial retirement.
  - (e) A member who returns to work under subsection (1) or (2) of this section, or in the event of the death of the member, the member's estate or applicably designated beneficiary, shall be entitled, within ninety (90) days of the posting of the annual report submitted by the employer, to a refund of contributions as permitted and limited by KRS 161.470;
- (6) The board of trustees may annually, on July 1, adjust the current daily rate of a member's last annual compensation, for each full twelve (12) month period that has elapsed subsequent to the member earning his or her last annual compensation, by the percentage increase in the annual average of the consumer price index for all urban consumers for the calendar year preceding the adjustment as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%) annually. Each annual adjustment shall become part of the member's daily rate base. Failure to comply with the salary limitations set forth in subsections (1) and (2) of this section as may be adjusted by this subsection shall result in a reduction of the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar that the member exceeds these salary limitations. Notwithstanding any other provision of law to the contrary, a member retiring from a local school district who returns to work for a local school district under subsection (1) or (2) of this section shall be entitled, without any reduction to his or her retirement allowance or any other retirement benefit, to earn a minimum amount equal to one hundred seventy dollars (\$170) per day;

- (7) (a) A retired member returning to work under subsection (1) or (2) of this section shall have separated from service for a period of at least one (1) year if returning to work for the same employer on a full-time basis, and at least three (3) months if returning to work for a different employer on a full-time basis. A retired member returning to work under subsection (1) or (2) of this section on a part-time basis shall have separated from service for a period of at least three (3) months before returning to work for any employer.
- (b) As an alternative to the separation-from-service requirements in paragraph (a) of this subsection, a retired member who is returning to work for the same employer in a full-time position under subsections (1) and (2) of this section may elect a separation-from-service of not less than two (2) months followed by a forfeiture of the retired member's retirement allowance on a month-to-month basis for each month that the member has separated from service for less than twelve (12) full months. A retired member returning to work for the same employer in a part-time position, or for a different employer in a full-time position, may elect an alternative separation-from-service requirement of at least two (2) months followed by a forfeiture of the member's retirement allowance for one (1) month. During the period that the member forfeits his or her retirement allowance and thereafter, member and employer contributions shall be made to the retirement system as a result of employment in any position subject to membership in the retirement system. The member shall contribute to an account with the retirement system subject to the conditions set forth in subsection (5) of this section. For purposes of measuring the separation-from-service requirements set forth throughout this section, a member's separation-from-service begins on the first day following the last day of paid employment for the member prior to retirement.
- (c) Failure to comply with the separation-from-service requirements in this subsection voids a member's retirement and the member shall be required to return all the retirement benefits he or she received, with interest, for the period of time that the member returned to work without a sufficient separation from service;
- (8) (a) Effective July 1, 2004, local school districts may employ retired members in full-time or part-time teaching or administrative positions without limitation on the compensation of the retired members that is otherwise required by subsections (1) and (2) of this section. Under provisions of this subsection, a local school district may only employ retired members to fill critical shortage positions for which there are no other qualified applicants as determined by the local superintendent. The number of retired members that a local school district may employ under this subsection shall be no more than two (2) members per local school district or one percent (1%) of the total active members employed by the local school district on a full-time basis as defined under KRS 161.220(21), whichever number is greater. Retired members returning to work under this subsection shall be subject to the separation-from-service requirements set forth in subsection (7) of this section. Retired members returning to work under this subsection shall waive their medical insurance coverage with the retirement system during their period of reemployment and receive medical insurance coverage that is offered to other full-time members employed by the local school district. Retired members returning to work under this subsection shall contribute to an account subject to the conditions set forth in subsection (5) of this section. Retired members returning to work under this subsection shall make contributions to the retirement system at the rate provided under KRS 161.540. The employer shall make contributions at the rate provided under KRS 161.550. Local school districts shall make annual payments to the retirement system on the compensation paid to the reemployed retirees at the rates determined by the retirement system's actuary that reflect any accrued liability resulting from the reemployment of these members.
- (b) The Department of Education may employ retired members in full-time or part-time teaching or nonteaching positions without the limitations on compensation otherwise required by subsections (1) and (2) of this section to fill critical shortage areas in the schools it operates, including the Kentucky School for the Blind, the Kentucky School for the Deaf, and the Kentucky Virtual High School, and to serve on audit teams. The department shall be subject to the same requirements as local school districts as provided in paragraph (a) of this subsection, except the Kentucky Teachers' Retirement System shall determine the maximum number of employees that may be employed under this paragraph;
- (9) The return to work limitations set forth in this section shall apply to retired members who are returning to work in the same position from which they retired, or a position substantially similar to the one from which they retired, or a position described in KRS 161.046 or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the return to work limitations set forth in this

section. The board of trustees shall determine whether employment in a nonteaching position is subject to this subsection;

- (10) (a) Notwithstanding the provisions of this section, individuals who ***become members on or after January 1, 2022, who subsequently*** retire and begin drawing a ***monthly lifetime*** retirement allowance from ~~one (1) or more of the systems or plans administered by the Kentucky Retirement Systems, [the Teachers' Retirement System, or the Judicial Form Retirement System on or after January 1, 2019]~~, who ***following retirement*** are reemployed ~~[on or after January 1, 2019, ]~~with an employer participating in the Teachers' Retirement System, shall not be eligible to contribute to or earn benefits in a second retirement account ***in the Teachers' Retirement System*** during the period of reemployment. ~~Employers shall be required to pay the employer normal cost for pension benefits established by KRS 161.550 for any period of full-time reemployment to help pay down the unfunded liability of the Teachers' Retirement System pension fund.]~~
- (b) The provisions of subsections (1) to (8) of this section are not subject to KRS 161.714;
- (11) Any member retired by reason of service may waive his or her annuity and return to full-time employment in a position covered by the Kentucky Teachers' Retirement System under the following conditions:
- (a) The member shall receive no annuity payments while employed in a covered position, shall waive his or her medical insurance coverage with the Kentucky Teachers' Retirement System during the period of reemployment, and shall receive the medical insurance coverage that is generally offered by the member's active employer to the other members of the retirement system employed by the active employer. The member's estate or, if there is a beneficiary applicably designated by the member, then the beneficiary, shall continue to be eligible for life insurance benefits as provided in KRS 161.655. Service subsequent to retirement shall not be used to improve an annuity, except as provided in paragraphs (b) and (c) of this subsection;
- (b) Any member who waives regular annuity benefits and returns to teaching or covered employment shall be entitled to make contributions on the salaries received for this service and have his retirement annuity recalculated as provided in the regular retirement formula in KRS 161.620(1), less any applicable actuarial discount applied to the original retirement allowance due to the election of a joint and last survivor option. Retirement option and beneficiary designation on original retirement shall not be altered by postretirement employment, and dependents and spouses of the members shall not become eligible for benefits under KRS 161.520, 161.525, or 161.661 because of postretirement employment;
- (c) When a member returns to full-time teaching or covered employment as provided in subsection (b) of this section, the employer is required to withhold and remit regular retirement contributions. The member must be employed full-time for at least one (1) consecutive contract year to be eligible to improve an annuity. The member shall be returned to the annuity rolls on July 1 following completion of the contract year or on the first day of the month following the month of termination of service if full-time employment exceeds one (1) consecutive contract year. Any discounts applied at the time of the original retirement due to service or age may be reduced or eliminated due to additional employment if full-time employment is for one (1) consecutive contract year or longer; and
- (d) A member retired by reason of service who has been employed the equivalent of twenty-five (25) days or more during a school year under KRS 161.605 may waive the member's retirement annuity and return to regular employment covered by the Kentucky Teachers' Retirement System during that school year a maximum of one (1) time during any five (5) year period, beginning with that school year;
- (12) Retired members may be employed in a part-time teaching capacity by an agency described in KRS 161.220(4)(b) or (n), not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year. Retired members may be employed for a period not to exceed the equivalent of one hundred (100) days in any one (1) fiscal year in a part-time administrative or nonteaching capacity by an agency described in KRS 161.220(4)(b) or (n) in a position that would otherwise be covered by the retirement system. The return to work provisions set forth in subsections (1) to (8) of this section shall not apply to retired members who return to work solely for an agency described in KRS 161.220(4)(b) or (n). Calculation of the number of days and teaching hours for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service. Any member who exceeds the twelve (12) hour or one hundred (100) day limitations of this subsection shall be subject to having his or her retirement voided and be required to return all retirement allowances and other benefits paid to the member or on the member's behalf since the

effective date of retirement. In lieu of voiding a member's retirement, the system may reduce the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar of compensation that the member earns in employment exceeding twelve (12) hours, one hundred (100) days, or any apportionment of the two (2) combined;

- (13) When a retired member returns to employment in a part-time teaching capacity or in a nonteaching capacity as provided in subsection (12) of this section, the employer shall contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for retired members who return to work under subsection (12) of this section; and
- (14) For retired members who return to work during any one (1) fiscal year in both a position described in KRS 161.220(4)(b) or (n) and in a position described under another provision under KRS 161.220(4), and for retired members who return to work in a position described under KRS 161.220(4)(b) or (n) in both a teaching and an administrative or nonteaching capacity, the board of trustees shall adopt a methodology for a pro rata apportionment of days and hours that the retired member may work in each position.

➔Section 33. KRS 161.612 is repealed, reenacted, and amended to read as follows:

Effective July 1, 2002, any individual occupying a position on a part-time basis that requires certification or graduation from a four (4) year college or university as a condition of employment and any individual providing part-time or substitute teaching services that are the same or similar to those teaching services provided by certified, full-time teachers shall be a member of the Kentucky Teachers' Retirement System, according to the conditions and only to the extent set forth in this section, if the individual is employed by one (1) of the public boards, institutions, or agencies set forth in KRS 161.220, excluding those public boards, institutions, and agencies described in KRS 161.220(4)(b) and (n). Members providing part-time and substitute services shall participate in the retirement system as follows:

- (1) Members providing part-time and substitute services shall accrue service credit as provided under KRS 161.500 and be entitled to a retirement allowance upon meeting the service retirement conditions of KRS ~~[161.235 or 161.600, as applicable]~~. The board of trustees shall adopt a methodology for accrediting service credit to these members on a pro rata basis. The methodology adopted by the board of trustees may be amended as necessary to ensure its actuarial soundness. The retirement allowance for members providing part-time and substitute services shall be calculated pursuant to **Section 3 or 4 of this Act and** ~~[KRS 161.235 or 161.620, as applicable]~~, except that the provisions of KRS 161.620(3) shall not apply. Members providing part-time and substitute services who meet the service retirement conditions of KRS ~~[161.235 or 161.600, as applicable]~~, may also be eligible to participate as approved by the board of trustees in the medical insurance program provided by the retirement system under KRS 161.675. Members providing part-time and substitute services shall make contributions to the Kentucky Teachers' Retirement System at the rate provided under KRS 161.540. A member who provides part-time or substitute services, or in the event of the death of the member, the member's estate or applicably designated beneficiary, will be entitled, within ninety (90) days of the posting of the annual report submitted by the member's employer, to a refund of contributions as permitted and limited by KRS 161.470;
- (2) The board of trustees shall adopt eligibility conditions under which members providing part-time and substitute services may participate in the benefits provided under KRS 161.520, 161.655, 161.661, and 161.663. The board of trustees may permit members providing part-time or substitute services to participate in other benefits offered by the retirement system by promulgating administrative regulations that establish eligibility conditions for participation in these benefits. All eligibility conditions adopted by the board of trustees pursuant to this subsection may be amended as necessary to ensure their actuarial soundness;
- (3) In addition to the pro rata methodology adopted by the board of trustees under subsection (1) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding the accrual, retention, accreditation, and use of service credit that apply to members providing full-time services. In addition to the eligibility conditions set forth by the board of trustees under subsection (2) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding both the eligibility to participate and the extent of participation in any benefit offered under KRS 161.220 to 161.716 that apply to members providing full-time services;
- (4) Notwithstanding any other provisions of this section to the contrary, instructional assistants who provide teaching services in the local school districts on a full-time basis in positions covered by the County Employees Retirement System who are used as substitute teachers on an emergency basis for five (5) days or less during any one (1) fiscal year shall not be considered members of the Teachers' Retirement System during that period in which they are serving as substitute teachers for five (5) days or less;

- (5) The board of trustees may adopt a pro rata methodology to determine the annual compensation of members providing part-time and substitute services in order to determine benefits provided under KRS 161.661 and 161.663. Members providing part-time and substitute services who had retirement contributions posted to their accounts during the previous fiscal year and who have not had those contributions refunded to them are eligible to vote for the board of trustees;
- (6) The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership; *and*
- (7) ~~Effective January 1, 2019, this section does not apply to any individual who retires on or after January 1, 2019, and is reemployed on or after January 1, 2019; and~~
- ~~(8) The provisions of this section are not subject to KRS 161.714.~~

➔Section 34. KRS 161.615 is amended to read as follows:

- (1) The board of trustees is authorized to implement a limited defined contribution plan for the sole purpose of providing retirement allowance payments for retired members who have been approved by the retirement system for full-time reemployment as provided in KRS 161.605.
- (2) The defined contribution plan shall be administered separately from the regular benefits provided for members of the retirement system, except that the contributions to the plan shall be invested in the same manner as other contributions to the retirement system.
- (3) The provisions of this section apply only to those retired members who were permitted to return to work under the critical shortage provisions of KRS 161.605(7) as they existed on June 30, 2002. The provisions of this section shall not apply to any retired member returning to work on or after July 1, 2002.
- (4) Separate member accounts shall be maintained for participants in this plan which shall reflect the annual contributions made to the participant's account based on the rates and interest levels specified in KRS 161.605.
- (5) When the retiree's reemployment terminates, the total contributions and accrued interest in the participant's account will be paid in a lump-sum payment or on an actuarial straight life monthly basis to the retiree. If the member dies prior to making application for a retirement allowance under this plan, the beneficiary designated by the participant for this plan shall receive a refund of the funds in the account. If there is a remaining balance in the account at the death of the participant after retirement from this plan, it shall be paid to the beneficiary designated by the participant for this benefit.
- (6) Retired members shall be eligible to receive their retirement annuity when approved for reemployment and participation in this plan. Service as a reemployed retiree may not be used in any manner for credit under the regular retirement benefit plans provided by the retirement system.

~~[(7) Notwithstanding the provisions of subsections (1) to (6) of this section, any plan established pursuant to this section shall, effective January 1, 2019, be closed to any future employee or employer contributions.]~~

➔Section 35. KRS 161.623 is amended to read as follows:

- (1) Effective July 1, 1982, and thereafter, a district board of education or other employer of members of the Teachers' Retirement System may compensate, at the time of retirement for service, an active contributing member for unused sick-leave days in accordance with this section.
- (2) Upon the member's application for service retirement, the employer shall certify the retiring member's unused accumulated sick-leave balance to the board of trustees of the Kentucky Teachers' Retirement System. The member's sick-leave balance, expressed in days, shall be divided by one hundred eighty-five (185) days to determine the amount of service credit that may be considered for addition to the member's retirement account for the purpose of determining the retirement allowance under KRS 161.620~~[, subject to the limitation of subsection (9)(a) of this section]~~. Notwithstanding any statute to the contrary, sick-leave credit that is accredited under this section or by one (1) of the other state-administered retirement systems shall not be used for the purpose of determining whether the member is eligible to receive a retirement allowance from the Kentucky Teachers' Retirement System.
- (3) The board shall compute the cost to the retirement system of the sick-leave credit for each retiring member and shall bill the last employer of the retiring member for such cost. The employer shall pay the cost of such service credit to the retirement system within fifteen (15) days after receiving notification of the cost from the board.

- (4) Retiring members who receive service credit under this section shall not be eligible to receive compensation for accrued sick leave under KRS 161.155(10) or any other statutory provision.
- (5) Employer participation is optional and the employer may opt to purchase less service credit than the member is eligible to receive provided the same percentage of reduction is made applicable to all retiring members of the employer during a school fiscal year.
- (6) The board of trustees shall formulate and adopt necessary rules and regulations for the administration of the foregoing provisions.
- (7) Payments to the retirement system for service credit obtained under this section or for compensation credit obtained under KRS 161.155(10) shall be based on the full actuarial cost as defined in KRS 161.220(22).
- (8) For an individual who becomes a member on or after July 1, 2008, the maximum amount of unused accumulated sick leave that may be considered for addition to the member's retirement account for purposes of determining the retirement allowance under KRS 161.620 shall not exceed three hundred (300) days ~~or the amount specified by subsection (9)(a) of this section~~.

~~[(9) Notwithstanding any other provision of KRS 161.220 to 161.716 to the contrary:~~

- ~~(a) The maximum amount of sick leave converted to additional service credit under the provisions of this section shall not exceed the service credit based upon the level of sick leave accumulated on December 31, 2018, by a member whose employer participates in the sick leave program authorized by this section; and~~
- ~~(b) On or after August 1, 2018, no employers may opt to participate in the sick leave program authorized by this section.]~~

➔Section 36. KRS 161.630 is repealed, reenacted, and amended to read as follows:

- (1)
  - (a) ~~{An individual who became }~~A member~~{ prior to January 1, 2019}~~, upon retirement, shall receive a retirement allowance in the form of a life annuity, with refundable balance, as provided in KRS 161.620, unless an election is made before the effective date of retirement to receive actuarially equivalent benefits under options which the board of trustees approves.
  - (b) An individual who is participating in the **supplemental benefit component**~~{hybrid cash balance plan}~~ as provided by **Section 3 or 4 of this Act**~~{KRS 161.235}~~ may, before the effective date of retirement, elect to receive his or her accumulated account balance **accrued in the supplemental benefit component** annuitized into a monthly payment under one (1) of the actuarial equivalent payment options approved by the board of trustees.
  - (c) No option shall provide for a benefit with an actuarial value at the age of retirement greater than that provided in **subsection (5)(a) of Section 3 of this Act, subsection (5)(a) of Section 4 of this Act,**~~{KRS 161.235(7)(a)}~~ or 161.620, as applicable. This section does not apply to disability allowances as provided in KRS 161.661(1).
- (2) The retirement option chosen by a retiree at the time of service retirement shall remain in force unless the retiree ~~{became a member prior to January 1, 2019, and }~~elects to make a change under the following conditions:
  - (a) A divorce, annulment, or marriage dissolution following retirement shall, at the election of the retiree, cancel any optional plan selected at retirement that provides continuing benefits to a spousal beneficiary and return the retiree to a single lifetime benefit equivalent as determined by the board; or
  - (b) Following marriage or remarriage, or the death of the designated beneficiary, a retiree may elect a new optional plan of payment based on the actuarial equivalent of a single lifetime benefit at the time of the election, as determined by the board. The plan shall become effective the first of the month following receipt of an application on a form approved by the board.
- (3) Except as otherwise provided in this section, a beneficiary designation shall not be changed after the effective date of retirement except for retirees who elect the life annuity with refundable balance or the predetermined years certain and life thereafter option. A member may remove a beneficiary at any time, but shall not designate a substitute beneficiary. If a member elects to remove a beneficiary, the member's retirement allowance shall not change regardless of the retirement option selected by the member, even if the removed beneficiary predeceases the member.

- (4) A member who experiences a qualifying event under subsection (2) of this section and who elects a new optional plan of payment shall make that election within sixty (60) days of the qualifying event.

➔Section 37. KRS 161.661 is repealed, reenacted, and amended to read as follows:

- (1) Any member who has completed five (5) or more years of accredited service in the public schools of Kentucky after July 1, 1941, may retire for disability and be granted a disability allowance if found to be eligible as provided in this section. Application for disability benefits shall be made within one (1) year of the last contributing service in Kentucky, and the disability must have occurred during the most recent period of employment in a position covered by the Teachers' Retirement System and subsequent to the completion of five (5) years of teaching service in Kentucky. A disability occurring during the regular vacation immediately following the last period of active service in Kentucky or during an official leave for which the member is entitled to make regular contributions to the retirement system, shall be considered as having occurred during a period of active service. The annual disability allowance shall be equal to sixty percent (60%) of the member's final average salary. ~~Individuals who became~~ Members ~~prior to January 1, 2019,~~ who have twenty-seven (27) or more years of service credit are eligible for service retirement only. ~~Individuals who become members on or after January 1, 2019, who have met the requirements of KRS 161.235(6)(b) shall be eligible for service retirement only.~~
- (2) The provisions of KRS 161.520, 161.525, and subsections (3), (4), and (5) of this section shall not apply to disability retirees whose benefits were calculated on the service retirement formula nor to survivors of these members.
- (3) Members shall earn one (1) year of entitlement to disability retirement, at sixty percent (60%) of the member's final average salary, for each four (4) years of service in a covered position, but any member meeting the service requirement for disability retirement shall be credited with no less than five (5) years of eligibility.
- (4) A member retired by reason of disability shall continue to earn service credit at the rate of one (1) year for each year retired for disability. This service shall be credited to the member's account at the expiration of entitlement as defined in subsection (3) of this section, or when the member's eligibility for disability benefits is terminated upon recommendation of a medical review committee, and this service shall be used in calculating benefits as provided in subsection (5) of this section, but under no circumstances shall this service be used to provide the member with more than twenty-seven (27) years of total service credit ~~or the level of service credit needed to meet the requirements of KRS 161.235(6)(b), as applicable~~. The service credit shall be valued at the same level as service earned by active members as provided under KRS ~~161.235,~~ 161.600~~,~~ or 161.620~~, as applicable~~. ~~Members participating in the hybrid cash balance plan as provided by KRS 161.235 shall also be credited with employer credits and interest credits for each year of service earned under the provisions of this subsection based upon the salary in which the last employer credit was paid. Payments during the entitlement period as specified by subsection (3) of this section shall not reduce the accumulated account balance of a member participating in the hybrid cash balance plan.~~
- (5) Any member retired by reason of disability and remaining disabled at the expiration of the entitlement period shall have his disability benefits recalculated using the service retirement formula with service credit ~~and any additional accumulated account balance~~ earned as set out in subsection (4) of this section. ~~For persons who became members prior to January 1, 2019,~~ The retirement allowance shall be calculated as set forth in KRS 161.620, except that those persons less than sixty (60) years of age shall be considered as sixty (60) years of age. ~~For persons who become members on or after January 1, 2019, the retirement allowance or benefit shall be calculated as set forth in KRS 161.235, except that those persons less than age sixty five (65) shall be considered as sixty five (65) years of age.~~ Members having their disability benefits recalculated under this subsection shall not be entitled to a benefit based upon an average of their three (3) highest salaries as set forth in KRS 161.220(9), unless approved otherwise by the board of trustees.
- (6) Members who have their disability retirement allowance recalculated at the expiration of the entitlement period shall continue to have coverage under the post-retirement medical insurance program. Restrictions on employment shall remain in effect until the member attains age seventy (70) or until the member's eligibility is discontinued. KRS 161.520 and 161.525 shall not apply to survivors of disability retirees whose retirement allowances have been recalculated at the expiration of the entitlement period. Members who have their disability retirement allowance recalculated at the expiration of their entitlement period shall be entitled to a minimum monthly allowance of five hundred dollars (\$500) as the basic straight life annuity. The minimum allowance shall be effective July 1, 1992, and shall apply to those members who have had their allowance recalculated prior to that date and to disability retirees who will have their benefit allowance recalculated on or after that date.

- (7) Effective July 1, 1992, members retired for disability prior to July 1, 1964, shall be entitled to a minimum monthly allowance of five hundred dollars (\$500) as their basic straight life annuity and their surviving spouse shall be eligible for survivor benefits as provided in KRS 161.520(1)(a) and (b).
- (8) Any member retired by reason of disability may voluntarily waive disability benefits and return to teaching or any ~~individual who became a member prior to January 1, 2019~~, who is age sixty (60) years or older, may elect to waive disability benefits and retire for service on the basis of service credited to the member on the effective date of the disability retirement, ~~or any individual who becomes a member on or after January 1, 2019, who is sixty five (65) years of age or older, may elect to waive disability benefits and retire for service on the basis of his or her accumulated account balance and service credited to the member on the effective date of disability retirement.~~
- (9) In order to qualify for retirement by reason of disability a member must suffer from a physical or mental condition presumed to be permanent in duration and of a nature as to render the member incapable of being gainfully employed in a covered position. The incapability must be revealed by a competent examination by a licensed physician or physicians and must be approved by a majority of a medical review committee.
- (10) A member retired by reason of disability shall be required to undergo periodic examinations at the discretion of the board of trustees to determine whether the disability allowance shall be continued. When examination and recommendation of a medical review committee indicate the disability no longer exists, the allowance shall be discontinued.
- (11) Eligibility for payment shall begin on the first day of the month following receipt of the application in the Teachers' Retirement System office, or the first of the month next following the last payment of salary or sick leave benefits by the employer, whichever is the later date.
- (12) No person who receives a disability allowance may be employed in a position that entails duties or qualification requirements similar to positions subject to participation in the retirement system either within or without the State of Kentucky. So doing shall constitute a misdemeanor and shall result in loss of the allowance from the first date of this service. A member who applies for and is approved for disability retirement on or after July 1, 2002, and whose annual disability benefit is less than forty thousand dollars (\$40,000) may earn income in any occupation other than covered employment only to the extent that the annual income from the other employment when added to the annual disability benefit does not exceed forty thousand dollars (\$40,000). For any member who exceeds this limit as a result of income from other employment, the Kentucky Teachers' Retirement System shall reduce the member's disability benefit on a dollar-for-dollar basis for each dollar that the member's combined annual disability benefit and annual income from other employment exceeds forty thousand dollars (\$40,000). The board of trustees may annually increase the forty thousand dollar (\$40,000) limit by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%).
- (13) All members who applied for disability retirement before July 1, 2002, and were approved as a result of that application shall be subject to the income limitations as they existed on June 30, 2002, until July 1, 2006. Effective July 1, 2006, the twenty-seven thousand dollar (\$27,000) limitation shall be increased to forty thousand dollars (\$40,000) and may be adjusted by the board of trustees by the consumer price index in the manner described in subsection (12) of this section. The recipient of a disability allowance who engages in any gainful occupation other than covered employment must make a report of the duties involved, compensation received, and any other pertinent information required by the board of trustees.
- (14) The board of trustees shall designate medical review committees, each consisting of three (3) licensed physicians. A medical review committee shall pass upon all applications for disability retirement and upon all applicant statements, medical certifications, and examinations submitted in connection with disability applications. The disposition of each case shall be recommended by a medical review committee in writing to the retirement system. Members of a medical review committee shall follow administrative regulations regarding procedures as the board of trustees may enact and shall be paid reasonable fees and expenses as authorized by the board of trustees in compliance with the provisions of KRS 161.330 and 161.340. The retirement system may secure additional medical examinations and information as it deems necessary. A member may appeal any final agency decision denying his or her disability retirement application pursuant to the provisions of KRS 161.250(2).
- (15) A disability may be presumed to be permanent if the condition creating the disability may be reasonably expected to continue for one (1) year or more from the date of application for disability benefits.



- (16) Any member who has voluntarily waived disability benefits or whose disability benefits have been discontinued on recommendation of a medical review committee, may apply for reinstatement of disability benefits. The application for reinstatement must be made to the retirement system within twelve (12) months of the date disability benefits terminated. If the termination of benefits were voluntary, the reinstatement may be made without medical examination if application is made within three (3) months of the termination date. Other applications for reinstatement will be processed in the same manner as new applications for benefits.
- (17) No person who is receiving disability benefits under this section may be employed in a position which qualifies the person for membership in a retirement system financed wholly or in part with public funds. Employment in a position prohibited by this subsection shall result in disqualification for those disability benefits from the date of employment in the prohibited position.
- (18) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section, or becomes disqualified from receiving a portion of those benefits due to income from other than covered employment, shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits. The Kentucky Teachers' Retirement System may, in order to collect an outstanding debt, reduce or terminate any benefit that a member is otherwise entitled to receive.
- (19) ***Notwithstanding any other provision of this section to the contrary, individuals who become members on or after January 1, 2022, shall be eligible for an actuarially determined disability benefit as prescribed by the board of trustees via administrative regulations promulgated by the board. The board of trustees shall arrange by appropriate contract or on a self-insured basis a disability plan to provide the disability benefits and may adjust the benefits in accordance with subsection (3) of Section 1 of this Act or subsection (3) of Section 2 of this Act.***

➔Section 38. KRS 161.650 is repealed and reenacted to read as follows:

- (1) In the case of death of a member who has retired by reason of service or disability, any portion of the member's accumulated contributions, including member contributions to the state accumulation fund and regular interest to the date of retirement, that has not, and will not be paid as an allowance or benefit shall be paid to the member's beneficiary in such manner as the board of trustees elects.
- (2) The member may designate a primary beneficiary or two (2) or more cobeneficiaries to receive any remaining accumulated member contributions payable under this section. A contingent beneficiary may be designated in addition to the primary beneficiary or the cobeneficiaries. The member may designate two (2) or more contingent beneficiaries. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of any remaining funds of the member's accumulated contributions. 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. Cobeneficiaries shall be composed of a single class of individuals, or trusts where permitted, who will share in equal proportions in any payment that may become available under this section. Any beneficiary designation made by the member shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent divorce. 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. In the event that the member fails to designate a beneficiary or all designated beneficiaries predecease the member, any remaining accumulated member contributions shall be payable to the member's estate.

➔Section 39. KRS 161.700 is repealed and reenacted to read as follows:

- (1) Except as otherwise provided by this section and KRS 161.655(5), 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 account balance, 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 retirement allowance, 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 his or her accumulated account balance 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.

➔Section 40. KRS 161.714 is amended to read as follows:

~~{(1) For persons who became members in the Teachers' Retirement System prior to January 1, 2019, }It is hereby declared that in consideration of the contributions by members and in further consideration of benefits received by the state from the member's employment, KRS 161.220 to 161.710 shall constitute, *except as provided in KRS 6.696*, an inviolable contract of the Commonwealth, and the benefits provided herein, *except as provided in KRS 6.696*, shall not be subject to reduction or impairment by alteration, amendment, or repeal. ~~except:~~~~

~~(a) As provided in KRS 6.696; and~~

~~(b) The General Assembly reserves the right to amend, reduce, or suspend any legislative changes to the provisions of KRS 161.220 to 161.716 that become effective on or after July 1, 2018.~~

~~(2) (a) For persons who become members in the Teachers' Retirement System on or after January 1, 2019, the General Assembly reserves the right to amend, suspend, or reduce the benefits and rights provided under KRS 161.220 to 161.716 if, in its judgment, the welfare of the Commonwealth so demands, except that the amount of benefits the member has accrued at the time of amendment, suspension, or reduction shall not be affected.~~

~~(b) For purposes of this subsection, the amount of benefits the member has accrued at the time of any amendment, suspension, or reduction shall be limited to the accumulated account balance the member has accrued at the time of amendment, suspension, or reduction.~~

~~(e) The provisions of this subsection shall not be construed to limit the General Assembly's authority to change any other benefit or right specified by KRS 161.220 to 161.716, except the benefits specified by paragraph (b) of this subsection for members who begin participating in the Teachers' Retirement System on or after January 1, 2019.~~

~~(3) The provisions of this section shall not be construed to limit the General Assembly's authority to amend, reduce, or suspend the benefits and rights of members of the Teachers' Retirement System as provided by KRS 161.220 to 161.716 that the General Assembly had the authority to amend, reduce, or suspend, prior to July 1, 2018.~~

➔Section 41. The following KRS section is repealed:

161.235 Establishment of hybrid cash balance plan for new Teachers' Retirement System members who begin participating on or after January 1, 2019 -- TRS members with fewer than five years of service may elect participation. (Declared void -- See LRC Note Below)

➔Section 42. The Teachers' Retirement System shall, on or before November 1, 2021, submit recommendations to the Public Pension Oversight Board regarding how and when any future actuarial gains in the new tier of benefits for members entering the system on or after January 1, 2022, could be distributed to these members in the form of additional contributions to the supplemental benefit component. The recommendations provided by this section shall include but not be limited to the funding level necessary before the board can consider distributing contributions to the supplemental benefit component and the first fiscal year in which the board could take action.

➔Section 43. Sections 1 to 41 of this Act shall take effect January 1, 2022.

**Veto overridden March 29, 2021.**

## CHAPTER 158

( HB 272 )

AN ACT relating to utility services.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *Any water district or water association formed for the purpose of furnishing water or sewer services to the general public for compensation pursuant to KRS Chapters 74 or 273 may assess a customer who fails to pay a bill for rendered services by the due date shown on the bill a late payment charge of ten percent (10%) of the amount billed.*
- (2) *A late payment charge or fee shall not be assessed more than once per billing cycle or on any part of the late payment charge.*
- (3) *Any payment received by a water district or water association shall first be applied to the portion of the bill for service rendered.*
- (4) *The commission shall not modify, reject, discontinue, abolish, or suspend the operation of a late payment charge that is provided for currently, or has been provided for in the past, in a water district or water association tariff.*
- (5) *A water district or water association shall not be required to demonstrate to the commission that the late payment charge is required to recover customer-specific costs incurred that would otherwise result in a monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or actions taken.*
- (6) *Any late payment charge imposed by a water district or water association shall be waived for any bill or portion of a bill for which a customer has received third-party billing assistance through the Low-Income Household Drinking Water and Wastewater Emergency Assistance Program or from another public or charitable source.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

- (1) *During a declared emergency, no executive order, administrative regulation, or other guidance from a department or officer of state government shall be issued or promulgated that conflicts with any of the requirements or guidance, including advisory memoranda, that is issued by the United States Department of Homeland Security or its successor agencies regarding the classification or treatment of the employees of utilities subject to or created under KRS Chapter 58, 96, 278, or 279, regional wastewater commissions subject to or created under KRS Chapter 65, regional water commissions subject to or created under KRS Chapter 74, metropolitan sewer districts subject to or created under KRS Chapter 76, and sanitation districts subject to or created under KRS Chapter 220, as essential or critical infrastructure workers that are needed to ensure the continuity of functions critical to public health and safety or economic and national security.*
- (2) *Beginning on the effective date of this Act, during a declared emergency, no current or future executive order, administrative regulation, or other guidance shall remain in effect or be issued or promulgated by a department or officer of state government that prohibits or otherwise impairs the right of a utility subject to or created under KRS Chapter 96 from:*
  - (a) *Terminating service for a customer's non-payment of a utility bill; or*
  - (b) *Assessing or collecting its usual and customary fees or penalties for non-payment or delinquent payments of a customer's utility bill.*

Veto overridden March 29, 2021.

## CHAPTER 159

( HB 275 )

AN ACT relating to the State Investment Commission.

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

➔Section 1. KRS 42.500 is amended to read as follows:

- (1) There shall be a State Investment Commission composed of:~~[the Governor who shall be chairman;]~~
  - (a) The State Treasurer who shall be~~[vice]~~ chairman~~[and serve as chairman in the absence of the Governor];~~
  - (b) The secretary of the Finance and Administration Cabinet;
  - (c) ***The state controller;*** and
  - (d) Two (2) persons appointed by the Governor.
- (2) The individuals appointed by the Governor shall be selected as follows: one (1) to be selected from a list of five (5) submitted to the Governor by the Kentucky Bankers Association, and one (1) to be selected from a list of five (5) submitted to the Governor by the Independent Community Bankers Association.
- (3) The State Investment Commission shall meet at least quarterly to review investment performance and conduct other business. This provision shall not prohibit the commission from meeting more frequently as the need arises.
- (4) The~~[Governor,]~~ State Treasurer,~~[]~~ and secretary of the Finance and Administration Cabinet shall each have the authority to designate, by an instrument in writing over his or her signature and filed with the secretary of the commission as a public record of the commission, an alternate with full authority to:
  - (a) Attend in the member's absence, for any reason, any properly convened meeting of the commission; and
  - (b) Participate in the consideration of, and vote upon, business and transactions of the commission.

Each alternate shall be a person on the staff of the appointing member or in the employ of the appointing member's state agency or department.

- (5) Any designation of an alternate may, at the appointing member's direction:
- (a) Be limited upon the face of the appointing instrument to be effective for only a specific meeting or specified business;
  - (b) Be shown on the face of the appointing instrument to be a continuing designation, for a period of no more than four (4) years, whenever the appointing member is unable to attend; or
  - (c) Be revoked at any time by the appointing member in an instrument in writing, over his or her signature, filed with the secretary of the commission as a public record of the commission.
- (6) Any person transacting business with, or materially affected by, the business of the commission may accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time and scope of the designation, and, if it is of a continuing nature, whether and when the designation has been revoked. The joint certificate shall be made and delivered to the person requesting it within a reasonable time after it has been requested in writing, with acceptable identification of the business or transaction to which it refers and the requesting person's interest in the business or transaction.
- (7) Any three (3) persons who are members of the commission or alternates authorized under subsections (4) and (5) of this section shall constitute a quorum and may, by majority vote, transact any business of the commission. Any three (3) members of the commission may call a meeting.
- (8) The provisions of KRS 61.070 shall not apply to members of the commission.
- (9) The commission shall have authority and may, if in its opinion the cash in the State Treasury is in excess of the amount required to meet current expenditures, invest any and all of the excess cash in:
- (a) Obligations and contracts for future delivery of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:
    1. United States Treasury;
    2. Export-Import Bank of the United States;
    3. Farmers Home Administration;
    4. Government National Mortgage Corporation; and
    5. Merchant Marine bonds;
  - (b) Obligations of any corporation of the United States government or government-sponsored enterprise, including but not limited to:
    1. Federal Home Loan Mortgage Corporation;
    2. Federal Farm Credit Banks:
      - a. Bank for Cooperatives;
      - b. Federal Intermediate Credit Banks; and
      - c. Federal Land Banks;
    3. Federal Home Loan Banks;
    4. Federal National Mortgage Association; and
    5. Tennessee Valley Authority obligations;
  - (c) Collateralized or uncollateralized certificates of deposit, issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized statistical rating organization or other interest-bearing accounts in depository institutions chartered by this state or by the United States, except for shares in mutual savings banks;
  - (d) Bankers acceptances for banks rated in the highest short-term category by a nationally recognized statistical rating organization;
  - (e) Commercial paper rated in the highest short-term category by a nationally recognized statistical rating organization;

- (f) Securities issued by a state or local government, or any instrumentality or agency thereof, in the United States, and rated in one (1) of the three (3) highest long-term categories by a nationally recognized statistical rating organization;
  - (g) United States denominated corporate, Yankee, and Eurodollar securities, excluding corporate stocks, issued by foreign and domestic issuers, including sovereign and supranational governments, rated in one (1) of the three (3) highest long-term categories by a nationally recognized statistical rating organization;
  - (h) Asset-backed securities rated in the highest category by a nationally recognized statistical rating organization; ~~and~~
  - (i) Shares of mutual funds, each of which shall have the following characteristics:
    - 1. The mutual fund shall be an open-end diversified investment company registered under Federal Investment Company Act of 1940, as amended;
    - 2. The management company of the investment company shall have been in operation for at least five (5) years;
    - 3. The mutual fund shall be rated in the highest category by a nationally recognized statistical rating organization;
    - 4. All of the securities in the mutual fund shall be eligible investments pursuant to this section; and
  - (j) State and local delinquent property tax claims which upon purchase shall become certificates of delinquency secured by interests in real property not to exceed twenty-five million dollars (\$25,000,000) in the aggregate. For any certificates of delinquency that have been exonerated pursuant to KRS 132.220(5), the Department of Revenue shall offset the loss suffered by the Finance and Administration Cabinet against subsequent local distributions to the affected taxing districts as shown on the certificate of delinquency.
- (10) The State Investment Commission shall promulgate administrative regulations for the investment and reinvestment of state funds in shares of mutual funds, and the regulations shall specify:
- (a) The long and short term goals of any investment;
  - (b) The specification of moneys to be invested;
  - (c) The amount of funds which may be invested per instrument;
  - (d) The qualifications of instruments; and
  - (e) The acceptable maturity of investments.
- (11) Any investment in obligations and securities pursuant to subsection (9) of this section shall satisfy this section if these obligations are subject to repurchase agreements, provided that delivery of these obligations is taken either directly or through an authorized custodian.
- (12) (a) Income earned from investments made pursuant to this section shall accrue to the credit of the investment income account of the general fund, except that interest from investments of excess cash in the road fund shall be credited to the surplus account of the road fund and interest from investments of excess cash in the game and fish fund shall be credited to the game and fish fund, interest earned from investments of imprest cash funds and funds in the trust and revolving fund for each state public university shall be credited to the appropriate institutional account, and interest earned from the investment of funds accumulated solely by means of contributions and gifts shall not be diverted to any purpose other than that stipulated by the donor, when the donor shall have designated the use to which the interest shall be placed.
- (b) Except as otherwise provided by law, or by the obligations and covenants contained in resolutions and trust indentures adopted or entered into for state bond issues, interest earned from the investment of moneys appropriated to the capital construction accounts, trust and agency accounts, and trust and agency revolving accounts shall accrue to the capital construction investment income account.
  - (c) If there is a revenue shortfall, as defined in KRS 48.010, of five percent (5%) or less, the secretary of the Finance and Administration Cabinet, upon the recommendation of the state budget director, may direct the transfer of excess unappropriated capital construction investment income to the general fund

investment income account. The amount of the transfer shall not exceed the amount of the shortfall in general fund revenues.

- (d) If the capital construction investment income is less than that amount appropriated by the General Assembly, the secretary of the Finance and Administration Cabinet may, upon recommendation of the state budget director, direct the transfer of excess unappropriated general fund investment income to the capital construction investment income account. The transfer of general fund investment income revenues to the capital construction investment income account shall be made only when the actual general fund revenues are in excess of the enacted estimates under KRS 48.120 and shall be limited to the amount of the excess general fund revenues. The amount of the transfer shall not exceed the amount of the shortfall in the capital construction fund revenues.
- (13) The authority granted by this section to the State Investment Commission shall not extend to any funds that are specifically provided by law to be invested by some other officer or agency of the state government.
- (14) The authority granted by this section to the State Investment Commission shall only be exercised pursuant to the administrative regulations mandated by KRS 42.525.
- (15) Each member of the State Investment Commission~~[- with the exception of the Governor,]~~ shall post bond for his acts or omissions as a member thereof identical in amount and kind to that posted by the State Treasurer.

**Veto overridden March 29, 2021.**

## CHAPTER 160

### ( HB 312 )

AN ACT relating to public records.

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

➔Section 1. KRS 61.870 is amended to read as follows:

As used in KRS 61.870 to 61.884, unless the context requires otherwise:

- (1) "Public agency" means:
- (a) Every state or local government officer;
  - (b) Every state or local government department, division, bureau, board, commission, and authority;
  - (c) Every state or local legislative board, commission, committee, and officer;
  - (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
  - (e) Every state or local court or judicial agency;
  - (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
  - (g) Any body created by state or local authority in any branch of government;
  - (h) Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;
  - (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;



- (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
  - (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;
- (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;
- (3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.
- (b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;
- (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.
- (b) "Commercial purpose" shall not include:
1. Publication or related use of a public record by a newspaper or periodical;
  2. Use of a public record by a radio or television station in its news or other informational programs; or
  3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;
- (5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;
- (6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;
- (7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards;
- (8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device; ~~and~~
- (9) "Booking photograph and photographic record of inmate" means a photograph or image of an individual generated by law enforcement for identification purposes when the individual is booked into a detention facility as defined in KRS 520.010 or photograph and image of an inmate taken pursuant to KRS 196.099; **and**
- (10) ***"Resident of the Commonwealth" means:***
- (a) ***An individual residing in the Commonwealth;***
  - (b) ***A domestic business entity with a location in the Commonwealth;***
  - (c) ***A foreign business entity registered with the Secretary of State;***
  - (d) ***An individual that is employed and works at a location or locations within the Commonwealth;***
  - (e) ***An individual or business entity that owns real property within the Commonwealth;***

- (f) *Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or*
- (g) *A news-gathering organization as defined in KRS 189.635(8)(b)1.a. to e..*

➔Section 2. KRS 61.872 is amended to read as follows:

- (1) All public records shall be open for inspection by any *resident of the Commonwealth*~~person~~, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No *resident of the Commonwealth*~~person~~ shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.
- (2) (a) Any *resident of the Commonwealth*~~person~~ shall have the right to inspect public records. The official custodian may require *a written*~~;~~
- ~~(a) Written~~ application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. *The official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under paragraphs (a) to (f) of subsection (10) of Section 1 of this Act.*
- (b) The written application shall be:
1. Hand delivered;~~;~~
  2. Mailed;~~;~~~~or~~
  3. Sent via facsimile ~~to the public agency~~; *or*
  4. *Sent via e-mail to the public agency's official custodian of public records or his or her designee at the e-mail address designated in the public agency's rules and regulations adopted pursuant to Section 3 of this Act*~~;~~
- ~~(b) Facsimile transmission of the written application described in paragraph (a) of this subsection; or~~
- ~~(c) E-mail of the application described in paragraph (a) of this subsection~~.
- (c) *A public agency shall not require the use of any particular form for the submission of an open records request, but shall accept for any request the standardized form developed under subsection (4) of Section 3 of this Act.*
- (3) A *resident of the Commonwealth*~~person~~ may inspect the public records:
- (a) During the regular office hours of the public agency; or
  - (b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the *resident of the Commonwealth*~~person~~ requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.
- (4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.
- (5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed *five (5)*~~three (3)~~ days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.
- (6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

➔Section 3. KRS 61.876 is amended to read as follows:

- (1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to ~~ensure~~<sup>insure</sup> efficient and timely action in response to application for inspection, and such rules and regulations shall include ~~but~~ but shall not be limited to:
- (a) The principal office of the public agency and its regular office hours;
  - (b) The title, *mailing address*, and *e-mail* address of the official custodian of the public agency's records;
  - (c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;
  - (d) The procedures to be followed in requesting public records.
- (2) Each public agency shall display ~~a copy of its rules and regulations pertaining to public records~~ in a prominent location accessible to the public, *including on its Web site*:
- (a) *A copy of its rules and regulations pertaining to public records;*
  - (b) *The mailing address, e-mail address, and phone number of the official custodian of the records or his or her designee to which all requests for public records shall be made; and*
  - (c) *The form developed by the Attorney General under subsection (4) of this section that may be used to request public records.*
- (3) The Finance and Administration Cabinet may promulgate *administrative regulations pursuant to KRS Chapter 13A, pertaining to public records*, ~~uniform rules and regulations~~ for all state administrative agencies, *except for the Legislative Research Commission and the Administrative Office of the Courts, each of which may promulgate administrative regulations for their respective agencies, pertaining to public records.*
- (4) *The Attorney General shall promulgate by administrative regulation under KRS Chapter 13A a standardized form that may be used to request public records from a public agency. The form shall not allow any request for information other than the following:*
- (a) *The name of the requesting party;*
  - (b) *The mailing or e-mail address of the requesting party, if copies of records are requested;*
  - (c) *Whether the request is for a commercial purpose;*
  - (d) *A description of the documents requested;*
  - (e) *A statement that the person making the request:*
    1. *Is a resident of the Commonwealth under subsection (10) of Section 1 of this Act; and*
    2. *The statement includes the manner in which the requester is a resident of the Commonwealth under paragraphs (a) to (f) of subsection (10) of Section 1 of this Act; and*
  - (f) *The signature of the requesting party.*
- (5) *The Attorney General shall make the form readily available to the public, including on the Attorney General's Web site. The form shall be accepted by every public agency for any request for public records made on or after the effective date of this Act.*

➔Section 4. KRS 61.878 is amended to read as follows:

- (1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:
- (a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;
  - (b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;

- (c) 1. ~~Upon and after July 15, 1992,~~ Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;
2. ~~Upon and after July 15, 1992,~~ Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:
- a. In conjunction with an application for or the administration of a loan or grant;
  - b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;
  - c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or
  - d. For the grant or review of a license to do business.
3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;
- (d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;
- (e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to ~~the~~ banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;
- (f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;
- (g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;
- (h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;
- (i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;
- (j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;
- (k) All public records or information the disclosure of which is prohibited by federal law or regulation *or state law*;
- (l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly, including any information acquired by the

Department of Revenue in tax administration that is prohibited from divulgence or disclosure under KRS 131.190;

- (m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:
- a. Criticality lists resulting from consequence assessments;
  - b. Vulnerability assessments;
  - c. Antiterrorism protective measures and plans;
  - d. Counterterrorism measures and plans;
  - e. Security and response needs assessments;
  - f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;
  - g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and
  - h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.
2. As used in this paragraph, "terrorist act" means a criminal act intended to:
- a. Intimidate or coerce a public agency or all or part of the civilian population;
  - b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or
  - c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.
3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.
4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.
5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law;
- (n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law;
- (o) Records of a procurement process under KRS Chapter 45A or 56. This exemption shall not apply after:
1. A contract is awarded; or
  2. The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited; ~~and~~

(p) *Client and case files maintained by the Department of Public Advocacy or any person or entity contracting with the Department of Public Advocacy for the provision of legal representation under KRS Chapter 31; and*

(q) Communications of a purely personal nature unrelated to any governmental function.

- (2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.
- (3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, lay-offs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.
- (4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.
- (5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

➔Section 5. KRS 61.880 is amended to read as follows:

- (1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within ~~five (5) [three (3)]~~ days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the ~~five (5) [three (3)]~~ day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.
- (2)
  - (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.
  - (b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:
    1. The need to obtain additional documentation from the agency or a copy of the records involved;
    2. The need to conduct extensive research on issues of first impression; or
    3. An unmanageable increase in the number of appeals received by the Attorney General.
  - (c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved, but they shall not be disclosed.
- (3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a

party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

- (4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees, ***delay past the five (5) day period described in subsection (1) of this section, excessive extensions of time***, or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.
- (5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.
- (b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

➔Section 6. KRS 7.119 is amended to read as follows:

- (1) Records in the custody of the Legislative Research Commission or the General Assembly shall be available for distribution to the public, or open for inspection by any person ***who is a resident of the Commonwealth***.
- (2) As used in subsection (1) of this section, "records" includes bills and amendments introduced in the Senate or House of Representatives, Senate and House Journals, Acts of the General Assembly, roll call votes, final reports of committees, Kentucky Administrative Regulations, documents showing salary and expenses paid to members of the General Assembly and all employees of the legislative branch, contracts, receipts and work orders for repairs or renovations to legislative offices or facilities, items cataloged in the legislative library, the Legislative Record, and informational and educational materials offered by the public information office, including legislative videotapes and photographs, calendars, and meeting notices.
- (3) Requests for records ~~or other documents~~ in the custody of the Legislative Research Commission or the General Assembly ***set forth in subsection (2) of this section*** shall be directed to the director of the Legislative Research Commission, ***who shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the request whether to comply with the request, and shall, in writing notify the person making the request of his or her decision.*** ~~[Except for KRS 61.880(3), provisions of the Open Records Act, KRS 61.870 to 61.884, shall apply to a request for inspection or copies of documents or other items not set forth in subsection (2) of this section, and except that]~~ A request for a review ~~under KRS 61.880~~ of any determination by the director ***regarding a request for records set forth in subsection (2) of this section*** shall be made to the Legislative Research Commission, which shall issue its decision within thirty (30) days ***of the first scheduled meeting held following receipt for review***. If the Legislative Research Commission does not issue its decision on a review of the director's determination within thirty (30) days ***of the first scheduled meeting held following receipt of the request for review, the review shall be considered denied*** ~~[submission to it of the matter, the director's determination may be appealed to the Franklin Circuit Court within sixty (60) days of its issuance. For purposes of this subsection, any reference to the Attorney General in KRS 61.880 and 61.882 shall be read as the Legislative Research Commission]~~.
- (4) ***If a request for records in the custody of the Legislative Research Commission or the General Assembly not described in subsection (2) of this section or in KRS 7.117 is made to the director of the Legislative Research Commission, those records shall not be subject to disclosure. A request for review of the denial of the disclosure shall be made to the Legislative Research Commission, which shall issue its decision within thirty (30) days of the first scheduled meeting held following receipt of the request for review. That decision shall be final and unappealable.***
- (5) ***Once a request for records is made, and unless otherwise permitted by statute, if the Legislative Research Commission determines that a denial of disclosure related to that request was properly made, no member of the Commission, the General Assembly, or the staff of the Legislative Research Commission shall knowingly or intentionally disclose to any person the records that were the subject of the denied request. Violation of this subsection is a violation under KRS 6.734.***
- (6) (a) ***If a public agency other than the Legislative Research Commission receives a request for inspection of a public record that may fall under subsection (2) of this section, the official custodian of the records for the public agency shall notify the director of the Legislative Research Commission within***

*two (2) days of receipt of the request. The official custodian of records for the public agency that received the request shall be required to respond to the request.*

- (b) *If the Legislative Research Commission receives a request relating to a specific member of the General Assembly, the director shall notify that member within one (1) day of receipt of the request.*
- (7) *Nothing in this section shall be construed as a waiver or diminishment of any constitutional, common law, or statutory defenses, privileges, or immunities that may apply to any member of the General Assembly, legislative staff, legislative agency or entity, or any other member or employee of the legislative branch.*

**Veto overridden March 29, 2021.**

## CHAPTER 161

### ( HB 394 )

AN ACT relating to the Fish and Wildlife Resources Commission and declaring an emergency.

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

➔Section 1. KRS 150.021 is amended to read as follows:

- (1) The Department of Fish and Wildlife Resources shall constitute a department of state government within the meaning of KRS Chapter 12. The department shall consist of a commissioner, a Fish and Wildlife Resources Commission, the Division of Law Enforcement, and other agents and employees provided for in this chapter. The department shall enforce the laws and regulations adopted under this chapter relating to wildlife and shall exercise all powers necessarily incident thereto.
- (2) ***Except with regard to the commission's authority to appoint and compensate a commissioner under Section 2 of this Act***, any powers conferred by this chapter upon the Department of Fish and Wildlife Resources, the Fish and Wildlife Resources Commission, or the commissioner of the Department of Fish and Wildlife Resources, and any powers conferred by KRS Chapter 235 shall be exercised subject to the provisions of KRS Chapters 42, 45, 45A, 56, and 64, which chapters in all respects are controlling.
- (3)
  - (a) The Finance and Administration Cabinet shall assess the Department of Fish and Wildlife Resources each fiscal year a fee in an amount equal to five percent (5%) of the debt service associated with all phases and implementation of the capital project to replace, repair, or maintain the two (2) way radio system utilized by the Department of Kentucky State Police.
  - (b) The fee shall be assessed on each phase of the implementation of the two (2) way radio system and shall continue to be assessed until all debt for the system has been retired.

➔Section 2. KRS 150.061 is amended to read as follows:

- (1) ***Notwithstanding any provisions of KRS Chapter 18A, 42, 45, 45A, 56, or 64 to the contrary***, the commission shall ***have the sole authority to*** appoint a commissioner of the Department of Fish and Wildlife Resources, who shall be a person with knowledge of and experience in the requirements for the protection, conservation and restoration of the wildlife resources of the state. ***The commission shall be the sole contracting body for the purposes of KRS Chapter 45A and shall submit any proposed personal service contract with a commissioner to the Government Contract Review Committee for its review pursuant to KRS 45A.690 to 45A.725.*** The commissioner shall serve for a defined employment contract term not to exceed four (4) years and shall be subject to:
  - (a) Annual review by the commission in closed, executive session;
  - (b) Removal by the commission for the same cause and in the same manner in which the Governor may remove a member of the commission; and
  - (c) Reappointment by the commission.
- (2) The commissioner shall receive such compensation as the commission may ***solely*** determine, and shall be reimbursed for all actual and necessary travel and other expenses incurred by him in the performance of his official duties.



- (3) Before entering upon the duties of his office, the commissioner shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear or affirm that he holds no other public office, nor any position upon or under any political committee or party. Upon appointment by the commission, the commissioner shall execute a bond of five thousand dollars (\$5,000) in favor of the Department of Fish and Wildlife Resources, the premium on said bond to be paid out of department funds.
- (4) The commissioner shall have general supervision and control of all activities, functions, appointments, and employees of the Department of Fish and Wildlife Resources. He shall enforce all provisions of the laws of the state relating to wild animals, birds, fish and amphibians, and shall exercise all powers necessarily incident thereto not specifically conferred on the commission. The commissioner shall make an annual report of all receipts and disbursements and file same with the Secretary of State of the Commonwealth of Kentucky.
- (5) If federal or other grant funds become available to pay their salaries, the commissioner may appoint and employ other persons that he may deem necessary or desirable to accomplish the purposes of this chapter. The commissioner shall determine the compensation, duties, and terms of employment of these employees, and grant funded, time-limited positions shall be approved by the commission as needed. Employees whose salaries are funded through federal or other grant funds shall not be counted in any tally of permanent employees made for employee cap or budgetary purposes.

➔Section 3. Whereas it is critical for the proper administration of the Fish and Wildlife Resources Commission that any ambiguity regarding its authority to hire and compensate a commissioner be alleviated 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 law.

**Veto overridden March 29, 2021.**

## CHAPTER 162

( HB 475 )

AN ACT relating to occupational safety and health.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 338 IS CREATED TO READ AS FOLLOWS:

*After July 1, 2021, neither the Kentucky Occupational Safety and Health Standards Board nor the secretary shall adopt or promulgate any occupational safety and health administrative regulation that is more stringent than the corresponding federal provision enforced by the United States Department of Labor under the Occupational Safety and Health Act of 1970. Whereas the Occupational Safety and Health Act of 1970 does not apply to public employees, the cabinet shall retain the authority to promulgate and enforce, as necessary, administrative regulations pertaining to public employees.*

**Veto overridden March 29, 2021.**

## CHAPTER 163

( HB 518 )

AN ACT relating to the State Fair Board and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

(1) *The State Fair Board shall:*

- (a) *Conduct all procurements necessary for the performance of its duties in accordance with KRS Chapter 45A and this chapter, provided that this chapter, controls in the event that, and to the extent*

*that, any provision in this chapter is expressly inconsistent with any provision of KRS Chapter 45A; or*

- (b) *Promulgate administrative regulations pursuant to KRS Chapter 13A establishing its procurement procedures.*
- (2) *If the State Fair Board elects to promulgate administrative regulations establishing its procurement procedures rather than conduct procurements in accordance with KRS Chapter 45A, the State Fair Board may include sections of KRS Chapter 45A as part of its administrative regulations and shall require review of personal service contracts, tax incentive agreements, and memorandum of agreements by the Government Contract Review Committee as established by KRS 45A.705.*
- (3) *Procurements for personal service contracts shall not be subject to the requirements of KRS 45A.695(2)(b), due to the unique operational activities conducted for state government by the State Fair Board as recognized in this chapter.*
- (4) *The State Fair Board's procurement procedures or administrative regulations shall be designed to provide for the purchase of supplies, equipment, services, and construction items that provide the greatest long-term benefit to the state, the greatest integrity for the State Fair Board, and the best service and products for the public.*
- (5) *In its bidding and negotiation processes, the State Fair Board may:*
  - (a) *Perform its own bidding and procurement;*
  - (b) *Utilize the services of the Finance and Administration Cabinet; or*
  - (c) *Utilize a combination thereof.*
- (6) *The president and chief executive officer of the State Fair Board may, in lieu of the secretary of the Finance and Administration Cabinet, declare an emergency for purchasing purposes.*

➔Section 2. KRS 247.090 is amended to read as follows:

- (1) The State Fair Board shall be composed of *sixteen (16) voting members and five (5) ex officio, nonvoting*~~[eighteen (18)]~~ members, as follows:
  - (a) The Governor or his or her designee;
  - (b) The Commissioner of Agriculture or his or her designee;
  - (c) *The President of the Senate or his or her designee, who shall serve as an ex officio, nonvoting member for the duration of his or her service as President of the Senate;*
  - (d) *The Speaker of the House of Representatives or his or her designee, who shall serve as an ex officio, nonvoting member for the duration of his or her service as Speaker of the House of Representatives;*
  - (e) The secretary of the Finance and Administration Cabinet or his or her designee, who shall serve as an ex officio, nonvoting member for the duration of his or her service as secretary of the cabinet. The secretary shall provide additional financial expertise to the Kentucky State Fair Board, with no resulting personnel impact, fiscal impact, nor expense to Kentucky state government;
  - ~~(f)(4)~~ The dean of the University of Kentucky College of Agriculture, Food and Environment or his or her designee;
  - ~~(g)(e)~~ *Four (4)*~~[Five (5)]~~ members appointed by the Governor from the state at large with due consideration to geographical distribution throughout the state;
  - ~~(h)(f)~~ *Three (3) members*~~[One (1) member]~~ appointed by the *Commissioner of Agriculture*~~[Governor]~~ from the state at large who *are*~~[is]~~ involved with, or experienced in, *agriculture or agriculture-related businesses*~~[agribusiness]~~;
  - ~~(i)(e)~~ One (1) member appointed by the *Commissioner of Agriculture*~~[Governor]~~ from a list of six (6) nominees that are representative of all segments of animal agriculture provided by trade organizations and commodity groups that may include but not be limited to the Kentucky Cattlemen's Association, Kentucky Dairy Development Council, Kentucky Livestock Improvement Association, Kentucky Pork Producers Association, Kentucky Poultry Federation, and Kentucky Sheep and Goat Development Office;

- (j)~~(h)~~ One (1) member appointed by the *Commissioner of Agriculture*~~[Governor]~~ from a list of six (6) nominees that are representative of all segments of crop or plant production provided by trade organizations or commodity groups that may include but not be limited to Kentucky Corn Growers Association, Kentucky Grape and Wine Council, Kentucky Horticulture Council, Kentucky Small Grain Growers Association, and Kentucky Soybean Association;
- (k)~~(i)~~ One (1) member appointed by the *Commissioner of Agriculture*~~[Governor]~~ from a list of six (6) nominees submitted by the governing body of the American Saddlebred Horse Association;
- (l)~~(j)~~ One (1) member appointed by the *Commissioner of Agriculture*~~[Governor]~~ from a list of six (6) nominees provided by the Kentucky Farm Bureau Federation;
- (m)~~(k)~~ One (1) member appointed by the *Commissioner of Agriculture*~~[Governor]~~ from a list of six (6) nominees provided by the Kentucky Association of Fairs and Horse Shows;
- (n)~~(l)~~ One (1) member appointed by the Governor from a list of six (6) nominees provided by the Louisville Convention and Visitors Bureau representing the hospitality and tourism industry;
- (o)~~(m)~~ The state president of the Kentucky FFA Association, who shall serve as an ex officio, nonvoting member for the duration of his or her term as student leader of the association; and
- (p)~~(n)~~ The state president of the Kentucky 4-H Organization, who shall serve as an ex officio, nonvoting member for the duration of his or her term as student leader of the organization.
- (2) The terms of the members of the board appointed by the *Commissioner of Agriculture or the Governor, respectively*, shall be staggered terms **and shall be subject to confirmation as provided in KRS 11.160(2)**. Members of the board shall be appointed to a term of four (4) years and shall serve until their successors are duly appointed and qualified. Members of the board shall be appointed to no more than three (3) terms that began on or after **the effective date of this Act**~~[April 27, 2016]~~. Terms that began prior to **the effective date of this Act**~~[April 27, 2016]~~, shall not count toward the term limits established by this subsection. As the terms of each group of members expire, the *Commissioner of Agriculture or the Governor, as the case may be*, shall appoint successors for terms of four (4) years and until their successors are appointed and qualify. The initial appointments **of the members designated in subsection (1)(g) and (h) of this section** shall be for staggered terms, as follows:
- (a) **Pursuant to subsection (1)(g) of this section, the Governor shall appoint one (1) at-large member in 2022, one (1) at-large member in 2023, and two (2) at-large members in 2024 to replace or reappoint current members whose terms expire in each of these years**~~[Three (3) members shall be appointed for one (1) year];~~
- (b) **Pursuant to subsection 1(h) of this section, the Commissioner of Agriculture shall appoint one (1) at-large member in 2021, one (1) at-large member in 2022, and one (1) at-large member in 2023 to replace or reappoint current members whose terms expire in each of these years**~~[Three (3) members shall be appointed for two (2) years];~~
- (c) **On the effective date of this Act and pursuant to subsection (1)(h) of this section, the Commissioner of Agriculture shall appoint one (1) at-large member to serve a one (1) year term in order to establish the number of voting members as required by this section**~~[Three (3) members shall be appointed for three (3) years];~~ and
- (d) **Those members whose terms expire in 2021 shall be appointed by the Commissioner of Agriculture**~~[Three (3) members shall be appointed for four (4) years].~~
- ~~[Initial members shall be appointed by the Governor within thirty (30) days of April 27, 2016.]~~ It is the intention of the General Assembly that the political affiliation of the appointed members shall be as evenly divided as possible between the two (2) political parties polling the largest number of votes in the state at general elections.
- (3) In case of a vacancy among the appointed members of the board, the unexpired term shall be filled pursuant to the requirements and procedures for original appointments.
- (4) **The State Fair Board shall not be subject to reorganization under KRS Chapter 12.**
- ➔Section 3. KRS 247.100 is amended to read as follows:
- (1) **As used in this section, "solely for administrative purposes" means those limited functions and purposes expressly requested by the State Fair Board to be performed by the Tourism, Arts and Heritage Cabinet.**

*The State Fair Board shall have sole discretion as to which functions shall be deemed necessary for the efficient operation of the State Fair Board and the properties in its custody and control.*

- (2) The State Fair Board shall be a body corporate with ~~full~~<sup>the usual</sup> corporate powers. *The General Assembly hereby recognizes and reaffirms that the operations of the State Fair Board and the operation of its facilities are unique activities for state government and that an independent corporate structure is best to enable the State Fair Board to be managed in an entrepreneurial and business-like manner. The State Fair Board shall be an independent, de jure municipal corporation and political subdivision of the Commonwealth of Kentucky, which shall be a public body corporate and politic. The State Fair Board shall be deemed a public agency within the meaning of KRS 61.805 and 61.870. The State Fair Board shall be attached to the Tourism, Arts and Heritage Cabinet solely for administrative purposes.*
- (3) Full minutes and records shall be kept of all meetings of the board and all official actions of the board shall be recorded therein, and such minutes and records shall constitute public records and be available at all reasonable times for public inspection.
- (4) *It is the intent of the General Assembly that the State Fair Board shall be accountable to the Governor, the Commissioner of Agriculture, the General Assembly, and the people of the Commonwealth through a system of audits, reports, and thorough financial disclosures.*
- (5) *On the effective date of this Act, any records, files, or documents associated with functions previously performed by the Tourism, Arts and Heritage Cabinet, but for which it is no longer deemed responsible, shall be transferred to the State Fair Board.*

➔Section 4. KRS 247.110 is amended to read as follows:

- (1) *The members of the State Fair Board shall select a chair and vice chair from among the voting membership, effective on the effective date of this Act. The chair and vice chair shall serve in that capacity for one (1) year and shall be eligible for reelection. The chair shall preside at all meetings and shall have all of the powers and privileges of the other members. The vice chair shall preside in the absence of the chair at all meetings and shall have all the powers and privileges of the other members.* ~~[The Governor shall appoint one (1) member of the board to serve as its chair. The Governor shall further designate a second member to serve as vice chair with authority to act in the absence of the chair. The chair and vice chair shall each serve for a period of one (1) year and may be reappointed by the Governor for subsequent years to those positions].~~
- (2) The board shall meet monthly, a minimum of ten (10) months per year. A majority of the voting members of the board shall constitute a quorum for the transaction of business.
- (3) The board shall 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 function and duties.
- (4) The board shall elect and employ a secretary who shall be responsible directly to the board as the keeper of all records pertaining to the operation of the fair or the business of the board. The president and chief executive officer provided for in KRS 247.130 shall be ex officio treasurer to the board.
- (5) *The board as set out in the bylaws adopted under subsection (3) of this section may establish an executive committee from among its membership with full authority to act between its meetings to the extent delegated by the board.*

➔Section 5. KRS 247.130 is amended to read as follows:

- (1) The State Fair Board *shall have the sole authority to* ~~may~~ employ or contract with a president who shall not be one of their number. The president shall be the chief executive officer for the board. The employment or contract of a president shall be on the basis of training, ability, and experience. A president shall hold his position during the pleasure of the board, but may be removed only by an affirmative vote of a majority of the members of the board and upon thirty (30) days written notice. A president shall be responsible for the administration of the policies set by the board and shall devote his entire time and attention to the performance of such duties and work as may be required of him by law or be assigned to him by the board. The board shall determine the term, conditions, and compensation of its president, provided such term does not exceed four (4) years.
- (2) The president *shall have the authority to* ~~may~~ organize such administrative divisions as may be necessary and may designate chiefs of such divisions who, under his control and supervision, shall have the duties of direction of such divisions. The president shall organize a Division for Personnel Management and Staff

Development which shall manage all personnel matters, including staff development and training and programs for affirmative action. The director of this division shall be appointed ~~[, with the prior written approval of the Governor,]~~ by the president, **and said appointment shall be subject to confirmation by the board.** The president ~~shall~~<sup>may</sup> employ such other employees and agents as he deems necessary for the carrying out of the policies of the board and to conduct the affairs of the State Fair, and ~~shall~~<sup>may</sup> fix the duties and compensation of any employees or agents with the approval of the board.

- (3) The board **shall have the sole authority to**<sup>may</sup> employ or contract with such other persons, firms, or corporations as the board may deem necessary or desirable to accomplish its duties and functions; ~~shall~~<sup>may</sup> fix the compensation and the terms of employment or contract of those employed or contracted with; and may assign to them such duties and responsibilities as the board may determine, including the responsibility of actual operation of any or all of the facilities under the control of the board.
- (4) The president and any persons employed under this section shall not be subject to the provisions of KRS Chapter 18A.

➔Section 6. KRS 247.145 is amended to read as follows:

- (1) The state fair board in governing the operation, maintenance, or use of property under its custody and control is authorized to **promulgate**<sup>[establish]</sup> such reasonable and lawful **administrative** regulations, **as provided in KRS Chapter 13A**, as are necessary:
  - (a) To maintain decency and good order;~~[, or]~~
  - (b) To protect the peace or safety of the general public;~~[, or]~~
  - (c) To protect the public interest, convenience, or necessity; **or**
  - (d) **To govern the operation, maintenance, or use of property under its custody and control.**
- (2) All **administrative** regulations **promulgated**<sup>[established]</sup> by the state fair board shall be printed and posted at not less than three (3) public places on the property under its custody and control.
- (3) All persons using, occupying or going upon any property under the custody and control of the state fair board shall comply with all **administrative** regulations **promulgated**<sup>[made]</sup> by it.

➔Section 7. KRS 247.160 is amended to read as follows:

- (1) The State Fair Board shall have exclusive control of **all operations and events occurring upon the state fairgrounds and exhibition center and any other properties under the custody and control of the State Fair Board, including but not limited to** concessions, exhibitions, shows, **facility rental, property development**, entertainments, and attractions at any place on the state fairgrounds and exhibition center and may, in the discretion of the board, operate any or all of such concessions, exhibitions, shows, entertainments and attractions, but the board shall not allow the operation of any gambling device or game of chance therein. It may delegate such control or operation to any of its employees or agents, or to an executive committee. This section shall not apply to the sale of lottery tickets sold under the provisions of KRS Chapter 154A.
- (2) The State Fair Board shall have a prior lien upon the property of any concessionaire, exhibitor, **lessee**, or person, immediately upon its coming or being brought on the grounds, or the center, to secure existing or future indebtedness.
- (3) Any designated employee or agent of the State Fair Board may sell the property to satisfy the indebtedness after giving ten (10) days' notice to the owner or agent of the owner or, if notice cannot be given to the owner, after a notice is posted for ten (10) days in the office of the State Fair Board on the grounds, announcing that the property is to be sold. The State Fair Board, through its designated agent, may bid and buy in the property offered for sale for the use and benefit of the State Fair.

➔Section 8. KRS 247.165 is amended to read as follows:

None of the provisions of KRS Chapter 137 and none of the provisions of KRS 91.200 shall apply to any operations on state fairgrounds,~~[, or]~~ the exhibition center, **or any other properties under the custody and control of the State Fair Board** wherein the State Fair Board shares in the receipts and proceeds of such operations.

➔Section 9. KRS 247.190 is amended to read as follows:

- (1) All revenues derived by the State Fair Board from the use of properties and facilities under its custody and control shall be used exclusively for the purpose of defraying the expenses of the board, the cost of the management and operation of such properties and facilities, the payment of interest and principal upon any

indebtedness incurred by the board for such properties and facilities, the creation of adequate reserves for the repair and replacement thereof, and for the financing of further extensions, improvements, and additions thereto. Included in the cost of operation may be such promotional activities as the State Fair Board may determine upon as calculated to stimulate and increase the use and the revenues of such facilities, and to increase and stimulate the interest and usefulness of the State Fair. Any surplus revenues remaining after full provision for the above purposes shall be used to reduce the admission fees and charges to the public for attendance upon the State Fair and for public use by the citizens of the Commonwealth of the facilities of the State Fair Board, and shall on no account be appropriated to any other agency or function.

- (2) The State Fair Board shall generally cause its funds to be deposited in the State Treasurer's office, to be withdrawn on appropriate vouchers approved by the board, but may create special accounts in other depositories for the purpose of securing the prompt payment of interest and principal on any of its bonded indebtedness if in the judgment of the board, or, if as determined by competitive bids, the creation of such special accounts and depositories is advantageous and economical to the board.
- (3) ***The State Fair Board may receive tax revenues from any governmental unit and financial contributions from local governments, private persons, or foundations.***
- (4)~~(3)~~ An annual accounting of the funds of the state fair board shall be made by the Auditor of Public Accounts and reported to the Governor ***and the Legislative Research Commission*** for the benefit of Governor and the General Assembly.

→Section 10. Whereas, the Kentucky State Fair Board is a vital part of the agricultural and tourism economies within the Commonwealth and due to the COVID-19 pandemic, Kentucky's tourism and agricultural industries have experienced massive economic losses, and it is necessary to ensure that the actions and decisions of the Kentucky State Fair Board are carried out in an independent and corporate-like manner, 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.

**Veto overridden March 29, 2021.**

## CHAPTER 164

### ( SB 11 )

AN ACT relating to criminal damage to rental property.

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

→Section 1. KRS 512.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) ***"Lease or rental agreement" means all agreements, written or oral, embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises;***
- (2) ***"Litter" means rubbish, refuse, waste material, offal, paper, glass, cans, bottles, trash, debris or any foreign substance of whatever kind or description and whether or not it is of value;***~~;~~
- (3)~~(2)~~ ***"Noxious substance" means any substance capable of generating offensive, noxious or suffocating fumes, gases or vapors;***~~;~~
- (4)~~(3)~~ ***"Property" includes cattle;***~~;~~
- (5) ***"Residential rental property" means any residential premises or property contained therein leased or otherwise rented to a tenant solely for residential purposes under a lease or rental agreement to which the tenant is a party; and***
- (6) ***"Tenant" means a person entitled under a lease or rental agreement to occupy a residential rental property to the exclusion of others.***

→Section 2. KRS 512.020 is amended to read as follows:

- (1) A person is guilty of criminal mischief in the first degree when, having no right to do so or any reasonable ground to believe that he or she has such right, he or she intentionally or wantonly:
- (a) Defaces, destroys, or damages any property causing pecuniary loss of *one thousand dollars* (\$1,000) or more; ~~or~~
  - (b) Tamper with the operations of a key infrastructure asset, as defined in KRS 511.100, in a manner that renders the operations harmful or dangerous; *or*
  - (c) *As a tenant, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss of one thousand dollars (\$1,000) or more.*
- (2) Criminal mischief in the first degree is a Class D felony.
- ➔Section 3. KRS 512.030 is amended to read as follows:
- (1) A person is guilty of criminal mischief in the second degree when, having no right to do so or any reasonable ground to believe that he *or she* has such right, he *or she*:
- (a) Intentionally or wantonly defaces, destroys or damages any property causing pecuniary loss of *five hundred dollars* (\$500) or more *but less than one thousand dollars (\$1,000); or*
  - (b) *As a tenant, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss of five hundred dollars (\$500) or more but less than one thousand dollars (\$1,000).*
- (2) Criminal mischief in the second degree is a Class A misdemeanor.
- ➔Section 4. KRS 512.040 is amended to read as follows:
- (1) A person is guilty of criminal mischief in the third degree when:
- (a) Having no right to do so or any reasonable ground to believe that he *or she* has such right, he *or she* intentionally or wantonly defaces, destroys or damages any property *causing pecuniary loss of less than five hundred dollars (\$500);* ~~or~~
  - (b) He *or she* tampers with property so as knowingly to endanger the person or property of another; *or*
  - (c) *He or she as a tenant, and having no right to do so or any reasonable grounds to believe that he or she has such right, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss of less than five hundred dollars (\$500).*
- (2) Criminal mischief in the third degree is a Class B misdemeanor.

**Veto overridden March 29, 2021.**

## CHAPTER 165

( SB 65 )

AN ACT relating to deficient administrative regulations.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly finds that certain administrative regulations as evidenced by the records of the Legislative Research Commission, including but not limited to the Kentucky Administrative Regulations Service and the Administrative Register of Kentucky, were found deficient but became effective notwithstanding the finding of deficiency, pursuant to KRS 13A.330, on or after April 15, 2020, and before January 5, 2021, and were found deficient pursuant to KRS 13A.336 including:*
- (a) *803 KAR 2:180, Labor Cabinet, Department of Workplace Standards, Recordkeeping, reporting, statistics;*

- (b) *921 KAR 3:025, Cabinet for Health and Family Services, Department for Community Based Services, Technical requirements; and*
- (c) *921 KAR 3:025E, Cabinet for Health and Family Services, Department for Community Based Services, Technical requirements, emergency.*
- (2) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, each administrative regulation referenced in subsection (1) of this section shall be null, void, and unenforceable as of the effective date of this Act.*
- (3) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, any of the administrative regulations referenced in subsection (1) of this section for a period beginning on March 30, 2021, and concluding on June 1, 2022.*
- (4) *A list of the administrative regulations referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.*

**Veto overridden March 29, 2021.**

## CHAPTER 166

### ( SB 105 )

AN ACT relating to abandoned and blighted property.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

*The General Assembly finds and declares that:*

- (1) *Abandoned and blighted residential, commercial, and industrial buildings are a nuisance and public safety threat to communities across the Commonwealth, negatively affecting quality of life and surrounding property values. If not rehabilitated, the buildings are likely to remain abandoned and subject to further deterioration, resulting in increased costs to the Commonwealth, local governments, and taxpayers;*
- (2) *Providing a mechanism to transform abandoned and blighted buildings into productive reuse and return to the market is an opportunity for communities throughout the Commonwealth to revitalize, grow, and improve the quality of life of its citizens; and*
- (3) *If the owner of an abandoned and blighted residential, commercial, or industrial building fails to maintain a building in compliance with applicable public safety housing, building, and nuisance code requirements, it is in the public interest for the court, pursuant to Sections 1 to 16 of this Act, to appoint a conservator to bring the building into compliance with applicable code requirements before the building sustains further deterioration preventing future productive economic use.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 16 of this Act, unless the context otherwise requires:*

- (1) *"Abandoned and blighted property" means a residential, commercial, or industrial building that has been continuously vacant for at least one (1) year with repeated housing, building, or nuisance code citations and at least three (3) of the following conditions:*
  - (a) *The building has not been brought into compliance with the housing, building, or nuisance code requirements of the local government in which it is located within time constraints placed upon the owner by the appropriate code enforcement agency or agencies;*
  - (b) *The building is unfit for human habitation, occupancy, or use;*
  - (c) *The condition and vacancy of the building materially increases the risk of fire to the building and to adjacent properties;*



- (d) *The building, by reason of neglect or lack of maintenance, has become a place for the accumulation of substantial trash and debris or a haven for rodents or other vermin that create potential health and safety hazards;*
  - (e) *The building is subject to unauthorized entry leading to potential health and safety hazards, and either the owner has failed to take reasonable and necessary measures to secure the building or the local government has secured the building in order to prevent such hazards after the owner has failed to do so;*
  - (f) *The building is an attractive nuisance to children or for illicit purposes, including drug use and vagrancy; or*
  - (g) *The building, because of its dilapidated appearance or other conditions, substantially negatively affects the economic well-being of residents or businesses in close proximity to the building;*
- (2) *"Actively marketed" means:*
- (a) *A "for sale" sign has been placed on the property with accurate contact information;*
  - (b) *The owner has engaged the services of a licensed real estate agent, placed weekly or more frequent advertisements in print, or listed the property for sale in electronic media via a Web site specifically designed for such activity; and*
  - (c) *The owner has made a good-faith effort to sell the property at a price that reflects the circumstances and market conditions;*
- (3) *"Building" means a residential, commercial, or industrial building or structure and the land appurtenant thereto;*
- (4) *"Competent entity" means a person or entity, including a nonprofit corporation, with experience in the rehabilitation of residential, commercial, or industrial buildings and the ability to provide or obtain the necessary financing for such rehabilitation;*
- (5) *"Conservator" means a competent entity appointed by a court to take possession of and undertake the rehabilitation of an abandoned and blighted building;*
- (6) *"Conservator's fee" for rehabilitation or demolition of an abandoned and blighted building means a fee equal to the greater of:*
- (a) *A reasonable amount not to exceed twenty percent (20%) of the actual costs incurred by a conservator for rehabilitation or demolition of the building as described in the plan for rehabilitation or demolition approved by the court; or*
  - (b) *Fifteen percent (15%) of the sale price of the property;*
- (7) *"Costs of rehabilitation" means costs and expenses for construction, stabilization, rehabilitation, maintenance, or demolition, including reasonable nonconstruction costs associated with the project, including but not limited to architectural, engineering, legal fees and costs, permits, financing fees, and a conservator's fee;*
- (8) *"Historic structure" means a property which is listed on the National Register of Historic Places, is a contributing property in a national register historic district, or is designated an historic property by the Kentucky Heritage Council;*
- (9) *"Immediate family" means a parent, spouse, child, brother, or sister;*
- (10) *"Local government" has the same meaning as in KRS 99.705;*
- (11) *"Nonprofit corporation" means a corporation recognized by the United States Internal Revenue Service as being tax exempt under 26 U.S.C. sec. 501(c) that has, as one (1) of its purposes, remediation of blight, economic development, historic preservation, or the promotion or enhancement of affordable housing opportunities;*
- (12) *"Owner":*
- (a) *Means the holder or holders of title to, or of a legal or equitable interest in, a residential, commercial, or industrial building for six (6) months or more; and*

- (b) *Includes an heir, assignee, trustee, beneficiary, and lessee, provided the ownership interest is a matter of public record;*
- (13) *"Party in interest" means a person or entity that has a direct and immediate interest in a residential, commercial, or industrial building, including:*
  - (a) *The owner;*
  - (b) *Any lienholder with a recorded interest in the property; and*
  - (c) *The city and county in which the building is located;*
- (14) *"Rehabilitation" means improvements to a building in order to bring it into compliance with all applicable housing, building, and nuisance code requirements; and*
- (15) *"Vacant" means abandoned, unoccupied, or empty continuously for at least one (1) year, excluding unauthorized or illegal occupancies.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *A petition for the appointment of a conservator to take possession of and undertake the rehabilitation of an abandoned and blighted building shall be filed in the Circuit Court in the county in which the building is located by the city or county in which the building is located. The proceeding on the petition shall constitute an action in rem.*
- (2) *The petition shall include:*
  - (a) *The name and last known address of the owner of the vacant building;*
  - (b) *Copies of citations charging the owner with being in violation of local housing, building, plumbing, electrical, fire, health, or nuisance code requirements, including proof of service pursuant to KRS 65.8825(2);*
  - (c) *A schedule of recorded liens or other encumbrances on the property, including the names and addresses of all lienholders;*
  - (d) *Assessed value of the property for tax purposes;*
  - (e) *A recommendation as to which person or entity should be appointed conservator, including the qualifications of the person or entity;*
  - (f) *A preliminary plan, including the current condition of the building, photographs, initial estimates for costs of rehabilitation of the building to bring it into compliance with all applicable housing, building, electrical, fire, health, and nuisance code requirements charged in the citations, and an estimated timeline for completion;*
  - (g) *Anticipated funding sources for the preliminary plan; and*
  - (h) *A sworn statement by the petitioner that, to the best of his or her knowledge and belief:*
    - 1. *The building meets the conditions for conservatorship set forth in Section 5 of this Act;*
    - 2. *The building has not been legally occupied for at least the previous twelve (12) months;*
    - 3. *The property has not been actively marketed within the previous sixty (60) days;*
    - 4. *The property is not subject to a pending foreclosure action by an individual or nongovernmental entity;*
    - 5. *The property is not subject to an outstanding mortgage held by a bank or other creditor with a recorded security interest in the property, unless waived by the bank or other creditor; and*
    - 6. *The owner has been the holder of title to the property for six (6) months or more.*
- (3) *Upon filing the petition with the court, the petitioner shall file a notice of lis pendens in the office of the clerk of the county in which the property is located.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *Service of process shall be provided in accordance with the Kentucky Rules of Civil Procedure to the following parties in interest:*

- (a) *The owner of the property at his or her last known address;*
  - (b) *The city or county in which the property is located that is not the petitioner; and*
  - (c) *Any lienholder with a recorded interest in the property.*
- (2) *Notice of the pendency and nature of the proceeding shall additionally be provided by certified or registered mail to any property owner located within five hundred (500) feet of the property at his or her last known address, including notice the property owner may petition to intervene in the proceeding.*
  - (3) *The petitioner shall notify the parties in interest and any property owner located within five hundred (500) feet of the property of the hearing date.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *The court shall act upon a petition filed by holding a hearing. A party in interest may be heard with respect to the petition, the requested relief, or any other matter which may come before the court in reference to the proceeding. Any party in interest shall be permitted to present evidence to support or contest the petition, including but not limited to the schedule of encumbrances.*
- (2) *The court may appoint a competent entity as conservator if it finds all of the following apply as of the date of filing the petition:*
  - (a) *The building has not been legally occupied for at least the previous twelve (12) months;*
  - (b) *The owner fails to present sufficient evidence that the property was actively marketed during the preceding sixty (60) day period;*
  - (c) *The property is not subject to a pending foreclosure action by an individual or nongovernmental entity;*
  - (d) *The property is not subject to an outstanding mortgage held by a bank or other creditor with a recorded security interest in the property, unless waived by the bank or other creditor;*
  - (e) *The owner fails to present sufficient evidence the property was acquired by the owner within the preceding six (6) months. The evidence shall not include instances where the prior owner is a member of the immediate family of the current owner, unless the transfer of title results from the death of the prior owner; and*
  - (f) *The court finds at least three (3) of the conditions meeting the definition of abandoned and blighted property in Section 2 of this Act have been established.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *If the court finds after a hearing that the conditions for conservatorship have been established, the court may:*
  - (a) *Appoint a conservator; and*
  - (b) *Grant such other relief as may be just and appropriate.*
- (2) *In appointing a conservator, the court shall consider any recommendation contained in the petition or otherwise presented by a party in interest.*
- (3) *No member of the governing body of a local government or a public officer of a local government in his or her individual capacity, or a member of the immediate family of a member of the governing body or public officer of a local government, is qualified to be appointed as a conservator in the action.*
- (4) *A conservator appointed by the court may be required to post a bond in an amount determined by the court, but not exceeding the assessed value of the building at the time of the appointment, prior to proceeding as conservator.*
- (5) *A conservator may be removed by the court at any time upon the request of the conservator, or upon a showing by a party in interest that the conservator is not carrying out duties or responsibilities under the appointment. If a conservator is removed for failure to carry out duties or responsibilities under the appointment, the conservator shall not be entitled to reimbursement for costs of rehabilitation.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *If the court finds after a hearing that the conditions for conservatorship have been established, but the owner represents that the conditions will be abated in a reasonable period, the court may allow the owner to proceed to remedy the conditions.*
- (2) *If the owner is allowed to proceed with abatement, the court may require the owner to post a bond in the amount of the repair costs estimated in the petition as a condition to retaining possession of the building.*
- (3) *The court shall additionally enter an order providing that, if the conditions are not abated by the owner by a specific date or that other specified remedial activities have not occurred by a specific date or dates, an order appointing a conservator shall be entered.*
- (4) *In the event the owner brings the property into compliance with all applicable housing, building, and nuisance code requirements or sells the property subject to the conservatorship, the owner shall reimburse the petitioner for all reasonable costs incurred by the petitioner in preparing and filing the petition.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *The conservator shall have all powers and duties necessary in order to bring the building into compliance with all applicable housing, building, and nuisance code requirements and to fulfill the conservator's responsibilities under Sections 1 to 16 of this Act. A conservator's powers and duties shall include but not be limited to:*
  - (a) *Taking possession and control of the building and appurtenant land subject to the conservatorship;*
  - (b) *Pursuing all claims or causes of action of the owner with respect to the building;*
  - (c) *Contracting for the repair and maintenance of the building. The conservator shall make a reasonable effort to solicit three (3) bids for contracts valued at more than thirty thousand dollars (\$30,000);*
  - (d) *Borrowing money or incurring indebtedness for costs of rehabilitation of the building as set out in Section 9 of this Act;*
  - (e) *Contracting for and paying for the restoration of utilities to the building;*
  - (f) *Applying for and obtaining construction permits;*
  - (g) *Purchasing materials, goods, and supplies to accomplish repairs to the building;*
  - (h) *Renewing or entering into contracts providing for insurance coverage on the building;*
  - (i) *Engaging and paying legal, accounting, appraisal, and other professionals necessary to aid the conservator in the conduct of the conservatorship;*
  - (j) *If the building has been designated an historic structure, consulting with the local government's historical commission or board of historical and architectural review, a local historic preservation organization or, in the absence thereof, the Kentucky Heritage Council for recommendations on preserving the property's historic character;*
  - (k) *Applying for and receiving public grants or loans;*
  - (l) *Selling the building as set out in Section 12 of this Act; and*
  - (m) *Exercising all authority that an owner of the building would have to rehabilitate and maintain the building.*
- (2) *Notwithstanding the appointment of a conservator, nothing in Sections 1 to 16 of this Act shall be construed to relieve the owner of any civil or criminal liability or of any obligation to pay taxes, local government liens and charges, private liens, or other fees or charges, whether incurred before or after the appointment of the conservator, and no such liability shall transfer to the conservator.*
- (3) *If any interest in the property subject to conservatorship is sold or transferred by the owner during the pendency of the conservatorship, the sale or transfer shall be subject to the conservatorship.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

*A conservator may borrow money or incur indebtedness in order to cover the costs of rehabilitation or to otherwise fulfill the conservator's obligations under Sections 1 to 16 of this Act. In order to facilitate the borrowing of funds for the costs of rehabilitation, the court shall grant priority status to a lien given to secure payment on a debt incurred for purposes authorized under Sections 1 to 16 of this Act.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *While in possession of the building, the conservator shall:*
  - (a) *Maintain, safeguard, and insure the property;*
  - (b) *Develop a final plan for abatement of the conditions which caused the petition to be granted or, if no feasible final plan can be developed, develop alternatives, including the closing, sealing, or demolition of all or part of the building in accordance with Section 11 of this Act;*
  - (c) *Submit the final plan to the court and all parties in interest; and*
  - (d) *Execute the final plan.*
- (2) *The final plan shall include a cost estimate, a financing plan, sources of financing, and a description of the work to be done for the rehabilitation of the building in order to bring it into compliance with all applicable housing, building, and nuisance code requirements, any duly adopted plan for the area in which the building is located, and any historic preservation requirements, along with an estimated timeline for completion.*
- (3) *Any party in interest shall be allowed to comment on or request a hearing on the final plan within thirty (30) days of receipt of the final plan by certified or registered mail.*
- (4) *While in possession of the building, the conservator shall additionally submit a status report to the court and all parties in interest every six (6) months from the date of appointment, or more frequently as the court may deem appropriate. The status report shall include:*
  - (a) *A copy of any contracts entered into by the conservator regarding improvement of the building and any related bids;*
  - (b) *An account of all expenses and improvements;*
  - (c) *The status of developing and implementing the final plan; and*
  - (d) *A description of proposed actions to be taken in the next six (6) months to improve the building.*
- (5) *Upon implementation of the final plan, the conservator shall submit to the court and all parties in interest a full accounting of all actions taken to rehabilitate the property, all income and expenditures received or incurred during implementation of the final plan, and an estimate of the conservator's fee.*
- (6) *The conservator may then petition the court for authorization to terminate the conservatorship through either a public or private sale.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *If no feasible final plan can be developed for rehabilitation of the building in order to bring it into compliance with all applicable housing, building, and nuisance code requirements at a reasonable cost in relation to the present value of the building without consideration of the value of the land on which the building is located, the conservator may submit a plan for demolition and removal of the building and all debris from the property to the court and all parties in interest.*
- (2) *The present value of the building in relation to the estimate for costs of rehabilitation of the building in order to bring it into compliance with all applicable housing, building, and nuisance code requirements may be established by evidence of three (3) affidavits prepared by real estate appraisers, qualified building contractors, or qualified building inspectors.*
- (3) *A plan for demolition shall require a reasonable effort to be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of demolition and removal of the building and all debris from the property. Proper records shall be kept showing application of sales proceeds. Any sale of salvaged materials may be made without the necessity of public advertisement.*
- (4) *Any party in interest shall be allowed to comment on or request a hearing on a plan for demolition within thirty (30) days of receipt of the plan for demolition by certified or registered mail.*
- (5) *Upon demolition and removal of the building and all debris from the property, the conservator shall submit to the court and all parties in interest a full accounting of all actions taken, all income and expenditures received or incurred, and an estimate of the conservator's fee.*

- (6) *The conservator may then petition the court for authorization to terminate the conservatorship through either a public or private sale.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon application of the conservator, the court may order the sale of the property free and clear of all existing liens, claims, and encumbrances subject to the approval and supervision of the court by private sale pursuant to a written contract of sale between the conservator and prospective purchaser, by public auction, or by any other method that the court determines is fair to the owner of the property and all parties in interest, is reasonable under the circumstances, and will maximize the return from the property to the conservatorship estate.*
- (2) *Before entering an order authorizing the sale of the property by the conservator, the court may require that the conservator provide evidence of the value of the property by affidavit of three (3) real estate appraisers or by any other evidence that the court determines is appropriate.*
- (3) *If the conservator has received a specific offer for sale that the conservator desires to accept, the conservator shall provide to the court the identity of the buyer and the proposed terms of the sale. If the conservator has not received a specific offer for sale that the conservator desires to accept, the conservator shall provide to the court the proposed procedures for conduct of the sale.*
- (4) *Any sale of the property shall be made subject to the approval and supervision of the court only after all of the following occur:*
- (a) *The court finds the conditions that were the grounds for the petition have been abated or corrected by the conservator and the owner has not successfully petitioned to terminate the conservatorship as set out in Section 14 of this Act;*
- (b) *Notice of the proposed sale and an opportunity for a hearing at which all parties in interest may be heard is given in accordance with the Kentucky Rules of Civil Procedure, provided that if no party objects to the proposed sale or requests a hearing within thirty (30) days, the court may proceed without a hearing; and*
- (c) *The court issues an order of sale that sets forth the required procedures for or terms of the sale.*
- (5) *If the proposed sale is by public auction or any other method other than a private sale approved by the court, the conservator shall conduct and promote the sale in a manner anticipated to raise the highest and best sale price.*
- (6) *If the proposed sale is pursuant to a specific offer the conservator desires to accept, the court may finally approve the sale and no separate confirmation order is required. If the proposed sale is by public auction or any method other than a private sale approved by the court, the conservator shall seek an order approving the sale process and confirming the sale within ten (10) days of the date of the sale.*
- (7) *Notwithstanding any provision to KRS Chapter 134 to the contrary, any holder of a local government lien may by written agreement waive or release all or a portion of its lien priority upon sale of a property subject to the lien in accordance with Sections 1 to 16 of this Act.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *If the proceeds of the sale are insufficient to pay all existing liens, claims, and encumbrances, the proceeds shall be distributed according to the priorities set out in subsection (2) of this section and all unpaid liens, claims, or encumbrances which have not been assumed under subsection (2) of this section shall be extinguished.*
- (2) *The proceeds of the sale shall be applied in accordance with the following priorities to:*
- (a) *Costs and expenses of sale;*
- (b) *State and local government tax liens, unless priority is waived by a local government in accordance with Section 12 of this Act;*
- (c) *Principal and interest on any borrowing or incurrence of indebtedness granted priority over existing liens and security interests under Section 9 of this Act;*
- (d) *Costs of rehabilitation;*
- (e) *Properly recorded local government code enforcement liens existing pursuant to KRS 65.8835;*

- (f) *Other valid liens and security interests in accordance with their priority;*
  - (g) *The owner; and*
  - (h) *If the owner cannot be located, any proceeds from the sale which belong to the owner shall be presumed to be abandoned and unclaimed and shall be subject to the custody and control of the Commonwealth.*
- (3) *Following confirmation of the sale by the court, the conservator shall execute and deliver a deed within ten (10) days conveying title to the property to the purchaser free and clear of all existing liens, claims, and encumbrances in accordance with this section and KRS Chapter 132.*
- (4) *As soon as reasonably possible following delivery of the deed to the purchaser, the conservator shall submit to the court and all parties in interest a report of sale in which the conservator certifies all of the following:*
- (a) *That the sale was conducted in accordance with the order authorizing the sale;*
  - (b) *The date of the sale;*
  - (c) *The name of the purchaser;*
  - (d) *The purchase price;*
  - (e) *The amount of the net proceeds of the sale;*
  - (f) *A copy of the closing statement, if a closing statement was prepared; and*
  - (g) *Any other information that the court may require.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

*Upon request by a party in interest or the conservator, the court may order the termination of the conservatorship if it determines:*

- (1) *The obligations, expenses, and improvements of the conservatorship, including all costs of the conservator, have been fully paid or provided for and the purposes of the conservatorship have been fulfilled;*
- (2) *The owner or a lienholder has requested the conservatorship be terminated and has provided adequate assurances to the court that the conditions that constituted grounds for the petition will be promptly abated;*
- (3) *The conservator is not carrying out required duties or responsibilities as set out in Section 8 of this Act; or*
- (4) *The building has been sold by the conservator and the proceeds have been distributed as set out in Section 13 of this Act.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 16 of this Act shall not apply if the property owner has vacated the property in order to perform military service in time of war, armed conflict, or in order to assist with relief efforts during a declared federal or state emergency as a member of the United States Armed Forces or its Reserve component.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 16 of this Act may be cited as the Abandoned and Blighted Property Conservatorship Act.*

➔Section 17. This Act takes effect January 1, 2022.

**Veto overridden March 29, 2021.**

## CHAPTER 167

( HB 563 )

AN ACT relating to education.

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

➔Section 1. KRS 157.350 is amended to read as follows:

Each district which meets the following requirements shall be eligible to share in the distribution of funds from the fund to support education excellence in Kentucky:

- (1) Employs and compensates all teachers for not less than one hundred eighty-five (185) days. The Kentucky Board of Education, upon recommendation of the commissioner of education, shall prescribe procedures by which this requirement may be reduced during any year for any district which employs teachers for less than one hundred and eighty-five (185) days, in which case the eligibility of a district for participation in the public school fund shall be in proportion to the length of time teachers actually are employed;
- (2) Operates all schools for a minimum school term as provided in KRS 158.070 and administrative regulations of the Kentucky Board of Education. If the school term is less than one hundred eighty-five (185) days, including not less than one hundred seventy (170) student attendance days as defined in KRS 158.070 or one thousand sixty-two (1,062) hours of instructional time, for any reason not approved by the Kentucky Board of Education on recommendation of the commissioner, the eligibility of a district for participation in the public school fund shall be in proportion to the length of term the schools actually operate;
- (3) Compensates all teachers on the basis of a single salary schedule and in conformity with the provisions of KRS 157.310 to 157.440;
- (4) Includes no nonresident pupils in its average daily attendance, except:
  - (a)
    1. *Until July 1, 2022*, pupils listed under a written agreement, which may be for multiple years, with the district of the pupils' legal residence.
    2. If an agreement cannot be reached, either board may appeal to the commissioner for settlement of the dispute.
    3. The commissioner shall have thirty (30) days to resolve the dispute. Either board may appeal the commissioner's decision to the Kentucky Board of Education.
    4. The commissioner and the Kentucky Board of Education shall consider the factors affecting the districts, including but not limited to academic performance and the impact on programs, school facilities, transportation, and staffing of the districts.
    5. The Kentucky Board of Education shall have sixty (60) days to approve or amend the decision of the commissioner; ~~and~~
  - (b) *Beginning July 1, 2022, those nonresident pupils admitted pursuant to district nonresident pupil policies adopted under Section 2 of this Act; and*
  - (c) A nonresident pupil who attends a district in which a parent of the pupil is employed. All tuition fees required of a nonresident pupil may be waived for a pupil who meets the requirements of this paragraph.

This subsection does not apply to those pupils enrolled in an approved class conducted in a hospital and pupils who have been expelled for behavioral reasons who shall be counted in average daily attendance under KRS 157.320;

- (5) Any secondary school which maintains a basketball team for boys for other than intramural purposes, shall maintain the same program for girls;
- (6) Any school district which fails to comply with subsection (5) of this section shall be prohibited from participating in varsity competition in any sport for one (1) year. Determination of failure to comply shall be made by the Department of Education after a hearing requested by any person within the school district. The hearing shall be conducted in accordance with KRS Chapter 13B. A district under this subsection shall, at the hearing, have an opportunity to show inability to comply.

➔Section 2. KRS 158.120 is amended to read as follows:

- (1) *By July 1, 2022, a board of education shall adopt a nonresident pupil policy to govern the terms under which the district shall allow enrollment of nonresident pupils. Upon allowing nonresident pupil enrollment, the policy shall allow nonresident children to be eligible to enroll in any public school located within the district. The policy shall not discriminate between nonresident pupils, but may recognize enrollment capacity, as determined by the local school district. The nonresident pupil policy and any subsequent changes adopted by a board of education shall be filed with the Kentucky Department of Education no later than thirty (30) days following their adoption.*



(2) Any board of education may charge a reasonable tuition fee per month for each child attending its schools whose parent, guardian, or other legal custodian is not a bona fide resident of the district. Any controversy as to the fee shall be submitted to the Kentucky Board of Education for final settlement. The fee shall be paid by the board of education of the school district in which the pupil resides, except in cases where the board makes provision for the child's education within his district. If a board of education is required to pay a pupil's tuition fee, the pupil shall be admitted to a school only upon proper certificate of the board of education of the district in which he resides.

~~(3)(2)~~ When it appears to the board of education of any school district that it is convenient for a pupil of any grade residing in that district to attend an approved public school in another district, the board of education may enter into a tuition contract with the public school authorities of the other school district for that purpose, but before a contract is entered into with public school authorities in another state the school shall have been approved by the state school authorities of that state through the grades in which the pupil belongs. When a district undertakes, under operation of a tuition contract or of law, to provide in its school for pupils residing in another district, the district of their residence shall share the total cost of the school, including transportation when furnished at public expense, in proportion to the number of pupils or in accordance with contract agreement between the two (2) boards.

➔Section 3. KRS 156.070 is amended to read as follows:

(1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B.

(a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.

(b) Beginning with the 2003-2004 school year, the state board shall require any agency or organization designated by the state board to manage interscholastic athletics to adopt bylaws that establish as members of the agency's or organization's board of control one (1) representative of nonpublic member schools who is elected by the nonpublic school members of the agency or organization from regions one (1) through eight (8) and one (1) representative of nonpublic member schools who is elected by the nonpublic member schools of the agency or organization from regions nine (9) through sixteen (16). The nonpublic school representatives on the board of control shall not be from classification A1 or D1 schools. Following initial election of these nonpublic school representatives to the agency's or organization's board of control, terms of the nonpublic school representatives shall be staggered so that only one (1) nonpublic school member is elected in each even-numbered year.

(c) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws that prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity soccer and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade.

(d) 1. The state board or any agency designated by the state board to manage interscholastic athletics shall allow a member school's team or students to play against students of a non-member at-home private school, or a team of students from non-member at-home private schools, if the non-member at-home private schools and students comply with this subsection.

2. A non-member at-home private school's team and students shall comply with the rules for student athletes, including rules concerning:

a. Age;

- b. School semesters;
  - c. Scholarships;
  - d. Physical exams;
  - e. Foreign student eligibility; and
  - f. Amateurs.
3. A coach of a non-member at-home private school's team shall comply with the rules concerning certification of member school coaches as required by the state board or any agency designated by the state board to manage interscholastic athletics.
  4. This subsection shall not allow a non-member at-home private school's team to participate in a sanctioned:
    - a. Conference;
    - b. Conference tournament;
    - c. District tournament;
    - d. Regional tournament; or
    - e. State tournament or event.
  5. This subsection does not allow eligibility for a recognition, award, or championship sponsored by the state board or any agency designated by the state board to manage interscholastic athletics.
  6. A non-member at-home private school's team or students may participate in interscholastic athletics permitted, offered, or sponsored by the state board or any agency designated by the state board to manage interscholastic athletics.
- (e) Every local board of education shall require an annual medical examination performed and signed by a physician, physician assistant, advanced practice registered nurse, or chiropractor, if performed within the professional's scope of practice, for each student seeking eligibility to participate in any school athletic activity or sport. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall not promulgate administrative regulations or adopt any policies or bylaws that are contrary to the provisions of this paragraph.
- (f) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only. An exception to the provisions of this paragraph shall be made, and the student shall be eligible for high school athletics in Kentucky if the student:
1. Qualified for exceptional children services and had an individual education program developed by an admissions and release committee (ARC) while the student was enrolled in the primary school program;
  2. Was retained in the primary school program because of an ARC committee recommendation; and
  3. Has not completed four (4) consecutive years or eight (8) consecutive semesters of eligibility following initial promotion from grade eight (8) to grade nine (9).
- (g)
1. The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations that permit a school district to employ or assign nonteaching or noncertified personnel or personnel without postsecondary education credit hours to serve in a coaching position. The administrative regulations shall give preference to the hiring or assignment of certified personnel in coaching positions.
  2. A person employed in a coaching position shall be a high school graduate and at least twenty-one (21) years of age and shall submit to a criminal background check in accordance with KRS 160.380.
  3. The administrative regulations shall specify post-hire requirements for persons employed in coaching positions.

4. The regulations shall permit a predetermined number of hours of professional development training approved by the state board or its designated agency to be used in lieu of postsecondary education credit hour requirements.
  5. A local school board may specify post-hire requirements for personnel employed in coaching positions in addition to those specified in subparagraph 3. of this paragraph.
- (h) Any student who transfers enrollment from a district of residence to a nonresident district under subsection (4)(b) of Section 1 of this Act shall be ineligible to participate in interscholastic athletics for one (1) calendar year from the date of the transfer.***
- (3)
    - (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.
    - (b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.
    - (c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.
  - (4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations

published or distributed by the board shall be enclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.

- (5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

➔Section 4. By November 1, 2021, the Kentucky Department of Education shall submit a report to the Legislative Research Commission and the Interim Joint Committee on Education with options on how to ensure the equitable transfer of education funds so that funds follow a nonresident student to a school district of enrollment from a school district of residence. The report shall include recommendations on how the amount should be calculated and what mechanism should be used to conduct the transfer.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

*There is hereby established the Education Opportunity Account Program, also known as the EOA program. The purpose of the EOA program is to give more flexibility and choices in education to Kentucky residents and to address disparities in educational options available to students.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 5 to 19 of this Act:*

- (1) *"Account-granting organization" or "AGO" means a nonprofit organization that complies with the requirements of Sections 5 to 19 of this Act and:*
- (a) *Receives contributions, allocates funds, and administers EOAs; or*
  - (b) *Is an intermediary organization;*
- (2) *"Contribution" means a donation in the form of cash or marketable securities that is eligible for the tax credit permitted by Section 16 of this Act;*
- (3) *"Curriculum" means a complete course of study for a particular content area or grade level;*
- (4) *"Education opportunity account" or "EOA" means the account to which funds are allocated by an AGO to the parent of an EOA student in order to pay for expenses to educate the EOA student pursuant to the requirements of Sections 5 to 19 of this Act;*
- (5) *"Education service provider" means a person or organization that receives payments from an EOA to provide educational materials and services to EOA students;*
- (6) *"Eligible student" means a resident of Kentucky who:*
- (a) *Is a member of a household with an annual household income at the time of initially applying for an EOA from an AGO under this section of not more than one hundred seventy-five percent (175%) of the amount of household income necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789;*
  - (b) *Has previously received an EOA from an AGO under this section; or*
  - (c) *Is a member of the household of an eligible student that currently has an EOA from an AGO under this section;*
- (7) *"Eligible taxpayer" means an individual or business, including but not limited to a corporation, S corporation, partnership, limited liability company, or sole proprietorship subject to tax imposed under KRS 141.020, 141.040, or 141.0401;*
- (8) *"EOA student" means an eligible student who is participating in the EOA program;*
- (9) *"Income" has the same meaning as in the United States Department of Agriculture, Food and Nutrition Service, Child Nutrition Programs, Income Eligibility Guidelines, Federal Register Vol. 83, No. 89, published May 8, 2018, and as updated annually as authorized by 42 U.S.C. sec. 1758(b)(1)(A);*
- (10) *"Intermediary organization" means a nonprofit organization that complies with the requirements of Sections 5 to 19 of this Act and receives contributions to fund AGOs; and*

- (11) *"Parent" means a biological or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an EOA student.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *Each AGO shall create a uniform process for determining the amount allocated to each eligible student's EOA with the following limitations:*
- (a) *For eligible students that intend to use the funds in the EOA to pay tuition at a nonpublic school or tuition as described in subsection (2) of Section 2 of this Act, the EOA funds shall not exceed the lesser of:*
1. *Their parents' demonstrated financial need as determined by an independent financial analysis performed by an organization that is:*
    - a. *Experienced in evaluating a student's need for financial aid; and*
    - b. *Included on the department's list of approved organizations as required by subsection (2)(a) of Section 12 of this Act; or*
  2. *The actual amount of tuition and required fees charged by the school to students who do not receive assistance under this program;*
- (b) *For all other eligible students, the EOA funds shall not exceed the lesser of:*
1. *The expected cost of educational services to be provided during the succeeding school year; or*
  2. *The Commonwealth's guaranteed SEEK base amount for the immediately preceding school year reduced by the percentage equal to one-fourth (1/4) of the percentage by which the applicant's household income exceeds the applicable federal reduced lunch household income threshold; and*
- (c) *For students in the foster care system, the AGO shall assume that the student's parents have no income or ability to pay for educational services for the purposes of prioritizing the students and determining the amount of assistance provided under this program.*
- (2) (a) *The funds in an EOA shall not be used for athletics or any associated fees and shall only be used to pay for the tuition and fee expenses permitted by paragraph (b) of this subsection and the following qualifying expenses if covered by the AGO and incurred for the purpose of educating an EOA student:*
1. *Tuition or fees to attend a prekindergarten to grade twelve (12) public school;*
  2. *Tuition or fees for online learning programs;*
  3. *Tutoring services provided by an individual or a tutoring facility;*
  4. *Services contracted for and provided by a public school, including but not limited to individual classes and extracurricular activities and programs;*
  5. *Textbooks, curriculum, or other instructional materials, including but not limited to any supplemental materials or associated online instruction required by either a curriculum or an education service provider;*
  6. *Computer hardware or other technological devices that are primarily used to help meet an EOA student's educational needs;*
  7. *Educational software and applications;*
  8. *School uniforms;*
  9. *Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission, and tuition or fees for preparatory courses for these;*
  10. *Tuition or fees for summer education programs and specialized after-school education programs, excluding after-school childcare;*
  11. *Tuition, fees, instructional materials, and examination fees at a career or technical school;*

12. *Educational services and therapies, including but not limited to occupational, behavioral, physical, speech-language, and audiology therapies provided by a licensed professional;*
  13. *Tuition and fees at an institution of higher education for dual credit courses; and*
  14. *Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider.*
- (b) *In addition to the variety of education-related expenses for public and nonpublic schools in the Commonwealth as provided by paragraph (a) of this subsection, EOA students that are residents of counties with a population of ninety thousand (90,000) or more, as determined by the 2010 decennial report of the United States Census Bureau, shall be permitted to use funds received through the EOA program for tuition and fees to attend nonpublic schools, because students in these counties have access to substantial existing nonpublic school infrastructure and there is capacity in these counties to either grow existing tuition assistance programs or form new nonprofits from existing networks that can provide tuition assistance to students over the course of the pilot program. Pursuant to Section 17 of this Act, the General Assembly shall assess whether the purposes of the EOA program are being fulfilled.*
- (3) *EOA funds shall not be refunded, rebated, or shared with a parent or EOA student in any manner. Any refund or rebate for materials or services purchased with EOA funds shall be credited directly to the student's EOA.*
  - (4) *Parents may make payments for the costs of educational materials and services not covered by the funds in their student's EOA, but personal deposits into an EOA shall not be permitted.*
  - (5) *Funds allocated to an EOA shall not constitute taxable income to the parent or the EOA student.*
  - (6) (a) *An EOA shall remain in force, unless the EOA is closed because of a substantial misuse of funds, and any unused funds shall roll over from quarter to quarter and from year to year until:*
    1. *The parent withdraws the EOA student from the EOA program;*
    2. *The EOA student receives a high school diploma or equivalency certificate; or*
    3. *The end of the school year in which the student reaches twenty-one (21) years of age;**whichever occurs first.*
  - (b) *When an EOA is closed, any unused funds shall revert to the AGO that granted the EOA and be allocated by that AGO to fund other EOAs. If the AGO that granted the EOA is no longer operating, the funds shall be transferred to another AGO operating in good standing with the Commonwealth.*
  - (7) *An AGO shall first prioritize funding EOAs for students, their siblings, and foster children living in the same household who received an EOA in the previous academic year and then to first-time applicants in accordance with subsection (8) of this section.*
  - (8) *For first-time applicants, an AGO shall prioritize awarding EOAs to the applicants as follows:*
    - (a) *A majority of funds available for first-time applicants shall be reserved for students whose household income does not exceed that necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789. Within in this group of applicants, the funds shall be further prioritized to fund EOAs in the order of the applicants with the most demonstrated financial need; and*
    - (b) *The remaining unfunded first-time applicants shall be selected for funding based on a random lottery until all remaining funds are allocated to EOAs.*
  - (9) *An AGO may define and limit the services that the EOA funds may cover.*
  - (10) *An AGO shall not accept a contribution from an eligible taxpayer if the eligible taxpayer designates that the contribution shall be used to award an EOA to a particular student.*
  - (11) *Dependents of the AGO's board of directors, its staff, and its donors are ineligible to receive an EOA.*
- ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:
- (1) *To establish an EOA for an eligible student, the parent shall submit an application to an AGO.*

- (2) *The AGO shall approve an application for an EOA if:*
- (a) *An AGO verifies that the student on whose behalf the parent is applying is an eligible student;*
  - (b) *Funds are available for the EOA; and*
  - (c) *The parent signs an agreement with the AGO:*
    - 1. *To use the funds in the EOA only for the covered qualifying expenses;*
    - 2. *Not to establish any other EOA for the eligible student with any other AGO;*
    - 3. *To comply with the rules and requirements of the EOA program; and*
    - 4. *Not to use EOA funds to cover the cost of educational materials or services if they are currently receiving the same types of materials or services through the school district in which the student is enrolled.*
- (3) *The AGO shall annually renew a student's EOA if funds are available unless the student's family income has increased above two hundred fifty percent (250%) of the amount of household income necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789.*
- (4) *In the event that an eligible student becomes ineligible for reasons other than fraud or misuse of funds, the AGO may cease funding for the student's EOA provided that:*
- (a) *The AGO immediately suspends payment of additional funds into the student's EOA. For EOAs that have been open for at least one (1) full school year, the EOA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the EOA. When no funds remain in the student's EOA, the AGO may close the EOA;*
  - (b) *If a parent reapplies to the AGO and signs a new written agreement, payments into the student's existing EOA may resume if the EOA is still open and active. A new EOA may be established if the student's EOA was closed; and*
  - (c) *An AGO shall adopt policies to provide the least disruptive process possible for EOA students desiring to leave the EOA program.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to making a contribution to an AGO, the taxpayer or an AGO acting on behalf of the taxpayer shall apply to the department for preapproval of the tax credit permitted by Section 16 of this Act in a manner prescribed by the department. Each application shall be submitted separately and shall provide the total amount of proposed contributions and the year or years in which the contributions will be made, whether the proposed contributions will be in the form of cash or marketable securities, and the name of the AGO to which the contributions will be made.*
- (2) *Subject to the annual tax credit cap established by Section 16 of this Act, the department shall preliminarily approve the amount of tax credit within ten (10) business days of receipt of the application and shall notify the taxpayer and the AGO. The notification shall include the amount of the tax credit preliminarily approved, the name of the AGO to which contributions may be made, and any other information the department deems necessary.*
- (3) *If a taxpayer applies or the AGO applies on behalf of the taxpayer for preapproval when no amount of tax credit remains for allocation, but a portion of the total amount of tax credit available is pending verification, the department shall notify the taxpayer and the AGO that the application is being held in abeyance and will be funded on a first-come, first-served basis or will be denied if all preapproved contributions are timely made.*
- (4) (a) *The taxpayer shall make the preapproved contribution to the AGO no later than the earlier of:*
- 1. *Fifteen (15) business days following the date of the department's preapproval notice, excluding weekends and holidays; or*
  - 2. *June 30 of the fiscal year of the preapproval.*
- (b) *If the preapproved contribution is in the form of marketable securities, the AGO shall monetize the securities within five (5) business days of receipt, excluding weekends and holidays, and notify the*

*department within ten (10) business days of the monetization of the securities. If the monetized value of the marketable securities is less than the amount of the proposed contribution reflected on the application, the taxpayer shall supplement the contribution with additional cash to equal the amount of contribution reflected on the application. The taxpayer shall not receive preapproval for a tax credit in excess of the amount of proposed contribution reflected on the application form.*

- (5) (a) *The AGO shall certify to the department the name of the taxpayer, amount of the contribution made, and the date on which the contribution was made within ten (10) days of when the contribution has been made.*
- (b) *Upon receipt of certification that the contribution has been made or the expiration of the ten (10) day period without certification, whichever occurs first, the department shall modify the amount of credit pending certification, the amount of credit allocated to taxpayers, and the remaining credit available for allocation, as applicable.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *An organization that seeks to become an AGO shall apply for initial certification or renewal of certification from the department.*
- (2) *An application for initial certification as an AGO shall include:*
- (a) *A copy of the AGO's incorporation documents;*
- (b) *A copy of the AGO's Internal Revenue Service determination letter as a Section 501(c)(3) not-for-profit organization;*
- (c) *A description of the methodology the AGO will use to evaluate whether a student is eligible to establish an EOA;*
- (d) *A description of the application process the AGO will use for parents and eligible students;*
- (e) *A description of the methodology the AGO will use to establish, fund, and manage EOAs;*
- (f) *A description of the process the AGO will use to approve education service providers;*
- (g) *A description of how the AGO will inform parents of approved education service providers; and*
- (h) *A description of the AGO's procedures for crediting refunds from an education service provider back to a student's EOA.*
- (3) *An application for renewal of certification as an AGO shall include:*
- (a) *The AGO's completed Internal Revenue Service Form 990, submitted no later than November 30 of the year before the academic year that the AGO intends to fund EOAs;*
- (b) *A copy of any audit that may be required by the department; and*
- (c) *1. An annual report that includes:*
- a. *The number of applications the AGO received during the previous academic year, by county and by grade level;*
- b. *The name and address of all students that received EOA funds from the AGO during the previous academic year;*
- c. *When the AGO is an intermediary organization, the name and address of all AGOs that received funds from the intermediary organization during the last fiscal year;*
- d. *The total number of EOAs the AGO maintains;*
- e. *The amount of funds the AGO:*
- i. *Received to fund EOAs during the last fiscal year;*
- ii. *Distributed into EOAs during the last fiscal year;*
- iii. *Has remaining after the distribution into EOAs and any obligations to fund EOAs in the future;*
- iv. *Spent on administrative expenses and an accounting thereof during the last fiscal year; and*



- v. *Spent on fees to private financial management firms or other organizations to maintain records and process transactions of the EOAs;*
  - f. *When the AGO is an intermediary organization, the amount of funds the intermediary organization:*
    - i. *Received to distribute to AGOs during the last fiscal year;*
    - ii. *Distributed to each AGO during the last fiscal year;*
    - iii. *Has remaining after the distribution into AGOs and any obligations to distribute to AGOs in the future;*
    - iv. *Spent on administrative expenses and an accounting thereof during the last fiscal year; and*
    - v. *Spent on fees to private financial management firms or other organizations to maintain records and process transactions;*
  - g. *A list of the AGO's approved education service providers; and*
  - h. *A description of how the AGO has complied with the operational requirements and responsibilities of Sections 5 to 19 of this Act.*
2. *The annual report shall also:*
- a. *Comply with uniform financial accounting standards;*
  - b. *Be attested to by an independent certified public accountant in accordance with procedures promulgated by the department; and*
  - c. *Be free of material misstatements or exceptions.*
- (4) *The department shall only certify an AGO or renew an AGO's certification if the organization meets the requirements established by Sections 5 to 19 of this Act. The department shall issue initial certifications within sixty (60) days of receiving the application and renew certifications within thirty (30) days of receiving the application.*
- (5) *Upon application for renewal, an AGO shall demonstrate that:*
- (a) *It is an intermediary organization that collects contributions exclusively for the use by AGOs; or*
  - (b) *It includes two (2) or more education service providers in its EOA program and has awarded at least fifty (50) EOAs aggregating a minimum of two hundred thousand dollars (\$200,000) in the previous year and is expected to award at least fifty (50) EOAs aggregating a minimum of two hundred thousand dollars (\$200,000) in the succeeding year.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *An AGO shall ensure that at least ninety percent (90%) of the total annual contributions received are allocated to EOAs no later than the last day of the AGO's immediately succeeding calendar year or fiscal year, as applicable, unless the current year's total annual contributions received by the AGO exceed an amount equal to the average of the total annual contributions received in the immediately preceding three (3) years by more than fifteen percent (15%), in which case the excess amount may be carried forward and expended for EOAs in three (3) equal installments over the immediately succeeding three (3) years.*
- (2) *An AGO shall maintain separate accounts for EOA funds and operating funds.*
- (3) *Any interest that accrues from contributions that are eligible for the tax credit permitted by Section 16 of this Act shall be allocated by the AGO to fund EOAs.*
- (4) *An AGO shall create a standard application process for parents to establish their student's eligibility for an EOA. An AGO shall ensure that the application is readily available to interested families and may be submitted through various sources, including the Internet.*
- (5) *An AGO shall provide parents with a written explanation of the allowable uses of EOA funds, the responsibilities of parents, and the duties of the AGO and the role of any private financial management firms or other organizations that the AGO may contract with to process EOA transactions or maintain records for other aspects of the EOA program.*

- (6) (a) *An AGO may transfer funds to another AGO if additional funds are required to meet EOA demands at the receiving AGO or if the transferring AGO determines it cannot continue to operate due to any reason.*
- (b) *If funds are transferred for the purpose of meeting EOA demands, no more than a combined aggregate of ten percent (10%) of the AGOs' total annual contributions received may be retained by the AGOs for administrative expenses.*
- (c) *All transferred funds shall be allocated by the receiving AGO to its account for EOAs.*
- (d) *All transferred amounts received by an AGO shall be separately disclosed in the receiving AGO's annual report for certification renewal pursuant to Section 10 of this Act.*
- (e) *An AGO that receives a transfer of funds from an AGO that has determined it will not continue to operate shall agree to fund the EOAs established by the transferring AGO to the extent funds are available. The receiving AGO shall also prioritize the funding of transferred EOAs before funding new EOA applicants.*
- (7) *An AGO may accept donations that are not eligible for the tax credit permitted by Section 16 of this Act, gifts, and grants to cover administrative costs, to inform the public about the EOA program, to fund additional EOAs or to offer assistance outside of the EOA program. Donations that are not eligible for the tax credit permitted by Section 16 of this Act shall not be subject to Sections 5 to 19 of this Act.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *To administer the tax credit and the total annual tax credit cap established in Section 16 of this Act, the department shall:*
- (a) *Create the tax credit application form, the forms to be used by the department to notify the taxpayer and the AGO of preapproval or denial of the credit, and the educational materials to be distributed by the AGO;*
- (b) *Create a Web site listing the amount of the total credit pending verification, the amount of the total credit allocated to date, and the remaining credit available to taxpayers making contributions to AGOs;*
- (c) *Notify the taxpayer and the AGO of the amount of credit allocated to the taxpayer upon certification that the contribution has been made by the issuance of a tax credit allocation letter, which the taxpayer shall submit with the taxpayer's return when claiming the credit; and*
- (d) *Collect necessary data to provide the report required by subsection (3) of this section.*
- (2) *On or before January 1 of each year, the department shall publish on its Web site:*
- (a) *A list of organizations that have been approved by the department to perform independent financial analyses of parents' demonstrated financial needs; and*
- (b) *A list of AGOs.*
1. *If an AGO fails to meet the requirements of this section, the department shall not include the organization on the list of AGOs the following calendar year.*
2. *Only contributions to AGOs on the list maintained by the department for each calendar year shall be recognized for tax credits awarded under Section 16 of this Act.*
- (3) *The department shall produce and publish on its Web site an annual report that aggregates the data obtained from the annual reports submitted by AGOs for the renewal of their certification pursuant to Section 10 of this Act. The department's report shall not include any identifying information of EOA students or AGOs that would violate the confidentiality requirements in subsection (1) of Section 21 of this Act.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *The department may conduct an audit of an AGO or contract for the auditing of an AGO.*
- (2) (a) *In the event that the department determines that there has been a violation of Sections 5 to 19 of this Act by an AGO, the department shall send written notice to the AGO.*

- (b) *The AGO that receives written notice of a violation will have sixty (60) days from receipt of notice to correct the violation identified by the department.*
  - (c) *If the AGO fails or refuses to comply after sixty (60) days, the department may revoke the AGO's certification to participate in the EOA program.*
- (3) *An AGO whose certificate has been revoked under this section:*
- (a) *May appeal the revocation of its certification to the Kentucky Claims Commission pursuant to KRS 49.220;*
  - (b) *Shall continue administering EOAs that were donated prior to the date of notice stated on the revocation;*
  - (c) *Shall not accept any further contributions for the purpose of funding EOAs on or after the date of notice stated on the revocation; and*
  - (d) *Shall refund any contributions that were received for the purpose of funding EOAs on or after the date of notice stated on the revocation.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Each AGO shall implement a commercially viable, cost-effective, and parent-friendly system for payment of services from EOAs to education service providers.*
  - (b) *The AGO shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but shall provide maximum flexibility to parents by facilitating direct payments to education service providers or requests for preapproval of and reimbursements for qualifying expenses.*
  - (c) *An AGO may contract with private financial management firms or other organizations to develop the payment system.*
- (2) *An AGO may contract with private financial management firms or other organizations to maintain records and process transactions of the EOAs.*
- (3) *If funding is available, an AGO shall continue making payments into an EOA until:*
- (a) *The parent does not renew the EOA;*
  - (b) *The AGO determines that the EOA student's family income has increased above two hundred fifty percent (250%) of the amount of household income necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789;*
  - (c) *The AGO determines that there was substantial misuse of the funds in the EOA; or*
  - (d) *The EOA student receives a high school diploma or equivalency certificate.*
- (4) *Each AGO shall establish a process for approving education service providers.*
- (5) *An AGO may approve education service providers on their own initiative, at the request of parents, or up on request from prospective education service providers.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *Nothing in Sections 5 to 19 of this Act shall be deemed to limit the independence or autonomy of an education service provider or to make the actions of an education service provider the actions of the state government.*
- (2) *Nothing in Sections 5 to 19 of this Act shall be construed to expand the regulatory authority of the state, its officers, or any county school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the EOA Program.*
- (3) *An education service provider that accepts payment from an EOA pursuant to Sections 5 to 19 of this Act is not an agent of the state or federal government.*
- (4) *An education service provider shall not be required to alter its creed, practices, admissions policy, or curriculum in order to accept payments from an EOA.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Effective for taxable years beginning on or after January 1, 2021, but before January 1, 2026, a nonrefundable, nontransferable tax credit shall be permitted against the tax imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of credit as provided in Section 20 of this Act, as applicable, for contributions made during a taxable year to one (1) or more AGOs in accordance with the EOA program. To qualify for this credit, a taxpayer filing as an individual shall elect to claim a federal and Kentucky contribution deduction associated with the contributions made to an AGO that does not exceed an amount equal to the total contribution for the taxable year less the amount of credit allowed by this section for the taxable year.*
- (b) *If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall also pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.*
- (2) *The aggregate value of the total annual tax credit cap awarded shall not exceed twenty-five million dollars (\$25,000,000).*
- (3) *The credit amount awarded per taxpayer per taxable year shall be no more than the lesser of:*
  - (a) *Ninety-five percent (95%) of the total contributions made to an AGO, except as provided in subsection (4) of this section; or*
  - (b) *One million dollars (\$1,000,000).*
- (4) (a) *The taxpayer may elect to pledge a contribution for multiple taxable years, not to exceed a total of four (4) taxable years.*
- (b) *If the multi-year pledge is made by the taxpayer and the amount of the contributions for each of the multiple taxable years is equal to or more than the amount of contributions made to the AGO in the taxable year within which the pledge is made, the amount of allowable credit shall be increased by two (2) percentage points to ninety-seven percent (97%) in the taxable year within which the pledge is made and for each pledged year.*
- (c) *If the taxpayer does not remit the pledged amount of contributions during any taxable year for which a multi-year pledge is made, the taxpayer shall repay the portion of the credit resulting from the increase allowed by this subsection.*
- (5) *Any tax credit awarded under this section that is not used by the taxpayer in the current taxable year may be carried forward for up to five (5) succeeding taxable years until the tax credit has been utilized.*
- (6) *Tax credits under this section shall be awarded on a first-come, first-served basis each fiscal year within the limitations set forth in this section. The date and time stamp from each application for preapproval shall establish the order in which the application was received. For contributions pledged for multiple tax years, the contribution shall be considered the first in line for the years subsequent to the initial year of the pledge.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

*The department shall provide the following information to the Interim Joint Committee on Appropriations and Revenue no later than November 1, 2022, and no later than November 1 of each year thereafter as long as the tax credit permitted by Section 16 of this Act is taken:*

- (1) *All information contained in each annual report filed by an AGO as required by Section 10 of this Act and the administrative regulations promulgated thereunder, with each eligible student's identifying information removed and replaced with an assigned unique identification number;*
- (2) *The number and total amount of EOAs awarded by AGOs to EOA students reported by household income range intervals of five thousand dollars (\$5,000);*
- (3) *The number and total amount of EOAs awarded by AGOs to EOA students:*
  - (a) *Who are currently in the Commonwealth's foster care program;*
  - (b) *Who have previously received an EOA under this section; and*
  - (c) *Who are members of a household in which a student has previously received an EOA under this section; and*
- (4) *Any other information that may be necessary to assist the members of the General Assembly in determining that the purposes of this tax credit are being fulfilled.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

*If any part of Sections 5 to 19 of this Act is challenged in state court as violating either the state or federal constitutions, parents of students who would meet the criteria for being eligible students as defined by Section 6 of this Act shall be permitted to intervene as of right in such lawsuit for the purposes of defending the EOA program's constitutionality.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

*Sections 5 to 19 of this Act may be cited as the "Education Opportunity Account Act" or "EOA Act."*

➔SECTION 20. KRS 141.0205 is amended to read as follows:

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

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The limited liability entity tax credit permitted by KRS 141.0401;
  - (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
  - (c) The qualified farming operation credit permitted by KRS 141.412;
  - (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (e) The health insurance credit permitted by KRS 141.062;
  - (f) The tax paid to other states credit permitted by KRS 141.070;
  - (g) The credit for hiring the unemployed permitted by KRS 141.065;
  - (h) The recycling or composting equipment credit permitted by KRS 141.390;
  - (i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (j) The research facilities credit permitted by KRS 141.395;
  - (k) The employer High School Equivalency Diploma program incentive credit permitted under KRS 151B.402;
  - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (n) The clean coal incentive credit permitted by KRS 141.428;
  - (o) The ethanol credit permitted by KRS 141.4242;
  - (p) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (q) The energy efficiency credits permitted by KRS 141.436;
  - (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (s) The Endow Kentucky credit permitted by KRS 141.438;
  - (t) The New Markets Development Program credit permitted by KRS 141.434;
  - (u) The distilled spirits credit permitted by KRS 141.389;
  - (v) The angel investor credit permitted by KRS 141.396;
  - (w) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018;
  - (x) The inventory credit permitted by KRS 141.408; and
  - (y) The renewable chemical production credit permitted by KRS 141.4231.

- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The individual credits permitted by KRS 141.020(3);
  - (b) The credit permitted by KRS 141.066;
  - (c) The tuition credit permitted by KRS 141.069;
  - (d) The household and dependent care credit permitted by KRS 141.067; ~~and~~
  - (e) The income gap credit permitted by KRS 141.066; *and*
  - (f) *The Education Opportunity Account Program tax credit permitted by Section 16 of this Act.*
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The individual withholding tax credit permitted by KRS 141.350;
  - (b) The individual estimated tax payment credit permitted by KRS 141.305;
  - (c) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and
  - (d) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018.
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
  - (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
  - (b) The qualified farming operation credit permitted by KRS 141.412;
  - (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (d) The health insurance credit permitted by KRS 141.062;
  - (e) The unemployment credit permitted by KRS 141.065;
  - (f) The recycling or composting equipment credit permitted by KRS 141.390;
  - (g) The coal conversion credit permitted by KRS 141.041;
  - (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
  - (i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (j) The research facilities credit permitted by KRS 141.395;
  - (k) The employer High School Equivalency Diploma program incentive credit permitted by KRS 151B.402;
  - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (n) The clean coal incentive credit permitted by KRS 141.428;
  - (o) The ethanol credit permitted by KRS 141.4242;
  - (p) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (q) The energy efficiency credits permitted by KRS 141.436;
  - (r) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;

- (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (t) The railroad expansion credit permitted by KRS 141.386;
  - (u) The Endow Kentucky credit permitted by KRS 141.438;
  - (v) The New Markets Development Program credit permitted by KRS 141.434;
  - (w) The distilled spirits credit permitted by KRS 141.389;
  - (x) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018;
  - (y) The inventory credit permitted by KRS 141.408; ~~and~~
  - (z) The renewable chemical production tax credit permitted by KRS 141.4231; *and*
  - (aa) *The Education Opportunity Account Program tax credit permitted by Section 16 of this Act.***
- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
- (a) The corporation estimated tax payment credit permitted by KRS 141.044;
  - (b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and
  - (c) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018.

➔Section 21. KRS 131.190 is amended to read as follows:

- (1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.
- (2) The prohibition established by subsection (1) of this section shall not extend to:
  - (a) Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;
  - (b) Any matter properly entered upon any assessment record, or in any way made a matter of public record;
  - (c) Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
  - (d) Testimony provided by the commissioner or any employee of the department in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;
  - (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820, or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820, that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;
  - (f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10);
  - (g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;

- (h) Statistics of gasoline and special fuels gallonage reported to the department under KRS 138.210 to 138.448;
- (i) Providing any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on a confidential basis;
- (j) Providing documents, data, or other information to a third party pursuant to an order issued by a court of competent jurisdiction; or
- (k) Providing information to the Legislative Research Commission under:
  1. KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
  2. KRS 141.436 for purposes of the energy efficiency products credits;
  3. KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;
  4. KRS 148.544 for purposes of the film industry incentives;
  5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization tax credits and the job assessment fees;
  6. KRS 141.068 for purposes of the Kentucky investment fund;
  7. KRS 141.396 for purposes of the angel investor tax credit;
  8. KRS 141.389 for purposes of the distilled spirits credit;
  9. KRS 141.408 for purposes of the inventory credit;
  10. KRS 141.390 for purposes of the recycling and composting credit;
  11. KRS 141.3841 for purposes of the selling farmer tax credit; ~~and~~
  12. KRS 141.4231 for purposes of the renewable chemical production tax credit; *and*
  13. *Section 17 of this Act for purposes of the Education Opportunity Account Program tax credit.*
- (3) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
- (4) Access to and inspection of information received from the Internal Revenue Service is for department use only, and is restricted to tax administration purposes. Information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department, or any other person.
- (5) Statistics of crude oil as reported to the *department* ~~Department of Revenue~~ under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the *department* ~~Department of Revenue~~ under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Energy and Environment Cabinet, Department for Natural Resources.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

**Veto overridden March 30, 2021.**



**CHAPTER 168****( HJR 77 )**

A JOINT RESOLUTION ratifying emergency executive orders and declaring an emergency.

WHEREAS, emergency executive actions, administrative regulations, and other directives have been issued by the Governor and executive branch agencies in response to the COVID-19 virus; and

WHEREAS, 2021 Senate Bill 1 limited certain emergency executive actions and administrative regulations issued by the Governor to 30 days unless an extension is approved by the General Assembly, and the COVID-19 emergency executive actions, administrative regulations, and other directives therefore expired on March 4, 2021; and

WHEREAS, a number of COVID-19 emergency executive actions, administrative regulations, or directives need to be extended past March 4, 2021, in order to protect the citizens of Kentucky;

NOW, THEREFORE,

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

➔Section 1. All COVID-19 related executive orders, administrative regulations, other directives issued by the Governor or pursuant to his authority, or agencies or boards under the Governor's authority, not specifically extended by this Act are of no further force or effect as of the effective date of this Act.

➔Section 2. The General Assembly hereby approves and ratifies the following executive actions and administrative regulations issued in response to the COVID-19 virus, and declare that the same shall expire 90 days from the effective date of this Act:

2020 Executive Order 2020-215;

2021 Executive Order 2021-072;

2021 Executive Order 2021-078;

2020 Executive Order 2020-220;

2020 Executive Order 2020-265;

2020 Executive Order 2020-266;

2020 Executive Order 2020-881;

2020 Executive Order 2020-235;

201 KAR 8:505E;

201 KAR 2:410E;

702 KAR 7:140E;

902 KAR 20:160E;

902 KAR 20:440E;

902 KAR 30:210E;

907 KAR 15:070E;

907 KAR 15:080E;

921 KAR 3:025E;

922 KAR 1:490E;

922 KAR 2:415E;

Board of Veterinary Examiners Order of April 16, 2020;

Cabinet for Health and Family Services Order of July 9, 2020;

Education and Workforce Development Administrative Order 2020-02;

Education and Workforce Development Administrative Order 2020-03; and

Education and Workforce Development Administrative Order 2020-07.

➔Section 3. The General Assembly hereby approves and ratifies the following executive actions and administrative regulations issued in response to the COVID-19 virus for a period not to exceed 30 days to allow the opportunity to promulgate replacement administrative regulations pursuant to KRS Chapter 13A, and declare that the executive actions and administrative regulations shall expire 30 days from the effective date of this Act:

Labor Cabinet Administrative Order 2020-004;

Labor Cabinet Administrative Order 2020-001;

Kentucky Applied Behavior Analyst Licensing Board Order;

Kentucky Board of Alcohol and Drug Counselors Order;

Kentucky Board of Licensed Diabetes Educators Order;

Kentucky Board of Licensure for Long-term Care Administrators Order;

Kentucky Board of Licensed Professional Counselors Order;

Kentucky Board of Licensure for Marriage and Family Therapists Order;

Kentucky Board of Licensure for Occupational Therapy Order;

Kentucky Board of Licensure for Private Investigators Order;

Kentucky Board of Examiners of Psychology Order;

Kentucky Board of Speech-Language Pathology and Audiology Order;

Kentucky Board of Interpreters for Deaf and Hard of Hearing Order;

Kentucky Licensing Board for Specialists in Hearing Instruments Order;

Kentucky Board of Barbering Order;

Kentucky Board of Licensure for Massage Therapy Order;

Board of Pharmacy Order April 24, 2020;

Energy and Environment Cabinet Emergency Bulletin of March 26, 2020;

Energy and Environment Cabinet Emergency Memorandum of March 26, 2020;

Energy and Environment Cabinet Emergency and Public Service Commission Emergency Memorandum of July 31, 2020;

Energy and Environment Cabinet Emergency Memorandum of January 25, 2021;

Transportation Cabinet Official Order 112400;

Kentucky Economic Development Finance Authority Resolution No. 2020-0730;

Bluegrass State Skills Corporation May 21, 2020 exemption to Guidelines 2020-2021;

Board of Dentistry Order of April 17, 2020;

Board of Nursing Emergency Memoranda;

Department of Alcoholic Beverage Control Orders;

Department of Financial Institutions Order;

Housing, Buildings and Construction Orders;

Real Estate Authority Orders;

Department of Insurance Orders; and

Board of Social Work Memorandum of March 30, 2020.

➔Section 4. (1) The General Assembly hereby approves and ratifies Executive Order 2020-243 to the extent that the order:

(a) Encourages social distancing among citizens; and

- (b) Requires state agencies to:
1. Encourage social distancing;
  2. Provide and conduct services by mail, Internet, phone, and/or video conferencing;
  3. Extend licenses, credentials, or certificates that require in-person appearances or education for renewal;
  4. Permit education and continuing education to be satisfied online;
  5. Extend deadlines for statutory or regulatory reporting; and
  6. Extend deadlines for payments of fees, taxes, and assessments, and waive late payment penalties incurred.

(2) As of the effective date of this Act, Executive Order 2020-243 is otherwise of no further force or effect, and any statutes or regulations therein suspended are no longer suspended. Executive Order 2020-243 as ratified and extended in part shall expire 60 days from the effective date of this Act.

→Section 5. Upon the expiration of an executive action, other directive, or administrative regulation declaring an emergency or other implementation of powers under KRS Chapter 39A, the Governor shall not declare a new emergency or continue to implement any of the powers under KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.

→Section 6. Nothing in this Act shall be interpreted to allow state agencies to remain closed for regular in-person business.

→Section 7. It is not the intention of the General Assembly that this Joint Resolution should impair or delay the ability of the Commonwealth to receive any federal stimulus or pandemic related funds.

→Section 8. Whereas, the General Assembly desires to ensure that the citizens of the Commonwealth are protected for a specific period of time, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Veto overridden March 30, 2021.**

## CHAPTER 169

( HB 192 )

**Provisions of this bill that are to be deleted due to vetoes of the Governor that were not overridden by the General Assembly are displayed as bracketed and struck-through text enclosed in double asterisks, e.g.,**  
**\*\*[text]\*\*.**

AN ACT relating to appropriations measures providing funding and establishing conditions for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state-supported activities.

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

→Section 1. The State/Executive Branch Budget is as follows:

### PART I

#### OPERATING BUDGET

(1) **Funds Appropriations:** There is appropriated out of the General Fund, Road Fund, Restricted Funds accounts, Federal Funds accounts, or Bond Funds accounts for the fiscal year beginning July 1, 2019, and ending June 30, 2020, and for the fiscal year beginning July 1, 2020, and ending June 30, 2021, and for the fiscal year beginning July 1, 2021, and ending June 30, 2022, the following discrete sums, or so much thereof as may be necessary. Appropriated funds are included pursuant to KRS 48.700 and 48.710. Each appropriation is made by source of respective fund or funds accounts. Appropriations for the following officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and budget units of the state government, and any and all other

activities of the government of the Commonwealth, are subject to the provisions of Chapters 12, 42, 45, and 48 of the Kentucky Revised Statutes and compliance with the conditions and procedures set forth in this Act.

(2) **Tobacco Settlement Funds:** Appropriations identified as General Fund (Tobacco) in Part I, Operating Budget, of this Act are representative of the amounts provided in Part X, Phase I Tobacco Settlement, of this Act and are not to be appropriated in duplication.

#### A. GENERAL GOVERNMENT

##### Budget Units

##### 1. OFFICE OF THE GOVERNOR

	2020-21	2021-22
General Fund	6,099,000	6,105,800
Restricted Funds	294,700	294,700
Federal Funds	900,000	500,000
TOTAL	7,293,700	6,900,500

(1) **Salary Increment:** Notwithstanding KRS 64.480(2), no increment is provided on the base salary or wages of the Lieutenant Governor of the Commonwealth.

Notwithstanding KRS 64.480(4), no increment is provided on the base salary or wages of the Governor of the Commonwealth.

##### 2. OFFICE OF STATE BUDGET DIRECTOR

	2020-21	2021-22
General Fund	3,604,100	3,608,500
Restricted Funds	164,500	261,400
Federal Funds	13,000,000	-0-
TOTAL	16,768,600	3,869,900

(1) **Participation in Transparent Governing - Full Disclosure of Inmate Population Forecasts and Related Materials:** The Office of State Budget Director shall provide the methodology, assumptions, data, and all other related materials used to project biennial offender population forecasts conducted by the Office of State Budget Director, the Kentucky Department of Corrections, and any consulting firms, to the Interim Joint Committee on Appropriations and Revenue by November 1, 2021. This submission shall include but not be limited to the projected state, county, and community offender populations for the 2022-2024 fiscal biennium and must coincide with the budgeted amount for these populations. This submission shall clearly divulge the methodology and reasoning behind the budgeted and projected offender population in a commitment to participate in transparent governing.

(2) **Facilities Security Reimbursement Report:** It is the intent of the General Assembly to increase the existing reimbursement rate for Facilities Security services for state-operated buildings. The Office of State Budget Director shall provide a report to the Interim Joint Committee on Appropriations and Revenue detailing the anticipated costs of increasing the existing Facilities Security rate to \$36 per hour for every participating state-operated building by September 1, 2020.

##### 3. HOMELAND SECURITY

	2020-21	2021-22
General Fund	257,000	578,200
Restricted Funds	1,360,800	2,443,600
Federal Funds	4,259,400	5,784,600
Road Fund	321,000	-0-
TOTAL	6,198,200	8,806,400

##### 4. VETERANS' AFFAIRS

	2020-21	2021-22
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General Fund	26,060,400	26,121,400
Restricted Funds	73,788,700	68,075,600
Federal Funds	2,958,000	500,000
TOTAL	102,807,100	94,697,000

(1) **Weekend and Holiday Premium Pay Incentive:** The Kentucky Veterans Centers are authorized to continue the weekend and holiday premium pay incentive for the 2020-2022 fiscal biennium.

(2) **Congressional Medal of Honor Recipients - Travel and Per Diem:** The Commissioner of the Department of Veterans' Affairs may approve travel and per diem expenses incurred when Kentucky residents who have been awarded the Congressional Medal of Honor attend veterans, military, or memorial events in the Commonwealth of Kentucky.

(3) **Debt Service - Bowling Green Veterans' Center:** If any debt service is required for the issuance of bonds for the Construct Bowling Green Veterans' Center capital project authorized in Part II, Capital Projects Budget, of this Act, it shall be deemed a necessary government expense and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705). No bonds shall be sold for this project until it has been approved by the United States Department of Veterans Affairs and the Commonwealth has been notified by the United States Department of Veterans Affairs that Federal Funds are available to support this construction.

(4) **State Veterans Nursing Home:** With the exception of the Bowling Green Veterans Center construction project, all state veterans' nursing homes must meet a combined 80 percent bed occupancy rate before any future projects will be considered. Once the 80 percent threshold has been met, it is the intent of the General Assembly that any future beds allocated from the United States Department of Veterans Affairs or reallocated from the Kentucky Department of Veterans' Affairs be dedicated to a state veterans nursing home in Magoffin County to serve that area.

(5) **Brain Injury Association of America, Kentucky Chapter and the Epilepsy Foundation of Kentuckiana Funding:** Included in the above General Fund appropriation is \$93,700 in each fiscal year for grants to the Brain Injury Association of America, Kentucky Chapter and \$93,700 in each fiscal year for grants to the Epilepsy Foundation of Kentuckiana to be used solely for the purpose of working with veterans who have experienced brain trauma and their families.

(6) **Veterans' Service Organization Funding:** Included in the above General Fund appropriation is \$187,500 in each fiscal year for grants to Veterans' Service Organization programs.

**5. GOVERNOR'S OFFICE OF AGRICULTURAL POLICY**

	2020-21	2021-22
General Fund (Tobacco)	34,594,800	-0-
Restricted Funds	100,000	-0-
Federal Funds	2,000,000	-0-
TOTAL	36,694,800	-0-

(1) **Tobacco Settlement Funds - Allocations:** Notwithstanding KRS 248.711(2), and from the allocation provided therein, counties that are allocated in excess of \$20,000 in fiscal year 2020-2021 may provide up to four percent of the individual county allocation, not to exceed \$15,000 in fiscal year 2020-2021, to the county council in that county for administrative costs.

(2) **Counties Account:** Notwithstanding KRS 248.703(1), included in the above General Fund (Tobacco) appropriation is \$14,279,200 in fiscal year 2020-2021 for the counties account as specified in KRS 248.703(1)(a).

(3) **Directive for Fiscal Year 2018-2019 and Fiscal Year 2019-2020 General Fund (Tobacco) Appropriations:** Any remaining uncommitted or unobligated funds from the \$13,000,000 General Fund (Tobacco) appropriated in the 2018-2020 fiscal biennium to the Governor's Office of Agricultural Policy for use by the State Fair Board shall not be approved by the Agricultural Development Board for any other project until appropriated by the General Assembly.

(4) **State Account:** Notwithstanding KRS 248.703(1), included in the above General Fund (Tobacco) appropriation is \$20,315,600 in fiscal year 2020-2021 for the state account as specified in KRS 248.703(1)(b).

**6. KENTUCKY INFRASTRUCTURE AUTHORITY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	1,117,200	1,057,200
Restricted Funds	33,095,700	33,102,900
Federal Funds	29,380,100	29,376,700
<b>TOTAL</b>	<b>63,593,000</b>	<b>63,536,800</b>

(1) **Debt Service:** Included in the above General Fund appropriation is \$344,500 in fiscal year 2020-2021 and \$284,000 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**7. MILITARY AFFAIRS**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	14,991,400	15,006,800
Restricted Funds	48,590,600	39,733,800
Federal Funds	159,824,300	86,055,500
<b>TOTAL</b>	<b>223,406,300</b>	<b>140,796,100</b>

(1) **Kentucky National Guard:** Included in the above General Fund appropriation is \$4,500,000 in each fiscal year to be expended, subject to the conditions and procedures provided in this Act, which are required as a result of the Governor's declaration of emergency pursuant to KRS Chapter 39A, and the Governor's call of the Kentucky National Guard to active duty when an emergency or exigent situation has been declared to exist by the Governor. Any portion of the \$4,500,000 not expended shall lapse to the General Fund at the end of each fiscal year. In the event that costs for Governor-declared emergencies or the Governor's call of the Kentucky National Guard for emergencies or exigent situations exceed \$4,500,000 annually, the costs shall be deemed necessary government expenses and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

(2) **Disaster or Emergency Aid Funds:** There is appropriated from the General Fund the necessary funds, subject to the conditions and procedures in this Act, which are required to match federal aid for which the state would be eligible in the event of a presidentially declared disaster or emergency. These necessary funds shall be made available from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

(3) **Residential Youth-at-Risk Program:** Included in the above General Fund appropriation is \$335,000 in each fiscal year to support the Bluegrass Challenge Academy and \$335,000 in each fiscal year to support the Appalachian Youth Challenge Academy.

(4) **Bluegrass Station:** Included in the above Restricted Funds appropriation is \$1,761,000 in fiscal year 2021-2022 for preliminary work on the Bluegrass Station Industrial Airport and Airpark project, a project that has the potential for significant economic development and job creation opportunities, as well as the prospect of leveraging the mission of Bluegrass Station. These funds will support the request for information and qualification process and initiate related project activities that will inform key elements of a potential request for proposal once that is authorized by a future General Assembly.

**8. COMMISSION ON HUMAN RIGHTS**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	1,926,600	1,929,400
Restricted Funds	10,000	10,000
Federal Funds	245,000	245,000
<b>TOTAL</b>	<b>2,181,600</b>	<b>2,184,400</b>

**9. COMMISSION ON WOMEN**

(1) **Redistribution of Resources:** Notwithstanding KRS 12.020, 12.023, 14.260, 15A.190, 214.554, and 344.510 to 344.530, no General Fund appropriation is provided for the Commission on Women in order to provide additional funding for Domestic Violence Shelters, Rape Crisis Centers, and Children's Advocacy Centers.

**10. DEPARTMENT FOR LOCAL GOVERNMENT**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	9,415,300	9,637,700
Restricted Funds	1,388,700	1,382,900
Federal Funds	373,682,100	46,227,500
<b>TOTAL</b>	<b>384,486,100</b>	<b>57,248,100</b>

(1) **Area Development District Funding:** Included in the above General Fund appropriation is \$1,984,000 in each fiscal year for the Joint Funding Administration Program in support of the area development districts.

(2) **Mary Kendall Homes and Gateway Juvenile Diversion:** Included in the above General Fund appropriation is \$257,800 in each fiscal year for the support of the Mary Kendall Homes and \$257,800 in each fiscal year for the support of Gateway Juvenile Diversion.

(3) **Allocation of Area Development District Funding:** The Department for Local Government shall allocate area development district funding appropriated to the Joint Funding Administration Program to the area development districts in accordance with the following formula:

(a) Seventy percent of the total appropriation shall be allocated equally among all area development districts;

(b) Twenty percent of the total appropriation shall be allocated based upon each area development district's proportionate share of total state population, as identified by the 2010 United States Census; and

(c) Ten percent of the total appropriation shall be allocated based upon each area development district's proportionate share of total incorporated cities and counties, as identified by the records of the Kentucky Secretary of State's Land Office at the time of the allocation.

The Department for Local Government shall, upon the unanimous written direction of all area development districts, reduce the allocation based upon proportionate share of total incorporated cities and counties and instead allocate those funds to provide additional nonfederal dollars to area development districts for the purpose of maximizing federal awards.

(4) **Debt Service:** Included in the above General Fund appropriation is \$218,000 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**11. LOCAL GOVERNMENT ECONOMIC ASSISTANCE FUND**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	20,445,600	21,960,400

(1) **Allocation of the Local Government Economic Assistance Fund:** Notwithstanding KRS 42.470(1)(a), 70 percent of moneys in the Local Government Economic Assistance Fund shall be distributed to each coal producing county on the basis of the ratio of coal severed in each respective county to the coal severed statewide. Notwithstanding KRS 42.470(1)(c), no allocation shall be distributed to non-coal producing counties.

(2) **Coal Haul Road System:** Notwithstanding KRS 42.455(2), no funds appropriated to the Local Government Economic Assistance Fund are required to be spent on the coal haul road system.

**12. LOCAL GOVERNMENT ECONOMIC DEVELOPMENT FUND**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	17,163,800	18,511,800

(1) **Coal Severance Tax Transfers:** Notwithstanding KRS 42.450 to 42.495, 70 percent of the severance and processing taxes on coal collected annually, except items described in subsection (2) below, shall be transferred to the Local Government Economic Development Fund. Notwithstanding KRS 42.450 to 42.495, 30 percent of the severance and processing taxes on coal collected annually, except items described in subsection (2) below, shall be transferred to the Local Government Economic Assistance Fund. Transfers to the Local Government Economic

Development Fund and the Local Government Economic Assistance Fund shall be made quarterly, based upon the revenue estimates prevailing at the time each quarterly transfer is due, except the last quarterly transfer shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual transfer required by this subsection.

**(2) Coal Severance Tax Collections Calculations and Transfers:** The above appropriations from the General Fund are based on the official estimate presented by the Office of State Budget Director. Notwithstanding KRS 42.450 to 42.495, coal severance tax collections during the 2020-2022 fiscal biennium shall first be allocated to the following programs or purposes on a quarterly basis:

(a) Department for Local Government: An annual appropriation of \$669,700 in each fiscal year is appropriated as General Fund moneys to the Department for Local Government budget unit for Local Government Economic Development Fund and Local Government Economic Assistance Fund project administration costs;

(b) Debt Service: An annual appropriation of 100 percent of the debt service necessary to support bonds authorized in 2003 Ky. Acts ch. 156, 2005 Ky. Acts ch. 173, 2006 Ky. Acts ch. 252, 2008 Ky. Acts ch. 127, and 2010 (1st Extra. Sess.) Ky. Acts ch. 1, in the amount of \$26,210,600 in fiscal year 2020-2021 and \$24,784,800 in fiscal year 2021-2022 is appropriated for that purpose;

(c) Osteopathic Medicine Scholarship Program: Notwithstanding KRS 164.7891(11)(b), no transfers shall be made to the Osteopathic Medicine Scholarship Program within the Kentucky Higher Education Assistance Authority;

(d) Pharmacy Scholarships: Notwithstanding KRS 164.7890(11)(c), no transfers shall be made to the Coal County Pharmacy Scholarship Program within the Kentucky Higher Education Assistance Authority;

(e) Kentucky Coal Fields Endowment Authority: Notwithstanding KRS 42.453(3), no transfers shall be made to the Kentucky Coal Field Endowment Authority; and

(f) General Fund: A transfer of \$1,000,000 to the General Fund in fiscal year 2020-2021.

**(3) Allocation of the Local Government Economic Development Fund:** Notwithstanding KRS 42.4592(1), 50 percent of Local Government Economic Development Fund moneys shall be allocated in accordance with KRS 42.4592(1)(a), and 50 percent shall be allocated in accordance with KRS 42.4592(1)(b).

**(4) Use of the Local Government Economic Development Fund:** Notwithstanding KRS 42.450 to 42.495, all funds appropriated to Local Government Economic Development Fund Single-County Accounts shall be allocated to projects with the concurrence of the respective county judge/executive, state senator(s), and state representative(s) of each county. If concurrence is not achieved, the fiscal court of each county may apply for grants through the Department for Local Government pursuant to KRS 42.4588.

### 13. AREA DEVELOPMENT FUND

**(1) Area Development Fund:** Notwithstanding KRS 42.345 to 42.370 and 48.185, or any statute to the contrary, no funding is provided for the Area Development Fund.

**(2) Area Development District Flexibility:** Notwithstanding KRS 42.350(2) and provided that sufficient funds are maintained in the Joint Funding Agreement program to meet the match requirements for the Economic Development Administration grants, Community Development Block Grants, Appalachian Regional Commission grants, or any federal program where the Joint Funding Agreement funds are utilized to meet nonfederal match requirements, an area development district with authorization from its Board of Directors may request approval to transfer funding between the Area Development Fund and the Joint Funding Agreement Program from the Commissioner of the Department for Local Government.

### 14. REGIONAL DEVELOPMENT AGENCY ASSISTANCE FUND

	2020-21	2021-22
Restricted Funds	6,000,000	6,000,000

### 15. EXECUTIVE BRANCH ETHICS COMMISSION

	2020-21	2021-22
General Fund	561,600	563,000
Restricted Funds	420,000	420,000
TOTAL	981,600	983,000



(1) **Use of Restricted Funds:** All penalties collected or received by the Executive Branch Ethics Commission shall be deposited in the State Treasury and credited to a trust and agency fund account to the credit of the Commission to be used by the Commission for the cost of conducting administrative hearings pursuant to KRS Chapter 13B. Notwithstanding KRS 45.229, these funds shall not lapse and shall carry forward.

#### 16. SECRETARY OF STATE

	2020-21	2021-22
Restricted Funds	5,177,600	5,102,500
Federal Funds	221,400	221,400
TOTAL	5,399,000	5,323,900

(1) **Use of Restricted Funds:** Notwithstanding KRS 14.140(1) and (3), the above Restricted Funds may be used for the continuation of current activities within the Office of the Secretary of State.

(2) **Salary Increment:** Notwithstanding KRS 64.480(2), no increment is provided on the base salary or wages of the Secretary of State.

#### 17. BOARD OF ELECTIONS

	2020-21	2021-22
General Fund	6,206,500	3,326,600
Restricted Funds	2,188,500	246,000
Federal Funds	13,395,400	1,829,800
TOTAL	21,790,400	5,402,400

(1) **Cost of Elections:** Costs associated with special elections, KRS 117.345(2) costs associated with additional precincts with a voting machine, KRS 117.343 costs for additional registered voters, and KRS 116.145 costs for additional new registered voters shall be deemed a necessary government expense and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705). Any reimbursements authorized as a necessary government expense according to the above provisions shall be at the same rates as those established by the State Board of Elections.

#### 18. REGISTRY OF ELECTION FINANCE

	2020-21	2021-22
General Fund	1,541,300	1,543,300

#### 19. ATTORNEY GENERAL

	2019-20	2020-21	2021-22
General Fund (Tobacco)	-0-	150,000	150,000
General Fund	135,000	12,473,700	12,860,100
Restricted Funds	-0-	18,051,600	17,586,700
Federal Funds	-0-	4,989,000	4,994,100
TOTAL	135,000	35,664,300	35,590,900

(1) **State Enforcement:** Notwithstanding KRS 248.654 and 248.703(4), a total of \$150,000 of the Tobacco Settlement payments received in each fiscal year is appropriated to the Attorney General for the state's diligent enforcement of noncompliant nonparticipating manufacturers.

(2) **Expert Witnesses:** In addition to such funds as may be appropriated, the Office of the Attorney General may request from the Finance and Administration Cabinet, as a necessary government expense, such funds as may be necessary for expert witnesses. Upon justification of the request, the Finance and Administration Cabinet shall provide ~~\*\*[up to \$275,000]\*\*~~ for the 2020-2022 fiscal biennium for this purpose to the Office of the Attorney General from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705). Without charge, the Department of Insurance shall provide the Office of the Attorney General any available information to assist in the preparation of a rate hearing pursuant to KRS 304.17A-095. Expenditures under this

subsection shall be reported to the Interim Joint Committee on Appropriations and Revenue by August 1 of each year.

(3) **Annual and Sick Leave Service Credit:** Notwithstanding any statutory or regulatory restrictions to the contrary, any former employee of the Unified Prosecutorial System who has been appointed to a permanent full-time position under KRS Chapter 18A shall be credited annual and sick leave based on service credited under the Kentucky Retirement Systems solely for the purpose of computation of sick and annual leave. This provision shall only apply to any new appointment or current employee as of July 1, 1998.

(4) **Compensatory Leave Conversion to Sick Leave:** If the Office of the Attorney General determines that internal budgetary pressures warrant further austerity measures, the Attorney General may institute a policy to suspend payment of 50-hour blocks of compensatory time for those attorneys who have accumulated 240 hours of compensatory time and instead convert those hours to sick leave.

(5) **Operations of the Office of the Attorney General:** Notwithstanding KRS 367.478(2), 367.805(3), and 367.905(5), funds may be expended in support of the operations of the Office of the Attorney General.

(6) **Purdue Pharma Settlement Funds:** In each fiscal year, the Attorney General shall transfer \$1,500,000 of any lawfully received settlement funds resulting from Commonwealth of Kentucky, ex rel. v. Purdue Pharma, et al., Civil Action No: 07-CI-01303 to the Justice Administration budget unit for Operation UNITE.

(7) **Salary Increment:** Notwithstanding KRS 64.480(2), no increment is provided on the base salary or wages of the Attorney General.

(8) **Legal Services Contracts:** The Office of the Attorney General may present proposals to state agencies specifying legal work that is presently accomplished through personal service contracts that indicate the Office of the Attorney General's capacity to perform the work at a lesser cost. State agencies may agree to make arrangements with the Office of the Attorney General to perform the legal work and compensate the Office of the Attorney General for the legal services.

(9) **Debt Service:** Included in the above General Fund appropriation is \$127,000 in fiscal year 2020-2021 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

(10) **Electronic Crimes Laboratories:** The Attorney General and the Commissioner of the Kentucky State Police shall work collaboratively to identify a pathway for consolidation of the Commonwealth's electronic crimes laboratories.

(11) **Attorney General Security:** Included in the above General Fund appropriation is \$500,000 in fiscal year 2021-2022 for security for the Attorney General.

(12) **Civil Action Representation:** To ensure adequate representation of the interest of the Commonwealth and to protect the financial condition of the Kentucky Retirement Systems, it has been determined that it is necessary to allow the Attorney General appropriate authority to engage private lawyers as co-counsel in Civil Action No. 17-CI-01348. Due to the highly complex and specialized nature of that litigation, KRS Chapter 45A, et seq. would prevent the Attorney General from engaging counsel of his choice. Accordingly, to protect the interest of the Commonwealth, and notwithstanding the requirements of KRS Chapter 45A, et seq., which are hereby waived in respect to the Attorney General retaining private lawyers to prosecute Civil Action No. 17-CI-01348, the Attorney General is vested with the authority to hire and pay counsel of his choice on any contractual basis the Attorney General deems advisable.

## 20. UNIFIED PROSECUTORIAL SYSTEM

(1) **Prosecutors Advisory Council Administrative Functions:** The Prosecutors Advisory Council shall approve compensation for employees of the Unified Prosecutorial System subject to the appropriations in this Act.

(2) **Employment Salary Scale:** The Prosecutors Advisory Council shall develop a proposed salary scale for the employees of the Unified Prosecutorial System. Among the criteria that the proposal may include are pay differential and locality pay. The proposal shall also establish part-time positions as hourly or by one-quarter or one-half of a full-time equivalent. The Council shall finalize and submit the proposed salary scale to the Interim Joint Committee on Appropriations and Revenue by August 1, 2020. The salary scale shall not be implemented until approved by the General Assembly.

### a. Commonwealth's Attorneys

	2020-21	2021-22
General Fund	60,413,100	60,494,200

Restricted Funds	6,118,200	6,134,800
Federal Funds	756,800	777,800
TOTAL	67,288,100	67,406,800

(1) **Rocket Docket Program:** Included in the above General Fund appropriation is \$387,700 in each fiscal year to support the Rocket Docket Program.

(2) **Salary Increment:** Notwithstanding KRS 15.755(7), no increment is provided on the base salary or wages of each eligible Commonwealth's Attorney.

**b. County Attorneys**

	2020-21	2021-22
General Fund	53,518,500	56,153,400
Restricted Funds	958,400	963,300
Federal Funds	1,025,200	1,025,200
TOTAL	55,502,100	58,141,900

(1) **Salary Increment:** Notwithstanding KRS 15.765(3), no increment is provided on the base salary or wages of each eligible County Attorney.

(2) **Rocket Docket Program:** Included in the above General Fund appropriation is \$549,800 in each fiscal year to support the Rocket Docket Program.

(3) **County Attorneys Expense Allowance:** Notwithstanding KRS 15.765(2), each County Attorney shall receive a monthly expense allowance of \$400, payable out of the State Treasury for the 2020-2022 fiscal biennium.

(4) **County Attorney Retirement Costs:** Included in the above General Fund appropriation is \$2,520,500 in fiscal year 2021-2022 to cover each County Attorneys Office's share of the anticipated increase in retirement costs over each employer's fiscal year 2019-2020 baseline contribution as outlined in the fiscal note for 2021 Regular Session House Bill 8, as passed by the General Assembly and located on the Legislative Research Commission's Web site.

**TOTAL - UNIFIED PROSECUTORIAL SYSTEM**

	2020-21	2021-22
General Fund	113,931,600	116,647,600
Restricted Funds	7,076,600	7,098,100
Federal Funds	1,782,000	1,803,000
TOTAL	122,790,200	125,548,700

**21. TREASURY**

	2020-21	2021-22
General Fund	2,411,800	2,664,600
Restricted Funds	1,848,400	1,845,700
Federal Funds	1,254,800	1,247,300
Road Fund	250,600	-0-
TOTAL	5,765,600	5,757,600

(1) **Unclaimed Property Fund:** Included in the above Restricted Funds appropriation is \$1,848,400 in fiscal year 2020-2021 and \$1,845,700 in fiscal year 2021-2022 from the Unclaimed Property Fund to provide funding for services performed by the Unclaimed Property Division of the Department of the Treasury.

(2) **Salary Increment:** Notwithstanding KRS 64.480(2), no increment is provided on the base salary or wages of the State Treasurer.

**22. AGRICULTURE**

	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	500,000	35,468,800
General Fund	16,822,000	18,842,800
Restricted Funds	14,362,700	12,336,800
Federal Funds	12,817,300	8,664,200
TOTAL	44,502,000	75,312,600

(1) **Use of Restricted Funds:** Notwithstanding KRS 217.570 and 217B.580, funds may be expended in support of the operations of the Department of Agriculture.

(2) **Farms to Food Banks:** Included in the above General Fund (Tobacco) appropriation is \$500,000 in each fiscal year to support the Farms to Food Banks Program. The use of the moneys provided by this appropriation shall be restricted to purchases of Kentucky-grown produce from Kentucky farmers who participate in the Farms to Food Banks Program.

(3) **Salary Increment:** Notwithstanding KRS 64.480(2), no increment is provided on the base salary or wages of the Commissioner of Agriculture.

(4) **County Fair Grants:** Included in the above General Fund appropriation is \$300,000 in each fiscal year to support capital improvement grants to the Local Agricultural Fair Aid Program.

(5) **Kentucky Grape and Wine Council:** Notwithstanding KRS 260.175(2), no General Fund is provided for the Kentucky Small Farm Wineries Support Fund for use by the Kentucky Grape and Wine Council.

(6) **Counties Account:** Notwithstanding KRS 248.703(1), included in the above General Fund (Tobacco) appropriation is \$14,443,600 in fiscal year 2021-2022 for the counties account as specified in KRS 248.703(1)(a).

(7) **State Account:** Notwithstanding KRS 248.703(1), included in the above General Fund (Tobacco) appropriation is \$20,525,200 in fiscal year 2021-2022 for the state account as specified in KRS 248.703(1)(b).

(8) **Tobacco Settlement Funds - Allocations:** Notwithstanding KRS 248.711(2), and from the allocation provided therein, counties that are allocated in excess of \$20,000 in fiscal year 2021-2022 may provide up to four percent of the individual county allocation, not to exceed \$15,000 in fiscal year 2021-2022, to the county council in that county for administrative costs.

### 23. AUDITOR OF PUBLIC ACCOUNTS

	<b>2020-21</b>	<b>2021-22</b>
General Fund	7,787,000	7,788,900
Restricted Funds	11,926,600	11,569,300
TOTAL	19,713,600	19,358,200

(1) **Auditor's Scholarships:** Notwithstanding KRS 43.200, no funding is provided for Auditor's scholarships.

(2) **Audit Services Contracts:** No state agency shall enter into any contract with a nongovernmental entity for audit services unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within 30 days of receipt of a written request for such services. The agency's request for audit services shall include a comprehensive statement of the scope and nature of the proposed audit.

(3) **Compensatory Leave Conversion to Sick Leave:** If the Auditor of Public Accounts determines that internal budgetary pressures warrant further austerity measures, the State Auditor may institute a policy to suspend payment of 50-hour blocks of compensatory time for those employees who have accumulated 240 hours of compensatory time and instead convert those hours to sick leave.

(4) **Salary Increment:** Notwithstanding KRS 64.480(2), no increment is provided on the base salary or wages of the Auditor of Public Accounts.

### 24. PERSONNEL BOARD

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	875,000	856,000

**25. KENTUCKY RETIREMENT SYSTEMS**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	384,000	-0-
Restricted Funds	48,888,200	48,005,500
<b>TOTAL</b>	<b>49,272,200</b>	<b>48,005,500</b>

(1) **State Police Retirement System Pension Fund:** Included in the above General Fund appropriation is \$384,000 in fiscal year 2020-2021 to be applied to the unfunded pension liability of the State Police Retirement System pension fund.

**26. OCCUPATIONAL AND PROFESSIONAL BOARDS AND COMMISSIONS****a. Accountancy**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	673,300	658,300

**b. Certification of Alcohol and Drug Counselors**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	180,200	180,200

**c. Applied Behavior Analysis Licensing**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	39,600	39,600

**d. Architects**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	474,500	454,700

**e. Certification for Professional Art Therapists**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	11,200	11,200

**f. Barbering**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	465,400	457,400

**g. Chiropractic Examiners**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	377,900	377,900

**h. Dentistry**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	939,600	923,100

**i. Licensed Diabetes Educators**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	29,300	29,300

**j. Licensure and Certification for Dietitians and Nutritionists**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	93,900	93,900

**k. Embalmers and Funeral Directors**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	498,300	487,800
<b>l. Licensure for Professional Engineers and Land Surveyors</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	1,772,200	1,738,300
<b>m. Certification of Fee-Based Pastoral Counselors</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	3,600	3,600
<b>n. Registration for Professional Geologists</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	109,000	109,000
<b>o. Hairdressers and Cosmetologists</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	1,936,900	1,903,700
<b>p. Specialists in Hearing Instruments</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	78,000	78,000
<b>q. Interpreters for the Deaf and Hard of Hearing</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	38,200	38,200
<b>r. Examiners and Registration of Landscape Architects</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	80,700	79,300
<b>s. Licensure of Marriage and Family Therapists</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	133,600	133,600
<b>t. Licensure for Massage Therapy</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	151,500	150,500
<b>u. Medical Imaging and Radiation Therapy</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	443,800	466,300
<b>v. Medical Licensure</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	3,550,900	3,473,500
<b>w. Nursing</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	8,924,800	8,764,100
<b>x. Licensure for Nursing Home Administrators</b>		

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	101,100	101,100
<b>y. Licensure for Occupational Therapy</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	211,600	211,600
<b>z. Ophthalmic Dispensers</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	71,400	71,400
<b>aa. Optometric Examiners</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	221,800	205,700
<b>ab. Pharmacy</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	2,568,200	2,505,400
<b>ac. Physical Therapy</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	673,500	660,700
<b>ad. Podiatry</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	46,500	46,500
<b>ae. Private Investigators</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	113,700	113,700
<b>af. Licensed Professional Counselors</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	310,800	310,800
<b>ag. Prosthetics, Orthotics, and Pedorthic s</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	46,200	46,200
<b>ah. Examiners of Psychology</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	256,400	256,400
<b>ai. Respiratory Care</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	251,900	245,800
<b>aj. Social Work</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	370,600	362,700
<b>ak. Speech-Language Pathology and Audiology</b>		

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	222,900	222,900
<b>al. Veterinary Examiners</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	525,000	525,000
<b>TOTAL - OCCUPATIONAL AND PROFESSIONAL BOARDS AND COMMISSIONS</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	26,998,000	26,537,400
<b>27. KENTUCKY RIVER AUTHORITY</b>		
	<b>2020-21</b>	<b>2021-22</b>
General Fund	288,500	288,300
Restricted Funds	7,686,600	6,446,600
<b>TOTAL</b>	<b>7,975,100</b>	<b>6,734,900</b>
<b>28. SCHOOL FACILITIES CONSTRUCTION COMMISSION</b>		
	<b>2020-21</b>	<b>2021-22</b>
General Fund	121,775,600	125,835,000
<p>(1) <b>Debt Service:</b> Included in the above General Fund appropriation is \$2,946,900 in fiscal year 2020-2021 and \$4,974,600 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.</p>		
<p>(2) <b>Additional Offers of Assistance:</b> Notwithstanding KRS 157.611 to 157.665, the School Facilities Construction Commission is authorized to make an additional \$58,000,000 in offers of assistance during the 2020-2022 biennium in anticipation of debt service availability during the 2022-2024 biennium. No bonded indebtedness based on the above amount is to be incurred during the 2020-2022 biennium.</p>		
<p>(3) <b>Urgent Needs School Assistance - 2020-2022:</b> Notwithstanding KRS 157.611 to 157.665, the School Facilities Construction Commission is authorized to make additional offers of assistance in the specified amounts in fiscal year 2020-2021 to the following local school districts:</p>		
<p>(a) Not more than \$19,784,500 to Mason County Schools for Mason County Middle School;</p>		
<p>(b) Not more than \$12,931,700 to Lewis County Schools for Garrison Elementary School;</p>		
<p>(c) Not more than \$7,527,100 to Rowan County Schools for Clearfield Elementary School; and</p>		
<p>(d) Not more than \$7,283,700 to Green County Schools for Green County High School.</p>		
<p>These schools are designated as the four schools ranked highest on the Kentucky Facilities Inventory and Classification System report as of February 27, 2020, that are A1 schools, are ranked as a Priority 1 or 2 on the local school district's facility plan, and have levied a ten-cent equivalent tax dedicated to capital improvements but remain unable to cash fund or to sufficiently support the required annual debt service for replacement or renovation of the school. The amounts stated represent the difference between the cost to replace or renovate the designated facility and the amount of available local resources.</p>		
<p>The School Facilities Construction Commission shall make offers of assistance to each local school district up to the amount authorized for that local school district only upon the written authorization of the Commissioner of Education or his or her designee and documentation of the project cost, but in no case shall any district receive an additional offer of assistance greater than that authorized in this subsection.</p>		
<b>29. TEACHERS' RETIREMENT SYSTEM</b>		
	<b>2020-21</b>	<b>2021-22</b>
General Fund	781,620,000	715,293,700
Restricted Funds	16,100,300	16,320,600



TOTAL 797,720,300 731,614,300

(1) **Debt Service:** Included in the above General Fund appropriation is \$51,660,000 in fiscal year 2020-2021 and \$33,015,900 in fiscal year 2021-2022 for debt service on previously issued bonds.

(2) **Dependent Subsidy for All Retirees under age 65:** Pursuant to KRS 161.675(4), health insurance supplement payments made by the retirement system shall not exceed the amount of the single coverage insurance premium. Notwithstanding KRS 161.675(4), for all retirees under the age of 65 who participate in the Kentucky Group Health Insurance Program through the Kentucky Teachers' Retirement System and for Plan Year 2020 only, the Kentucky Teachers' Retirement System Board of Trustees may continue to pay from the Medical Insurance Fund one-third of the costs of the dependent subsidy. No General Fund appropriation shall be expended to pay one-third of the costs of the dependent subsidy. The dependent subsidy is not subject to KRS 161.714.

(3) **Retiree Health Insurance:** Pursuant to KRS 161.550(2)(b) and notwithstanding any statute to the contrary, included in the above General Fund appropriation is \$61,700,000 in fiscal year 2020-2021 to support the state's contribution for the cost of retiree health insurance for members not eligible for Medicare who have retired on or after July 1, 2010. Notwithstanding KRS 161.675, the Teachers' Retirement System Board of Trustees shall provide health insurance supplement payments towards the cost of the single coverage insurance premium based on age and years of service credit of eligible recipients of a retirement allowance, the cost of which shall be paid from the Medical Insurance Fund. Notwithstanding KRS 161.675, the Teachers' Retirement System Board of Trustees shall authorize eligible recipients of a retirement allowance from the Teachers' Retirement System who are less than age 65 to be included in the state-sponsored health insurance plan that is provided to active teachers and state employees under KRS 18A.225. Notwithstanding KRS 161.675(4)(a), the contribution paid by retirees who are less than age 65 who qualify for the maximum health insurance supplement payment for single coverage shall be no more than the sum of (a) the employee contribution paid by active teachers and state employees for a similar plan, and (b) the standard Medicare Part B premium as determined by the Centers for Medicare and Medicaid Services. Notwithstanding KRS 161.675(4)(a), the contribution paid by retirees who are less than age 65 who do not qualify for the maximum health insurance supplement payment for single coverage shall be determined by the same graduated formula used by the Teachers' Retirement System for Plan Year 2020.

Notwithstanding KRS 161.420 and 161.550, any General Fund contribution to the Teachers' Retirement System medical insurance fund in fiscal year 2020-2021 in excess of the actuarially determined contribution shall carry forward and be considered the General Fund contribution for fiscal year 2021-2022. The Teachers' Retirement System Board of Trustees shall report the amount carried forward to the Interim Joint Committee on Appropriations and Revenue by August 1, 2021.

(4) **Medical Insurance Fund Employee Contributions:** Notwithstanding KRS 161.540(1), the employee contribution to the Medical Insurance Fund shall not be changed in fiscal year 2020-2021 or fiscal year 2021-2022.

**30. APPROPRIATIONS NOT OTHERWISE CLASSIFIED**

	2019-20	2020-21	2021-22
General Fund	4,500,000	14,526,400	14,526,400

(1) **Funding Sources for Appropriations Not Otherwise Classified:** Funds required to pay the costs of items included within Appropriations Not Otherwise Classified are appropriated. Any required expenditure over the above amounts is to be paid first from the General Fund Surplus Account (KRS 48.700), if available, or from any available balance in either the Judgments budget unit appropriation or the Budget Reserve Trust Fund Account (KRS 48.705), subject to the conditions and procedures provided in this Act.

The above appropriation is for the payment of Attorney General Expense, Kentucky Claims Commission Award, Guardian Ad Litem, Prior Year Claims, Unredeemed Checks Refunded, Involuntary Commitments - ICF/MR, Frankfort in Lieu of Taxes, Frankfort Cemetery, Police Officer, Firefighter, and National Guard and Reserve Survivor Benefits, Medical Malpractice Liability Insurance Reimbursement, and Blanket Employee Bonds.

(2) **Repayment of Awards or Judgments:** Funds are appropriated from the General Fund for the repayment of awards or judgments made by the Kentucky Claims Commission against departments, boards, commissions, and other agencies funded with appropriations out of the General Fund. However, awards under \$5,000 shall be paid from funds available for the operations of the agency.

(3) **Guardian Ad Litem Fees:** Included in the above appropriation is funding for fees to be paid to each guardian ad litem appointed by the court pursuant to KRS 311.732. The fee shall be fixed by the court and shall not exceed \$500.

(4) **Reissuance of Uncashed Checks:** Checks written by the State Treasurer and not cashed within the statutory period may be presented to the State Treasurer for reissuance in accordance with KRS 41.370.

(5) **Police Officer, Firefighter, and Active Duty National Guard and Reserve Survivor Benefits:** Funds are appropriated for payment of benefits for survivors of state and local police officers, firefighters, and active duty National Guard and Reserve members in accordance with KRS 61.315 and for the cost of insurance premiums for firefighters as provided in KRS 95A.070.

### 31. JUDGMENTS

	2019-20	2020-21	2021-22
General Fund	16,900,000	22,500,000	22,500,000

(1) **Known Liabilities Against the Commonwealth:** The above appropriation is for the payment of judgments for known liabilities against the Commonwealth.

(2) **Payment of Judgments and Carry Forward of General Fund Appropriation Balance:** Notwithstanding KRS 45A.275, the payment of judgments, that exceed the above appropriation, as may be rendered against the Commonwealth by courts and orders of the State Personnel Board and, where applicable, shall be subject to KRS Chapter 45 and shall not be deemed a necessary governmental expense. Notwithstanding KRS 45A.270(1), funds required to pay the costs of items included within the Judgments budget are included in the above appropriation, and amounts required for any award or judgment in excess of the above appropriation shall be paid from appropriations for that department or agency and otherwise paid pursuant to KRS 45A.270(2).

### 32. KENTUCKY COMMUNICATIONS NETWORK AUTHORITY

	2020-21	2021-22
General Fund	34,220,000	34,222,600
Restricted Funds	12,033,100	12,106,400
TOTAL	46,253,100	46,329,000

(1) **Rate Assessments:** Notwithstanding KRS 154.15-020, rate assessments charged to state agencies for access to the KentuckyWired broadband network shall not exceed rates currently charged for broadband services to those state agencies in fiscal year 2019-2020.

(2) **Availability Payments:** Included in the above General Fund appropriation is \$22,535,600 in fiscal year 2020-2021 and \$22,539,800 in fiscal year 2021-2022 for the network availability payments.

(3) **Authority to Sell:** Notwithstanding KRS 154.15-020, the Kentucky Communications Network Authority shall have the authority to enter into contracts with public and private entities to carry out its duties and responsibilities, which may include the sale of all or portions of the Commonwealth's open-access broadband network known as KentuckyWired. A contract or other agreement involving the acquisition or disposition of a property interest by the Commonwealth shall be signed by the Secretary of the Finance and Administration Cabinet. KRS Chapters 45A and 56 may require the Secretary's signature on other contracts or agreements.

(4) **Contractual Costs:** Included in the above General Fund appropriation is \$8,025,800 in fiscal year 2020-2021 and \$8,027,300 in fiscal year 2021-2022 for contractual costs.

### TOTAL - GENERAL GOVERNMENT

	2019-20	2020-21	2021-22
General Fund (Tobacco)	-0-	35,244,800	35,618,800
General Fund	21,535,000	1,238,130,400	1,181,420,100
Restricted Funds	-0-	338,426,900	317,782,500
Federal Funds	-0-	620,708,800	187,449,100
Road Fund	-0-	571,600	-0-
TOTAL	21,535,000	2,233,082,500	1,722,270,500

### B. ECONOMIC DEVELOPMENT CABINET

#### Budget Unit

**1. ECONOMIC DEVELOPMENT**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	26,054,000	27,040,800
Restricted Funds	4,116,600	2,857,000
Federal Funds	521,400	521,400
<b>TOTAL</b>	<b>30,692,000</b>	<b>30,419,200</b>

(1) **Funding for Commercialization and Innovation:** Notwithstanding KRS 154.12-278, interest income earned on the balances in the High-Tech Construction/Investment Pool and loan repayments received by the High-Tech Construction/Investment Pool shall be used to support the Office of Entrepreneurship and are appropriated in addition to amounts appropriated above.

(2) **Lapse and Carry Forward of General Fund Appropriation Balance for Bluegrass State Skills Corporation:** Notwithstanding KRS 45.229, the General Fund appropriation balance for Bluegrass State Skills Corporation training grants for fiscal year 2019-2020 and fiscal year 2020-2021 shall not lapse and shall carry forward. The amount available to the Corporation for disbursement in each fiscal year shall be limited to the unexpended training grant allotment balance at the end of each fiscal year combined with the additional training grant allotment amounts in each fiscal year of the 2020-2022 biennium, less any disbursements. If the required disbursements exceed the Bluegrass State Skills Corporation training grants allotment balance, notwithstanding KRS 154.12-278, Restricted Funds may be expended for training grants.

(3) **Science and Technology Program:** Notwithstanding KRS 164.6011 to 164.6041 and any other statute to the contrary, the Cabinet for Economic Development shall have the authority to carry out the provisions of KRS 164.6013 to 164.6041.

(4) **Carry Forward of General Fund Appropriation Balance:** Notwithstanding KRS 45.229, the General Fund appropriation in fiscal year 2019-2020 and fiscal year 2020-2021 to the Cabinet for Economic Development, Science and Technology Program, shall not lapse and shall carry forward in the Cabinet for Economic Development.

(5) **Executive Officers' Compensation:** Notwithstanding KRS 154.10-050(2), any additional executive officers as described in KRS 154.10-050(2) shall not be paid a salary greater than the salary of the Governor of the Commonwealth.

(6) **Training Grants:** Included in the above General Fund appropriation is \$1,000,000 in each fiscal year for the Bluegrass State Skills Corporation to make training grants to support manufacturing-related investments. The Corporation shall utilize these funds for a manufacturer designated by the United States Department of Commerce, United States Census Bureau North American Industry Classification System code of 336111, 336112, 336120, or 336211 that employs at least 10,000 full-time persons at the same facility or at multiple facilities located within the same county to help offset associated costs of retraining its workforce.

(7) **Debt Service:** Included in the above General Fund appropriation is \$283,500 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**C. DEPARTMENT OF EDUCATION****Budget Units****1. SUPPORT EDUCATION EXCELLENCE IN KENTUCKY (SEEK) PROGRAM**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	2,819,696,700	2,922,857,900
Federal Funds	130,000,000	-0-
<b>TOTAL</b>	<b>2,949,696,700</b>	<b>2,922,857,900</b>

(1) **Common School Fund Earnings:** Accumulated earnings for the Common School Fund shall be transferred in each fiscal year to the SEEK Program.

(2) **Allocation of SEEK Funds:** Notwithstanding KRS 157.360(2)(c), the above General Fund appropriation to the base SEEK Program is intended to provide a base guarantee of \$4,000 per student in average daily attendance in each fiscal year, as well as to meet the other requirements of KRS 157.360. Notwithstanding KRS

157.360(2), each district's base funding level shall be adjusted for the number of students demonstrating limited proficiency in English language skills, multiplied by 0.096.

Funds appropriated to the SEEK Program shall be allotted to school districts in accordance with KRS 157.310 to 157.440, except that the total of the funds allotted shall not exceed the appropriation for this purpose, except as provided in this Act. The total appropriation for the SEEK Program shall be measured by, or construed as, estimates of the state expenditures required by KRS 157.310 to 157.440. If the required expenditures exceed these estimates, the Secretary of the Finance and Administration Cabinet, upon the written request of the Commissioner of Education and with the approval of the Governor, may increase the appropriation by such amount as may be available and necessary to meet, to the extent possible, the required expenditures under the cited sections of the Kentucky Revised Statutes, but any increase of the total appropriation to the SEEK Program is subject to Part III, General Provisions, of this Act and KRS Chapter 48. If funds appropriated to the SEEK Program are insufficient to provide the amount of money required under KRS 157.310 to 157.440, allotments to local school districts may be reduced in accordance with KRS 157.430.

(3) **SEEK Lapse:** Notwithstanding 2018 Ky. Acts ch. 169, Part I, C., 1., (3), any unexpended SEEK funds in fiscal year 2019-2020 shall lapse to the General Fund. Notwithstanding KRS 45.229, any unexpended SEEK funds in fiscal year 2020-2021 and fiscal year 2021-2022 shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705).

(4) **Base SEEK Allotments:** Notwithstanding KRS 157.420(2), included in the above appropriations are \$1,836,553,400 in General Fund and \$130,000,000 in Federal Funds in fiscal year 2020-2021 and \$1,941,876,500 in General Fund in fiscal year 2021-2022 for the base SEEK Program as defined by KRS 157.360. Funds appropriated to the SEEK Program shall be allotted to school districts in accordance with KRS 157.310 to 157.440, except that the total of the funds allotted shall not exceed the appropriation for this purpose, except as provided in this Act. Notwithstanding KRS 157.360(2)(c), included in the appropriation for the base SEEK Program is \$214,752,800 in each fiscal year for pupil transportation.

(5) **Tier I Component:** Included in the above General Fund appropriation is \$174,746,300 in fiscal year 2020-2021 and \$168,881,500 in fiscal year 2021-2022 for the Tier I component as established by KRS 157.440.

(6) **Vocational Transportation:** Included in the above General Fund appropriation is \$2,416,900 in each fiscal year for vocational transportation.

(7) **Teachers' Retirement System Employer Match:** Included in the above General Fund appropriation is \$425,565,500 in fiscal year 2020-2021 and \$435,085,500 in fiscal year 2021-2022 to enable local school districts to provide the employer match for qualified employees.

(8) **Salary Supplements for Nationally Certified Teachers:** Notwithstanding KRS 157.395, included in the above General Fund appropriation is \$2,750,000 in each fiscal year for the purpose of providing salary supplements for public school teachers attaining certification by the National Board for Professional Teaching Standards. Notwithstanding KRS 157.395, if the appropriation is insufficient to provide the mandated salary supplement for teachers who have obtained this certification, the Department of Education is authorized to pro rata reduce the supplement.

(9) **SEEK Adjustment Factors:** Funds allocated for the SEEK base and its adjustment factors that are not needed for the base or a particular adjustment factor may be allocated to other adjustment factors, if funds for that adjustment factor are not sufficient.

(10) **Facilities Support Program of Kentucky/Equalized Nickel Levies:** Included in the above General Fund appropriation is \$89,854,800 in fiscal year 2020-2021 and \$86,600,400 in fiscal year 2021-2022 to provide facilities equalization funding pursuant to KRS 157.440 and 157.620.

(11) **Growth Levy Equalization Funding:** : Included in the above General Fund appropriation is \$21,796,600 in fiscal year 2020-2021 and \$20,119,400 in fiscal year 2021-2022 to provide facilities equalization funding pursuant to KRS 157.440 and 157.620 for districts meeting the eligibility requirements of KRS 157.621(1) and (4). Notwithstanding KRS 157.621(1)(b)2., a school district that imposes the levy authorized by KRS 157.621(1)(b)1. shall be equalized for that levy at 25 percent of the calculated equalization funding in each fiscal year, in addition to the equalization funding appropriated in accordance with KRS 157.621(1)(b)2., and all funds for this purpose shall be committed to debt service, new facilities, or major renovations in accordance with KRS 157.440(1)(b). It is the intent of the General Assembly that any local school district receiving partial equalization under this subsection in the 2020-2022 fiscal biennium shall receive full calculated equalization in the 2022-2024 fiscal biennium and thereafter, until the earlier of June 30, 2038, or the date the bonds for the local school district supported by this equalization are retired, in accordance with KRS 157.621(2). Notwithstanding KRS 157.440,

157.621, or any other provision of this Act, no school district shall be equalized for an equivalent tax rate of more than 15 cents in fiscal year 2020-2021.

**(12) Retroactive Equalized Facility Funding:** Included in the above General Fund appropriation is \$33,221,300 in fiscal year 2020-2021 and \$32,740,800 in fiscal year 2021-2022 to provide equalized facility funding pursuant to KRS 157.440 and 157.620 to districts meeting the eligibility requirements of KRS 157.621(2) and (4). In addition, a local board of education that levied a tax rate subject to recall by January 1, 2014, in addition to the five cents levied pursuant to KRS 157.440(1)(b) and that committed the receipts to debt service, new facilities, or major renovations of existing facilities shall be eligible for equalization funds from the state at 150 percent of the statewide average per pupil assessment. Revenue to generate the five cent equivalent levy may be obtained from levies on property, motor vehicles, or the taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648 if the levy was dedicated to facilities funding at the time of the levy. The equalization funds shall be used as provided in KRS 157.440(1)(b). Notwithstanding KRS 157.621(2)(a) and (4), for the 2020-2022 fiscal biennium, school districts that levied the tax rate subject to recall prior to January 1, 2018, shall be equalized at 100 percent of the calculated equalization funding, school districts that levied the tax rate subject to recall after January 1, 2018, and before January 1, 2020, shall be equalized at 25 percent of the calculated equalization funding, and all funds for this purpose shall be committed to debt service, new facilities, or major renovations in accordance with KRS 157.440(1)(b). Notwithstanding KRS 157.621(2)(a) and (4), for fiscal year 2021-2022, school districts that levied the tax rate subject to recall after January 1, 2020, and before January 1, 2021, shall be equalized at 25 percent of the calculated equalization funding, and all funds for this purpose shall be committed to debt service, new facilities, or major renovations in accordance with KRS 157.440(1)(b). It is the intent of the General Assembly that any local school district receiving partial equalization under this subsection in the 2020-2022 fiscal biennium shall receive full calculated equalization in the 2022-2024 fiscal biennium and thereafter, until the earlier of June 30, 2038, or the date the bonds for the local school district supported by this equalization are retired, in accordance with KRS 157.621(2). Notwithstanding KRS 157.440, 157.621, or any other provision of this Act, no school district shall be equalized for an equivalent tax rate of more than 15 cents in fiscal year 2020-2021.

**(13) Equalized Facility Funding:** Included in the above General Fund appropriation is \$8,788,900 in fiscal year 2020-2021 and \$8,418,400 in fiscal year 2021-2022 to provide equalized facility funding pursuant to KRS 157.440 and 157.620 to districts meeting the eligibility requirements of KRS 157.621(3) and (4). Notwithstanding KRS 157.621(3)(c), a school district meeting the criteria of KRS 157.621(3)(a) and (b) that did not receive equalization funding in fiscal year 2019-2020 shall be equalized at 25 percent of the calculated equalization funding in each fiscal year, and all funds for this purpose shall be committed to debt service, new facilities, or major renovations in accordance with KRS 157.440(1)(b). In addition, notwithstanding KRS 157.621(1) and (3), a school district that has levied a five-cent equivalent rate authorized by KRS 157.621(1)(a) and is not receiving state equalization funding for that levy under KRS 157.621(1)(b), 157.621(3), or any other provision of this Act, shall be equalized at 25 percent of the calculated equalization funding in each fiscal year, and all funds for this purpose shall be committed to debt service, new facilities, or major renovations in accordance with KRS 157.440(1)(b). It is the intent of the General Assembly that any local school district receiving partial equalization under this subsection in the 2020-2022 fiscal biennium shall receive full calculated equalization in the 2022-2024 fiscal biennium and thereafter, until the earlier of June 30, 2038, or the date the bonds for the local school district supported by this equalization are retired, in accordance with KRS 157.621(3).

**(14) BRAC Equalized Facility Funding:** Notwithstanding KRS 157.621(1)(c)2., included in the above General Fund appropriation is \$2,314,200 in fiscal year 2020-2021 and \$2,226,400 in fiscal year 2021-2022 to provide equalized facility funding to school districts meeting the eligibility requirements of KRS 157.621(1)(c)1. pursuant to KRS 157.440 and 157.620.

**(15) Equalization Funding for Critical Construction Needs Schools:** Included in the above General Fund appropriation is \$6,936,000 in fiscal year 2020-2021 and \$6,989,300 in fiscal year 2021-2022 to school districts in accordance with KRS 157.621(5).

**(16) Hold-Harmless Guarantee:** A modified hold-harmless guarantee is established in each fiscal year which provides that every local school district shall receive at least the same amount of SEEK state funding per pupil as was received in fiscal year 1991-1992. If funds appropriated to the SEEK Program are insufficient to provide the amount of money required under KRS 157.310 to 157.440, and allotments to local school districts are reduced in accordance with KRS 157.430, allocations to school districts subject to this provision shall not be reduced.

**(17) Residential Youth-at-Risk Programs:** In accordance with KRS 157.360, no funds from the SEEK Program shall be distributed to the programs operated by the Kentucky Guard Youth Challenge Division of the Department of Military Affairs. Notwithstanding KRS 157.350, 157.360, 157.410, and any other statute to the contrary, any school district providing educational services to students enrolled in programs operated by the

Kentucky Guard Youth Challenge Division of the Department of Military Affairs shall be paid for those services solely from the General Fund appropriation in Part I, A., 7. of this Act, and students enrolled in such programs shall not be included in the average daily attendance for purposes of SEEK Program funding.

## 2. OPERATIONS AND SUPPORT SERVICES

	2020-21	2021-22
General Fund	55,615,100	58,459,100
Restricted Funds	7,913,400	8,150,100
Federal Funds	410,152,800	410,127,200
TOTAL	473,681,300	476,736,400

(1) **Employment of Leadership Personnel:** Notwithstanding KRS 18A.005 to 18A.200, the Kentucky Board of Education shall continue to have sole authority to determine the employees of the Department of Education who are exempt from the classified service and to set those employees' compensation comparable to the competitive market.

(2) **Debt Service:** Included in the above General Fund appropriation is \$959,500 in fiscal year 2020-2021 and \$182,000 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

(3) **Blind/Deaf Residential Travel Program:** Included in the above General Fund appropriation is \$492,300 in each fiscal year for the Blind/Deaf Residential Travel Program.

(4) **School Food Services:** Included in the above General Fund appropriation is \$3,555,900 in each fiscal year for the School Food Services Program.

(5) **Advanced Placement and International Baccalaureate Exams:** Notwithstanding KRS 160.348(3), included in the above General Fund appropriation is \$1,000,000 in each fiscal year to pay the cost of Advanced Placement and International Baccalaureate examinations for those students who meet the eligibility requirements for free or reduced-price meals. Notwithstanding KRS 154A.130(4) and 160.348(3), included in the above General Fund appropriation is \$2,600,000 in fiscal year 2021-2022 to pay the cost of Advanced Placement examinations for students on a first-come, first-served basis.

(6) **Review of the Classification of Primary and Secondary School Buildings:** Included in the above General Fund appropriation is \$600,000 in each fiscal year to implement KRS 157.420(9) and (10). Notwithstanding KRS 45.229, any portion of the \$600,000 that has not been expended by the end of fiscal year 2020-2021 shall not lapse and shall carry forward. Notwithstanding KRS 157.420(9) and (10), only schools classified as A1, A2, A3, A4, A5, A6, C2, and D1 shall be included in the evaluation process. Notwithstanding KRS 157.420(9) and (10), the Department of Education may limit the school buildings included in the evaluation process based on the time elapsed since the building's construction or last major renovation as defined in 702 KAR 4:160. The Department of Education shall provide an updated list of school buildings evaluated by the process pursuant to KRS 157.420(9) and (10) to the Legislative Research Commission by October 1, 2021.

(7) **District Facility Plan Modifications:** Notwithstanding any statute to the contrary, a district may modify its district facility plan without convening the local planning committee for the sole purpose of complying with KRS 158.162(3)(d). Any modification shall identify an unmet requirement of KRS 158.162(3)(d) as the highest priority on the modified district facility plan, subject to approval by the local board of education and the Commissioner of Education.

## 3. LEARNING AND RESULTS SERVICES

	2020-21	2021-22
General Fund	1,067,023,400	1,084,786,100
Restricted Funds	35,617,100	35,016,700
Federal Funds	561,547,100	561,549,800
TOTAL	1,664,187,600	1,681,352,600

(1) **Kentucky Education Technology System:** Notwithstanding KRS 157.650 to 157.665, the School for the Deaf and the School for the Blind shall be fully eligible, along with local school districts, to participate in the

Kentucky Education Technology System in a manner that takes into account the special needs of the students of these two schools.

**(2) Family Resource and Youth Services Centers:** Funds appropriated to establish and support Family Resource and Youth Services Centers shall be transferred in each fiscal year to the Cabinet for Health and Family Services consistent with KRS 156.496. The Cabinet for Health and Family Services is authorized to use, for administrative purposes, no more than three percent of the total funds transferred from the Department of Education for the Family Resource and Youth Services Centers. If a certified person is employed as a director or coordinator of a Family Resource and Youth Services Center, that person shall retain his or her status as a certified employee of the school district.

If 70 percent or more of the funding level provided by the state is utilized to support the salary of the director of a center, that center shall provide a report to the Cabinet for Health and Family Services and the State Budget Director identifying the salary of the director. The Cabinet for Health and Family Services shall transmit any reports received from Family Resource and Youth Services Centers pursuant to this paragraph to the Legislative Research Commission.

**(3) Health Insurance:** Included in the above General Fund appropriation is \$738,599,100 in fiscal year 2020-2021 and \$752,581,300 in fiscal year 2021-2022 for employer contributions for health insurance and the contribution to the health reimbursement account for employees waiving coverage.

**(4) Program Flexibility:** Notwithstanding KRS 158.070(8) and 158.446, local school districts shall be provided additional flexibility in the utilization of funds for Extended School Services and Safe Schools. Local school districts shall continue to address the governing statutes and serve the intended student population but may utilize funds from these programs for general operating expenses in each fiscal year. Local school districts that utilize these funds for general operating expenses shall report to the Kentucky Department of Education and the Interim Joint Committee on Education the amount of funding from each program utilized for general operating expenses.

**(5) Center for School Safety:** Included in the above General Fund appropriation is \$13,000,000 in each fiscal year for the Center for School Safety. Notwithstanding KRS 158.446, the Center for School Safety shall develop and implement allotment policies for all moneys received for the purposes of KRS 158.440, 158.441, 158.4415, 158.4416, 158.442, 158.445, and 158.446, except that no more than \$1,300,000 in each fiscal year may be retained for administrative purposes.

**(6) Allocations to School-Based Decision Making Councils:** Notwithstanding KRS 160.345(8), for each fiscal year, a local board of education may reduce the allocations to individual schools within the district as outlined in 702 KAR 3:246, secs. 6, 7, and 8. The allocation under 702 KAR 3:246, sec. 6, shall not be less than \$100 per pupil in average daily attendance.

**(7) Kentucky School for the Blind and Kentucky School for the Deaf:** Included in the above General Fund appropriation is \$7,853,100 in each fiscal year for the Kentucky School for the Blind and \$10,580,600 in each fiscal year for the Kentucky School for the Deaf. ~~\*\*[Any federal funds received related to COVID-19 emergency response or pandemic relief, including the American Rescue Plan Act of 2021, shall be expended prior to General Fund.]\*\*~~ Notwithstanding KRS 45.229, any portion of General Fund not expended for this purpose shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705).

**(8) Career and Technical Education:** Included in the above General Fund appropriation is \$64,149,700 in fiscal year 2020-2021 and \$64,782,800 in fiscal year 2021-2022 for career and technical education. Of this amount, \$12,043,500 in each fiscal year shall be distributed as supplemental funding to local area vocational education centers. Notwithstanding KRS 157.069, Category II and III programs in districts that also enroll students at a state-operated vocational education and technology center physically located in a different time zone shall be included in the distribution. Notwithstanding KRS 157.069, Category II and III programs in districts established after June 21, 2001, shall be included in the distribution if approved by the Commissioner of Education.

**(9) Advisory Council for Gifted and Talented Education:** Notwithstanding KRS 158.648(1), a member of the State Advisory Council for Gifted and Talented Education may be reappointed but shall not serve more than five consecutive terms. Notwithstanding KRS 158.648(1), a member of the Kentucky Association for Gifted Education shall be a voting member of the State Advisory Council for Gifted and Talented Education.

**(10) School-Based Mental Health Services Providers:** Included in the above General Fund appropriation is \$7,412,500 in each fiscal year to fund additional school-based mental health services provider full-time equivalent positions on a reimbursement basis. The Kentucky Center for School Safety, in consultation with the Office of the State School Security Marshal, shall develop criteria to determine which districts shall receive funding to meet the requirements of KRS 158.4416(3)(a). The criteria shall include:

- (a) A local district's use of Medicaid funding to supplement General Fund;
- (b) An equitable and balanced statewide distribution; and
- (c) Any other criteria to support a trauma-informed approach in schools.

**(11) Redistribution of Resources:** Notwithstanding KRS 156.095, 156.553, 156.555, 157.390, 158.070, 158.770, 158.775, 158.805, 161.027 to 161.030, 161.165, and 161.167, no General Fund is provided for the Professional Development Program, the Commonwealth School Improvement Fund, the Leadership and Mentor Fund, the Middle School Academic Center, the Teacher's Professional Growth Fund, the Teacher Academies Program, the Writing Program, the Kentucky Principal Internship Program, the Kentucky Teacher Internship Program, and the Kentucky Academy for Equity in Teaching in order to increase funding for school-based mental health services providers.

**(12) Learning and Results Services Programs:** Included in the above General Fund appropriation are the following allocations for the 2020-2022 fiscal biennium, but no portion of these funds shall be utilized for state-level administrative purposes:

- (a) \$1,700,000 in each fiscal year for AdvanceKentucky;
- (b) \$1,200,000 in each fiscal year for the Collaborative Center for Literacy Development;
- (c) \$1,850,000 in each fiscal year for the Community Education Program;
- (d) \$800,000 in fiscal year 2021-2022 for Dolly Parton's Imagination Library;
- (e) \$23,916,300 in each fiscal year for the Extended School Services Program;
- (f) \$48,889,000 in each fiscal year for the Family Resource and Youth Services Centers Program;
- (g) \$6,208,400 in each fiscal year for the Gifted and Talented Program;
- (h) \$100,000 in each fiscal year for the Hearing and Speech Center;
- (i) \$100,000 in each fiscal year for the Heuser Hearing and Language Academy;
- (j) Notwithstanding KRS 154A.130(4), \$250,000 in fiscal year 2020-2021 and \$500,000 in fiscal year 2021-2022 for the Jobs for America's Graduates Program;
- (k) \$250,000 in each fiscal year for the Kentucky Alliance of Boys & Girls Clubs;
- (l) \$9,465,500 in each fiscal year for the Kentucky Educational Collaborative for State Agency Children;
- (m) \$1,391,000 in each fiscal year for Local School District Life Insurance;
- (n) \$5,019,000 in each fiscal year for the Mathematics Achievement Fund;
- (o) \$84,481,100 in each fiscal year for the Preschool Program;
- (p) \$15,936,600 in each fiscal year for the Read to Achieve Program;
- (q) \$1,300,000 in each fiscal year for Save the Children;
- (r) \$500,000 in each fiscal year for Teach for America; and
- (s) \$250,000 in each fiscal year for the Visually Impaired Preschool Services Program.

~~\*\***(13) Area Technology Center Authority:** Notwithstanding KRS 157.069, for the first year a local board of education assumes authority for the management and control of a state operated secondary vocational education and technology center on or after the effective date of this Act, the locally operated center shall receive funding in an amount not less than 100 percent of the annual state General Fund appropriation allocated to the center for on site direct costs for the budget year immediately preceding the transfer, including any amount allocated directly to the local district for use of district owned facilities. In the second year, after the local board of education assumes authority of a state operated center and annually thereafter, the center shall annually receive an amount not less than 75 percent of the amount allocated to it the previous year. The remaining 25 percent of funds previously allocated to the center shall annually be allocated to locally operated secondary area centers and vocational departments that do not receive state supplemental funds under Part I, C., 3., (8) of this Act.~~

~~Notwithstanding KRS 156.844(1), if a state operated secondary vocational education and technology center serves more than one school district, any agreement shall require the local board to continue to serve the additional school district or districts through an interlocal agreement.~~



~~Notwithstanding KRS 156.844(2) and (5), a certified employee who has earned continuing status in the state certified personnel system under KRS 156.800 to 156.860 may be granted a continuing service contract as defined in KRS 161.720 upon transfer to a local board of education; a principal who has earned continuing status prior to transfer may be granted a continuing service contract, but the provisions relating to demotion of the principal under KRS 161.765 shall apply; and a classified employee who has four years of continuous active service in the state certified personnel system under KRS 156.800 to 156.860 at the time of transfer may be offered an employment contract at the time of transfer that shall be considered a continuing service contract as defined in KRS 161.720 for a minimum of five complete school terms.]\*\*~~

**TOTAL - DEPARTMENT OF EDUCATION**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	3,942,335,200	4,066,103,100
Restricted Funds	43,530,500	43,166,800
Federal Funds	1,101,699,900	971,677,000
<b>TOTAL</b>	<b>5,087,565,600</b>	<b>5,080,946,900</b>

**D. EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

**Budget Units**

**1. GENERAL ADMINISTRATION AND PROGRAM SUPPORT**

	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	1,400,000	1,400,000
General Fund	6,415,700	8,744,000
Restricted Funds	9,583,800	8,910,100
Federal Funds	11,515,500	10,995,800
<b>TOTAL</b>	<b>28,915,000</b>	<b>30,049,900</b>

(1) **Early Childhood Development:** Included in the above General Fund (Tobacco) appropriation is \$1,400,000 in each fiscal year for the Early Childhood Advisory Council.

(2) **Governor's Scholars Program:** Included in the above General Fund appropriation is \$1,758,700 in each fiscal year for the Governor's Scholars Program.

(3) **Governor's School for Entrepreneurs:** Included in the above General Fund appropriation is \$362,700 in fiscal year 2020-2021 and \$495,200 in fiscal year 2021-2022 for the Governor's School for Entrepreneurs.

(4) **Kentucky Center for Statistics:** Included in the above General Fund appropriation is \$1,200,000 in each fiscal year to sustain the State Longitudinal Data System. Included in the above General Fund appropriation is \$1,363,200 in fiscal year 2021-2022 for the Workforce Data Quality Initiative and Supplemental Nutrition Assistance Program data collection and analysis.

(5) **The Hope Center:** Included in the above General Fund appropriation is \$100,000 in each fiscal year for the Hope Center.

(6) **Kentucky Adult Learner Pilot Program:** Included in the above General Fund appropriation is \$1,000,000 in fiscal year 2021-2022 for the Kentucky Adult Learner Pilot Program. The purpose of the pilot program is to provide adults 18 years of age or older who have not graduated high school the opportunity to earn a high school diploma. The Education and Workforce Development Cabinet (EWDC) and the Kentucky Department of Education shall authorize a single eligible entity to operate the pilot program for not more than 350 adult learners. The eligible entity shall be a Kentucky-based non-profit organization, agree to commit at least \$1,000,000 to the pilot program, and staff the program with certified teachers teaching core academic subjects.

Notwithstanding any statute to the contrary, the Kentucky Adult Learner Pilot Program shall have authorization to issue a Kentucky high school diploma to an adult learner participant if all of the minimum graduation requirements under Kentucky law are met.

The Kentucky Board of Education and the EWDC shall develop metrics that will appropriately assess the expected performance outcomes of the pilot program. By June 30, 2022, the EWDC shall provide a report that

evaluates the pilot program and makes recommendations on continuation to the Interim Joint Committee on Education.

**2. PROPRIETARY EDUCATION**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	331,900	375,100

**3. DEAF AND HARD OF HEARING**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	970,200	971,700
Restricted Funds	1,378,200	1,365,600
<b>TOTAL</b>	<b>2,348,400</b>	<b>2,337,300</b>

**4. KENTUCKY EDUCATIONAL TELEVISION**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	15,054,000	15,074,600
Restricted Funds	1,524,800	1,524,800
<b>TOTAL</b>	<b>16,578,800</b>	<b>16,599,400</b>

**5. ENVIRONMENTAL EDUCATION COUNCIL**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	506,900	500,900
Federal Funds	316,000	316,000
<b>TOTAL</b>	<b>822,900</b>	<b>816,900</b>

(1) **Environmental Education Council:** Notwithstanding KRS 224.43-505(2)(b), the Council may use interest received to support the operations of the Council.

**6. LIBRARIES AND ARCHIVES**

**a. General Operations**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	4,747,100	6,253,500
Restricted Funds	3,161,400	967,100
Federal Funds	2,586,400	2,578,700
<b>TOTAL</b>	<b>10,494,900</b>	<b>9,799,300</b>

**b. Direct Local Aid**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	4,329,600	4,329,600
Restricted Funds	1,046,900	1,046,900
<b>TOTAL</b>	<b>5,376,500</b>	<b>5,376,500</b>

(1) **Per Capita Grants:** Notwithstanding KRS 171.201, no General Fund is provided for non-construction state aid.

(2) **Public Libraries Facilities Construction:** Included in the above General Fund appropriation is \$4,329,600 in each fiscal year for the Public Libraries Facilities Construction Fund.

**TOTAL - LIBRARIES AND ARCHIVES**

	<b>2020-21</b>	<b>2021-22</b>
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General Fund	9,076,700	10,583,100
Restricted Funds	4,208,300	2,014,000
Federal Funds	2,586,400	2,578,700
TOTAL	15,871,400	15,175,800

**7. WORKFORCE INVESTMENT**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	34,867,900	34,879,100
Restricted Funds	4,719,900	4,669,800
Federal Funds	119,774,100	119,111,800
TOTAL	159,361,900	158,660,700

(1) **Lapse and Carry Forward of General Fund Appropriation:** Not less than \$2,000,000 of unexpended Office of Adult Education funds in fiscal year 2019-2020 shall lapse to the General Fund. Notwithstanding KRS 45.229, the General Fund balance for the Office of Adult Education for fiscal year 2019-2020 and fiscal year 2020-2021 shall not lapse and shall carry forward.

(2) **Cafeteria Service Contracts:** No state agency shall enter into any contract with a nongovernmental entity for the operation of food services provided in the cafeterias located in the Kentucky Transportation Cabinet office building and/or the Cabinet for Human Resources office building in Frankfort unless the Office of Vocational Rehabilitation has declined in writing to provide such services.

(3) **Adult Education:** Included in the above General Fund appropriation is \$18,407,600 in each fiscal year for the Office of Adult Education.

(4) **Employer and Apprenticeship Services:** Included in the above General Fund appropriation is \$581,100 in each fiscal year for the Office of Employer and Apprenticeship Services. The Education and Workforce Development Cabinet shall provide a report by December 1 of each year to the Interim Joint Committee on Education detailing the use of these funds.

**TOTAL - EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	1,400,000	1,400,000
General Fund	66,384,500	70,252,500
Restricted Funds	22,253,800	19,360,300
Federal Funds	134,192,000	133,002,300
TOTAL	224,230,300	224,015,100

**E. ENERGY AND ENVIRONMENT CABINET****Budget Units****1. SECRETARY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	3,769,800	3,772,600
Restricted Funds	22,296,800	1,783,300
Federal Funds	1,607,600	1,323,000
TOTAL	27,674,200	6,878,900

(1) **Volkswagen Settlement:** Included in the above Restricted Funds appropriation is \$20,378,600 in fiscal year 2020-2021 to administer the Consent Decrees in Volkswagen "Clean Diesel" Marketing, Sales 14 Practices, and Products Liability litigation. Of this amount:

(a) \$8,521,700 shall be used to reimburse local school districts for 50 percent of the purchase cost to replace up to five school buses per district currently in daily use meeting the necessary criteria with a chassis year of

2001 or earlier. If these funds are insufficient to cover 50 percent of the purchase costs of districts that have requested reimbursement by June 1, 2021, the reimbursement shall be pro rata reduced;

(b) \$8,521,700 shall be transferred to the Office of Transportation Delivery to replace public transit buses meeting the necessary criteria. Priority shall be given to maximizing Federal Transit Grants;

(c) \$3,056,700 shall be used for the purchase of light-duty, zero-emission vehicle supply equipment meeting the necessary criteria. Recipients shall provide at least 50 percent of matching funds per project; and

(d) \$278,500 may be used for administrative costs.

Notwithstanding Part III, 2. of this Act, unexpended Restricted Funds appropriated in this subsection shall become available for expenditure in the 2020-2022 biennium.

## 2. ADMINISTRATIVE SERVICES

	<b>2020-21</b>	<b>2021-22</b>
General Fund	5,175,900	5,187,900
Restricted Funds	4,350,300	4,231,900
Federal Funds	1,278,000	1,268,300
<b>TOTAL</b>	<b>10,804,200</b>	<b>10,688,100</b>

## 3. ENVIRONMENTAL PROTECTION

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund	700,000	23,067,100	25,314,500
Restricted Funds	-0-	77,058,700	76,023,800
Federal Funds	-0-	26,427,800	24,053,800
Road Fund	-0-	320,900	-0-
<b>TOTAL</b>	<b>700,000</b>	<b>126,874,500</b>	<b>125,392,100</b>

(1) **Debt Service:** Included in the above General Fund appropriation is \$140,000 in fiscal year 2020-2021 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

## 4. NATURAL RESOURCES

	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	3,386,800	3,423,400
General Fund	36,068,600	37,115,300
Restricted Funds	13,322,600	13,122,600
Federal Funds	59,074,400	58,633,500
<b>TOTAL</b>	<b>111,852,400</b>	<b>112,294,800</b>

(1) **Emergency Forest Fire Suppression:** Not less than \$2,500,000 of the above General Fund appropriation in each fiscal year shall be set aside for emergency forest fire suppression. Any portion of the \$2,500,000 not expended for emergency forest fire suppression shall lapse to the General Fund at the end of each fiscal year. There is appropriated from the General Fund the necessary funds, subject to the conditions and procedures provided in this Act, which are required as a result of emergency fire suppression activities in excess of \$2,500,000 in each fiscal year. Fire suppression costs in excess of \$2,500,000 annually shall be deemed necessary government expenses and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

(2) **Environmental Stewardship Program:** Included in the above General Fund (Tobacco) appropriation is \$2,479,500 in fiscal year 2020-2021 and \$2,516,100 in fiscal year 2021-2022 for the Environmental Stewardship Program.

(3) **Conservation District Local Aid:** Included in the above General Fund (Tobacco) appropriation is \$907,300 in each fiscal year for the Division of Conservation to provide direct aid to local conservation districts.

**(4) Mine Safety Specialist Vacancies:** No Mine Safety Specialist vacancies shall be filled in the 2020-2022 fiscal biennium.

**5. ENERGY POLICY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	361,300	861,500
Restricted Funds	1,031,900	382,000
Federal Funds	809,500	539,900
TOTAL	2,202,700	1,783,400

**6. KENTUCKY NATURE PRESERVES**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	1,253,600	1,257,700
Restricted Funds	2,065,800	1,264,300
Federal Funds	160,700	72,700
TOTAL	3,480,100	2,594,700

**7. PUBLIC SERVICE COMMISSION**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	16,656,600	16,667,300
Restricted Funds	721,600	721,600
Federal Funds	910,600	703,200
TOTAL	18,288,800	18,092,100

**(1) Lapse of General Fund Appropriation Balance:** Notwithstanding KRS 278.150(3), \$7,185,200 in fiscal year 2020-2021 and \$7,185,200 in fiscal year 2021-2022 shall lapse to the General Fund.

**(2) Kentucky State Board on Electric Generation and Transmission Siting:** Notwithstanding Part III, 2. of this Act, unexpended Restricted Funds appropriated for the purposes of administering KRS 278.700 to 278.716 shall become available for expenditure in the 2020-2022 biennium.

**TOTAL - ENERGY AND ENVIRONMENT CABINET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	-0-	3,386,800	3,423,400
General Fund	700,000	86,352,900	90,176,800
Restricted Funds	-0-	120,847,700	97,529,500
Federal Funds	-0-	90,268,600	86,594,400
Road Fund	-0-	320,900	-0-
TOTAL	700,000	301,176,900	277,724,100

**F. FINANCE AND ADMINISTRATION CABINET**

**Budget Units**

**1. GENERAL ADMINISTRATION**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	7,129,200	7,418,700
Restricted Funds	29,016,000	28,879,800
Federal Funds	15,083,800	-0-

Road Fund	273,600	-0-
TOTAL	51,502,600	36,298,500

(1) **State Motor Vehicle Fleet:** The Secretary of the Finance and Administration Cabinet shall restrict permanently assigned vehicles to only Constitutional Officers, the Court of Justice, Executive Cabinet Secretaries, law enforcement, and those who are assigned vehicles for other public safety purposes. A report listing the recipients of permanently assigned vehicles from the State Motor Vehicle Fleet shall be submitted to the Interim Joint Committee on Appropriations and Revenue by August 1 of each fiscal year. The above General Fund appropriation shall be used to assist with development of this report. Should the report not be submitted timely, the entire above General Fund appropriation shall be forfeited and all remaining funds shall lapse to the General Fund.

## 2. CONTROLLER

	2020-21	2021-22
General Fund	5,576,700	5,582,800
Restricted Funds	14,352,700	14,179,500
TOTAL	19,929,400	19,762,300

(1) **Social Security Contingent Liability Fund:** Any expenditures that may be required by KRS 61.470 are hereby deemed necessary government expenses and shall be paid first from the General Fund Surplus Account (KRS 48.700), if available, or from any available balance in the Budget Reserve Trust Fund Account (KRS 48.705), subject to the conditions and procedures provided in this Act.

## 3. INSPECTOR GENERAL

	2020-21	2021-22
General Fund	283,200	-0-
Restricted Funds	673,700	665,000
TOTAL	956,900	665,000

## 4. DEBT SERVICE

	2020-21	2021-22
General Fund (Tobacco)	30,863,200	26,601,200
General Fund	491,964,100	528,429,500
TOTAL	522,827,300	555,030,700

(1) **General Fund (Tobacco) Debt Service Lapse:** Notwithstanding Part X, (4) of this Act, \$1,926,600 in fiscal year 2020-2021 and \$1,785,700 in fiscal year 2021-2022 shall lapse to the General Fund.

## 5. FACILITIES AND SUPPORT SERVICES

	2020-21	2021-22
General Fund	4,002,000	4,008,200
Restricted Funds	54,964,600	54,578,200
Federal Funds	445,900	-0-
TOTAL	59,412,500	58,586,400

(1) **Debt Service:** Included in the above General Fund appropriation is \$533,000 in fiscal year 2020-2021 and \$182,000 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

~~\*\*[(2) **Renovation Assessment:** Included in the above Restricted Funds appropriation is \$182,000 in fiscal year 2020-2021 and \$364,000 in fiscal year 2021-2022 to be transferred from the Legislative Research Commission for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.]\*\*~~

(3) **Capitol Campus Security Upgrades:** Included in the above General Fund appropriation is \$343,000 in fiscal year 2021-2022 to support security upgrades for the Capitol campus. The Commissioner of the Department for

Facilities and Support Services, or his or her designee, shall work under the direction of the Commissioner of the Kentucky State Police, or his or her designee, to ensure the best utilization of these funds for security purposes.

## 6. COUNTY COSTS

	2019-20	2020-21	2021-22
General Fund	2,800,000	19,743,500	19,743,500
Restricted Funds	-0-	1,702,500	1,702,500
TOTAL	2,800,000	21,446,000	21,446,000

(1) **County Costs:** Funds required to pay county costs are appropriated and additional funds may be allotted from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705) by the Secretary of the Finance and Administration Cabinet, subject to the conditions and procedures provided in this Act.

(2) **Reimbursement to Sheriffs' Offices for Court Security Services:** Notwithstanding KRS 64.092(6), the sheriff or other law enforcement officer serving a Circuit or District Court shall be compensated at the rate of \$9 per hour of service.

(3) **Sheriffs' Expense Allowance:** Notwithstanding KRS 70.170, each sheriff performing the duties required under the provisions of KRS 70.150 shall be allowed the amount of \$2,400 annually, payable out of the State Treasury at the rate of \$200 per month for such services in the 2020-2022 fiscal biennium.

## 7. COMMONWEALTH OFFICE OF TECHNOLOGY

	2020-21	2021-22
Restricted Funds	134,891,600	142,971,300
Federal Funds	3,749,400	150,400
TOTAL	138,641,000	143,121,700

(1) **Computer Services Fund Receipts:** The Secretary of the Finance and Administration Cabinet shall provide a listing of fee receipts from the Executive, Judicial, and Legislative Branches of government itemized by appropriation units, cost allocation methodology, and a report detailing the rebate of excess fee receipts to the agencies to the Interim Joint Committee on Appropriations and Revenue by August 1 of each fiscal year.

(2) **Service Rates:** Notwithstanding KRS 45.253(6), the Commonwealth Office of Technology shall maintain the rate schedule in effect in fiscal year 2019-2020 for services rendered or materials furnished during the 2020-2022 fiscal biennium, unless the services or materials are required by law to be furnished gratuitously. Enterprise assessments and security assessments not directly related to specific rated services shall not exceed fiscal year 2019-2020 levels.

## 8. REVENUE

	2020-21	2021-22
General Fund (Tobacco)	250,000	250,000
General Fund	100,026,900	104,202,800
Restricted Funds	13,834,000	12,789,300
Federal Funds	233,700	-0-
Road Fund	3,773,800	-0-
TOTAL	118,118,400	117,242,100

(1) **Operations of Revenue:** Notwithstanding KRS 132.672, 134.552(2), 136.652, and 365.390(2), funds may be expended in support of the operations of the Department of Revenue.

(2) **State Enforcement:** Notwithstanding KRS 248.654 and 248.703(4), a total of \$250,000 of the Tobacco Settlement payments received in each fiscal year is appropriated to the Finance and Administration Cabinet, Department of Revenue for the state's diligent enforcement of noncompliant nonparticipating manufacturers.

## 9. PROPERTY VALUATION ADMINISTRATORS

	<b>2020-21</b>	<b>2021-22</b>
General Fund	56,446,700	56,593,800
Restricted Funds	3,500,000	3,500,000
<b>TOTAL</b>	<b>59,946,700</b>	<b>60,093,800</b>

(1) **Management of Expenditures:** Notwithstanding KRS 132.590 and 132.597, the property valuation administrators are authorized to take necessary actions to manage expenditures within the appropriated amounts contained in this Act.

(2) **Property Valuation Administrators' Expense Allowance:** Notwithstanding KRS 132.597, each property valuation administrator shall receive an expense allowance of \$2,400 annually, payable out of the State Treasury at the rate of \$200 per month in the 2020-2022 fiscal biennium.

(3) **Salary Increment:** Notwithstanding KRS 132.590, no increment is provided on the base salary or wages of each eligible property valuation administrator.

#### **TOTAL - FINANCE AND ADMINISTRATION CABINET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	-0-	31,113,200	26,851,200
General Fund	2,800,000	685,172,300	725,979,300
Restricted Funds	-0-	252,935,100	259,265,600
Federal Funds	-0-	19,512,800	150,400
Road Fund	-0-	4,047,400	-0-
<b>TOTAL</b>	<b>2,800,000</b>	<b>992,780,800</b>	<b>1,012,246,500</b>

#### **G. HEALTH AND FAMILY SERVICES CABINET**

##### **Budget Units**

##### **1. GENERAL ADMINISTRATION AND PROGRAM SUPPORT**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	10,323,200	10,350,000
Restricted Funds	53,366,200	53,384,300
Federal Funds	48,932,500	48,859,100
<b>TOTAL</b>	<b>112,621,900</b>	<b>112,593,400</b>

(1) **Debt Service:** Included in the above General Fund appropriation is \$199,000 in fiscal year 2020-2021 and \$182,000 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

(2) **Human Services Transportation Delivery:** Notwithstanding KRS 281.010, the Kentucky Works Program shall not participate in the Human Services Transportation Delivery Program or the Coordinated Transportation Advisory Committee.

(3) **Federally Funded Positions:** Notwithstanding KRS 18A.010(2) and any provisions of this Act to the contrary, direct service units of the Office of Inspector General, Department for Income Support, Office for Children with Special Health Care Needs, Department for Community Based Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, Family Resource Centers and Volunteer Services, Department for Aging and Independent Living, and the Department for Public Health shall be authorized to establish and fill such positions that are 100 percent federally funded for salary and fringe benefits.

(4) **Kentucky All Schedule Prescription Electronic Reporting (KASPER) System:** In accordance with the appropriation as set forth in Part II, G., 1., 002. of this Act, the Cabinet for Health and Family Services shall issue a Request for Proposals to determine if a vendor can provide a system that is a scalable, cloud-based solution and is capable of best practices, including analytics and administrative dashboards, that also enables critical communications between practitioners, administrators, and doctors, and readily bridges patient transition directly to treatment. The Cabinet may include additional requirements for system functionalities that may improve the



implementation of a new KASPER program. A Request for Proposals shall be issued by October 1, 2021. Notwithstanding KRS 45.229, in the event that the Cabinet fails to issue a Request for Proposals by October 1, 2021, an amount of \$693,000 of the General Fund appropriation within the General Administration and Program Support budget unit shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705) on October 2, 2021, and shall be used for no other purpose.

(5) **Special Olympics:** Included in the above General Fund appropriation is \$50,000 in each fiscal year to support the operations of Special Olympics Kentucky.

## 2. OFFICE FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS

	2020-21	2021-22
General Fund	3,863,100	5,851,900
Restricted Funds	11,439,500	8,982,600
Federal Funds	4,551,800	4,564,800
TOTAL	19,854,400	19,399,300

## 3. MEDICAID SERVICES

### a. Medicaid Administration

	2020-21	2021-22
General Fund	59,304,800	59,310,400
Restricted Funds	12,547,500	12,568,700
Federal Funds	165,853,300	165,864,500
TOTAL	237,705,600	237,743,600

(1) **Transfer of Excess Administrative Funds for Medicaid Benefits:** If any portion of the above General Fund appropriation in either fiscal year is deemed to be in excess of the necessary expenses for administration of the Department, the amount may be used for Medicaid Benefits in accordance with statutes governing the functions and activities of the Department for Medicaid Services. In no instance shall these excess funds be used without prior written approval of the State Budget Director to:

- (a) Establish a new program;
- (b) Expand the services of an existing program; or
- (c) Increase rates or payment levels in an existing program.

Any transfer authorized under this subsection shall be approved by the Secretary of the Finance and Administration Cabinet upon recommendation of the State Budget Director.

(2) **Medicaid Service Category Expenditure Information:** No Medicaid managed care contract shall be valid and no payment to a Medicaid managed care vendor by the Finance and Administration Cabinet or the Cabinet for Health and Family Services shall be made, unless the Medicaid managed care contract contains a provision that the contractor shall collect Medicaid expenditure data by the categories of services paid for by the Medicaid Program. Actual statewide Medicaid expenditure data by all categories of Medicaid services, including mandated and optional Medicaid services, special expenditures/offsets, and Disproportionate Share Hospital payments by type of hospital, shall be compiled by the Department for Medicaid Services for all Medicaid providers and forwarded to the Interim Joint Committee on Appropriations and Revenue on a quarterly basis. Projections of Medicaid expenditures by categories of Medicaid services shall be provided to the Interim Joint Committee on Appropriations and Revenue upon request.

### b. Medicaid Benefits

	2020-21	2021-22
General Fund	2,018,893,700	1,934,395,200
Restricted Funds	713,921,500	1,510,913,700
Federal Funds	11,745,488,200	11,483,841,700
TOTAL	14,478,303,400	14,929,150,600

(1) **Transfer of Medicaid Benefits Funds:** Any portion of the General Fund appropriation in either fiscal year that is deemed to be necessary for the administration of the Medicaid Program may be transferred from the Medicaid Benefits budget unit to the Medicaid Administration budget unit in accordance with statutes governing the functions and activities of the Department for Medicaid Services. The Secretary shall recommend any proposed transfer to the State Budget Director for approval prior to transfer. Such action shall be reported by the Cabinet for Health and Family Services to the Interim Joint Committee on Appropriations and Revenue.

(2) **Intergovernmental Transfers (IGTs):** Any funds received through an Intergovernmental Transfer (IGT) agreement between the Department for Medicaid Services and other governmental entities, in accordance with a federally approved State Plan amendment, shall be used to provide for the health and welfare of the citizens of the Commonwealth through the provision of Medicaid Benefits. Revenues from IGTs are contingent upon agreement by the parties, including but not limited to the Cabinet for Health and Family Services, Department for Medicaid Services, and the appropriate providers. The Secretary of the Cabinet for Health and Family Services shall make the appropriate interim appropriations increase requests pursuant to KRS 48.630.

(3) **Medicaid Benefits Budget Deficit:** If Medicaid Benefits expenditures are projected to exceed available funds, the Secretary of the Cabinet for Health and Family Services may recommend and implement that reimbursement rates, optional services, eligibles, or programs be reduced or maintained at levels existing at the time of the projected deficit in order to avoid a budget deficit. The projected deficit shall be confirmed and approved by the Office of State Budget Director. No rate, service, eligible, or program reductions shall be implemented by the Cabinet for Health and Family Services without written notice of such action to the Interim Joint Committee on Appropriations and Revenue and the State Budget Director. Such actions taken by the Cabinet for Health and Family Services shall be reported, upon request, at the next meeting of the Interim Joint Committee on Appropriations and Revenue.

(4) **Kentucky Access Fund:** Notwithstanding KRS 304.17B-021, funds are transferred from this source to Medicaid Benefits in each fiscal year.

(5) **Disproportionate Share Hospital (DSH) Program:** Hospitals shall report the uncompensated care for which, under federal law, the hospital is eligible to receive disproportionate share payments. Disproportionate share payments shall equal the maximum amounts established under federal law.

(6) **Medicaid Pharmacy:** Notwithstanding KRS 205.6312(4), a pharmacy provider participating in the Medical Assistance Program or a pharmacy provider serving Kentucky Medicaid recipients through a Medicaid Managed Care Organization shall not be required to serve an eligible recipient if the recipient does not make the required copayment at the time of service. An exception to this provision shall be an encounter when a recipient presents a condition which could result in harm to the recipient if left untreated, in which case the pharmacist shall dispense a 72-hour emergency supply of the required medicine. The recipient may then return to the pharmacy with the necessary copayment to obtain the remainder of the prescription. Only one dispensing fee shall be paid by the Cabinet for the provision of both the emergency supply and the remainder of the prescription. The Medicaid Managed Care Organization shall determine its policies with respect to dispensing fees.

(7) **Hospital Indigent Patient Billing:** Hospitals shall not bill patients for services if the services have been reported to the Cabinet and the hospital has received disproportionate share payments for the specific services.

(8) **Provider Tax Information:** Any provider who posts a sign or includes information on customer receipts or any material distributed for public consumption indicating that it has paid provider tax shall also post, in the same size typeset as the provider tax information, the amount of payment received from the Department for Medicaid Services during the same period the provider tax was paid. Providers who fail to meet this requirement shall be excluded from the Disproportionate Share Hospital and Medicaid Programs. The Cabinet for Health and Family Services shall include this provision in facilities' annual licensure inspections.

(9) **Medicaid Budget Analysis Reports:** The Department for Medicaid Services shall submit a quarterly budget analysis report to the Interim Joint Committee on Appropriations and Revenue no later than 75 days after the quarter's end. The report shall provide monthly detail of actual expenditures, eligibles, and average monthly cost per eligible by eligibility category along with current trailing 12-month averages for each of these figures. The report shall also provide actual figures for all categories of noneligible-specific expenditures such as Supplemental Medical Insurance premiums, Kentucky Patient Access to Care, nonemergency transportation, drug rebates, cost settlements, and Disproportionate Share Hospital payments by type of hospital. The report shall compare the actual expenditure experience with those underlying the enacted or revised enacted budget and explain any significant variances which may occur.

**(10) Medicaid Managed Care Organization Reporting:** Except as provided by KRS 61.878, all records and correspondence relating to Kentucky Medicaid, revenues derived from Kentucky Medicaid funds, and expenditures utilizing Kentucky Medicaid funds of a Medicaid managed care company operating within the Commonwealth shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. All records and correspondence relating to Medicaid specifically prohibited from disclosure by the federal Health Insurance Portability and Accountability Act privacy rules shall not be provided under this Act.

No later than 60 days after the end of a quarter, each Medicaid managed care company operating within the Commonwealth shall prepare and submit to the Department for Medicaid Services sufficient information to allow the department to meet the following requirements 90 days after the end of the quarter. The Department shall forward to the Legislative Research Commission Budget Review Office a quarterly report detailing monthly actual expenditures by service category, monthly eligibles, and average monthly cost per eligible for Medicaid and the Kentucky Children's Health Insurance Program (KCHIP) along with current trailing 12-month averages for each of these figures. The report shall also provide actual figures for other categories such as pharmacy rebates and reinsurance. Finally, the Department shall include in this report the most recent information or report available regarding the amount withheld to meet Department of Insurance reserve requirements, and any distribution of moneys received or retained in excess of these reserve requirements.

**(11) Critical Access Hospitals:** Beginning with the effective date of this Act through June 30, 2022, no acute care hospital shall convert to a critical access hospital unless the hospital has either received funding for a feasibility study from the Kentucky State Office of Rural Health or filed a written request by January 1, 2020, with the Kentucky State Office of Rural Health requesting funding for conducting a feasibility study.

**(12) Appeals:** An appeal from denial of a service or services provided by a Medicaid managed care organization for medical necessity, or denial, limitation, or termination of a health care service in a case involving a medical or surgical specialty or subspecialty, shall, upon request of the recipient, authorized person, or provider, include a review by a board-eligible or board-certified physician in the appropriate specialty or subspecialty area; except in the case of a health care service rendered by a chiropractor or optometrist, for which the denial shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky as specified in KRS 304.17A-607(1)(b). The physician reviewer shall not have participated in the initial review and denial of service and shall not be the provider of the service or services under consideration in the appeal.

**(13) Medicaid Prescription Benefits Reporting:** Notwithstanding KRS 205.647, the Department for Medicaid Services shall submit a report to the Interim Joint Committee on Appropriations and Revenue and the Medicaid Oversight and Advisory Committee by December 1 of each fiscal year on the dispensing of prescription medications to persons eligible under KRS 205.560. The report shall include:

- (a) The total Medicaid dollars paid to the state pharmacy benefit manager by a managed care organization;
- (b) The total amount of Medicaid dollars paid to the state pharmacy benefit manager by a managed care organization which were not subsequently paid to a pharmacy licensed in Kentucky;
- (c) The average reimbursement by drug ingredient cost, dispensing fee, and any other fee paid by the state pharmacy benefit manager to licensed pharmacies with which the state pharmacy benefit manager shares common ownership, management, or control; or which are owned, managed, or controlled by any of the state pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company; or which share any common members on the board of directors; or which share managers in common;
- (d) The average reimbursement by drug ingredient cost, dispensing fee, or any other fee paid by the state pharmacy benefit manager to pharmacies licensed in Kentucky which operate ten locations, ten or fewer locations, or ten or more locations; and
- (e) All common ownership, management, common members of a board of directors, shared managers, or control of the state pharmacy benefit manager, or any of the state pharmacy benefit manager's management companies, parent companies, subsidiary companies, jointly held companies, or companies otherwise affiliated by a common owner, manager, or holding company with any managed care organization contracted to administer Kentucky Medicaid benefits, any entity which contracts on behalf of a pharmacy, or any pharmacy services administration organization, or any common ownership management, common members of a board of directors, shared managers, or control of a pharmacy services administration organization that is contracted with the state pharmacy benefit manager, with any drug wholesaler or distributor or any of the pharmacy services administration organizations, management companies, parent companies, subsidiary companies, jointly held companies, or

companies otherwise affiliated by a common owner, common members of a board of directors, manager, or holding company.

**(14) Kentucky Children's Health Insurance Program (KCHIP):** Included in the above appropriation is \$46,143,100 in General Fund, \$799,500 in Restricted Funds, and \$257,910,000 in Federal Funds in fiscal year 2020-2021 and \$44,281,500 in General Fund, \$605,200 in Restricted Funds, and \$232,258,200 in Federal Funds in fiscal year 2021-2022 to support the continuation of KCHIP services.

**(15) Supports for Community Living Waiver Program Rates:** If the Supports for Community Living Waiver Program experiences a material change in funding based upon a new or amended waiver that is approved by the Centers for Medicare and Medicaid Services, the Department for Medicaid Services may adjust the upper payment limit amount for a Supports for Community Living Waiver Program service as long as the upper payment limit for each service is not less than the upper payment limit in effect on January 1, 2020.

**(16) Substance Abuse Treatment for Incarcerated Individuals - Medicaid Demonstration Waiver:** Within ninety days after the effective date of this Act, the Department for Medicaid Services shall develop and submit an application for a Section 1115 demonstration waiver under 42 U.S.C. sec. 1315 to provide Medicaid coverage for substance use disorder treatment, including peer support services, to individuals incarcerated for a conviction under KRS Chapter 218A. Upon approval of the waiver, the cost of treatment for a substance use disorder or patient navigation provided by a licensed clinical social worker shall be a covered Medicaid benefit for an incarcerated individual.

**(17) Nursing Home Pandemic Relief Reimbursement Increase:** Included in the above appropriation is \$16,312,500 in General Fund and \$58,687,500 in Federal Funds for the period of January 1, 2021, through June 30, 2021, and \$16,312,500 in General Fund and \$58,687,500 in Federal Funds for the period of July 1, 2021, through December 31, 2021, for an additional reimbursement of \$29.00 per resident day for Medicaid eligible nursing home residents. The reimbursement increase shall only be used for personal protective equipment, COVID-19 testing, and staffing for Medicaid eligible nursing home residents. The reimbursement increase shall extend through the last day of the quarter in which the public health emergency for COVID-19 terminates as declared by the Secretary of the U.S. Department of Health and Human Services or December 31, 2021, whichever date occurs earlier. The Department for Medicaid Services shall file an emergency state plan amendment with the Centers for Medicare and Medicaid Services by March 31, 2021, to effectuate the pandemic reimbursement increase. Notwithstanding KRS 45.229, any funds not expended during the period of January 1, 2021, through June 30, 2021, shall not lapse and shall carry forward for expenditures in fiscal year 2021-2022. Notwithstanding KRS 45.229, any portion of the General Fund moneys not expended for the purpose of providing the pandemic reimbursement increase shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705) at the end of fiscal year 2021-2022.

#### **TOTAL - MEDICAID SERVICES**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	2,078,198,500	1,993,705,600
Restricted Funds	726,469,000	1,523,482,400
Federal Funds	11,911,341,500	11,649,706,200
<b>TOTAL</b>	<b>14,716,009,000</b>	<b>15,166,894,200</b>

#### **4. BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES**

	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	1,916,000	1,950,500
General Fund	158,573,900	150,032,000
Restricted Funds	215,396,800	211,176,400
Federal Funds	108,552,900	95,540,400
<b>TOTAL</b>	<b>484,439,600</b>	<b>458,699,300</b>

**(1) Disproportionate Share Hospital Funds:** Pursuant to KRS 205.640(3)(a)2., mental health disproportionate share funds are budgeted at the maximum amounts permitted by Section 1923(h) of the Social Security Act. Upon publication in the Federal Register of the Annual Institutions for Mental Disease (IMD)

Disproportionate Share Hospital (DSH) limit, 92.3 percent of the federal IMD DSH limit goes to the state-operated mental hospitals. If there are remaining funds within the psychiatric pool after all private psychiatric hospitals reach their hospital-specific DSH limit, state mental hospitals may exceed the 92.3 percent limit but may not exceed their hospital-specific DSH limit.

**(2) Lease Payments for Eastern State Hospital:** Included in the above General Fund appropriation is \$11,256,700 in fiscal year 2020-2021 and \$11,258,200 in fiscal year 2021-2022 to make lease payments to the Lexington-Fayette Urban County Government to retire its debt for the construction of the new facility.

**(3) Tobacco Settlement Funds:** Included in the above General Fund (Tobacco) appropriation is \$1,416,000 in fiscal year 2020-2021 and \$1,450,500 in fiscal year 2021-2022 for substance abuse prevention and treatment for pregnant women with a history of substance abuse problems.

**(4) Debt Service:** Included in the above General Fund appropriation is \$275,000 in fiscal year 2020-2021 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**(5) Kentucky Rural Mental Health and Suicide Prevention Pilot Program:** Included in the above General Fund (Tobacco) appropriation is \$500,000 in each fiscal year to support the Kentucky Rural Mental Health and Suicide Prevention pilot program. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall coordinate with the Kentucky Department of Agriculture, the University of Kentucky Southeast Center for Agricultural Health and Injury Prevention, and other entities to enhance awareness of the National Suicide Prevention Lifeline (988) in rural communities in Kentucky and to improve access to information on mental health issues and available treatment services. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide cultural competency training to staff to address the unique mental health challenges affecting the state’s rural communities. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall also provide outreach, treatment, and other necessary services to improve the mental health outcomes of rural communities in Kentucky. The Department for Behavioral Health, Developmental and Intellectual Disabilities, in conjunction with the Kentucky Department of Agriculture and the University of Kentucky Southeast Center for Agricultural Health and Injury Prevention, shall apply for federal funds as provided by the Agriculture Improvement Act of 2018, 7 U.S.C. sec. 5936, to supplement the General Fund (Tobacco) appropriation provided above. The Cabinet for Health and Family Services shall submit a report on the results of the pilot program, including but not limited to the number of participants, the mental health issues addressed, and the funding used to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Agriculture by June 30, 2021.

**(6) The Healing Place:** Included in the above General Fund appropriation is \$900,000 in each fiscal year to support direct services to clients provided by The Healing Place.

**(7) Regional Mental Health/Mental Retardation Boards Retirement Cost:** Included in the above General Fund appropriation is \$23,274,100 in fiscal year 2020-2021 for Regional Mental Health/Mental Retardation Boards to assist them with employer contributions for the Kentucky Employees Retirement System. In July and January of each year, the Department for Behavioral Health, Developmental and Intellectual Disabilities shall obtain the total creditable compensation reported by each Regional Mental Health/Mental Retardation Board to the Kentucky Retirement System and utilize that number to determine how much of this total appropriation shall be distributed to each Regional Mental Health/Mental Retardation Board. Payments to the Mental Health/Mental Retardation Boards shall be made on September 1 and April 1 of each fiscal year.

**5. PUBLIC HEALTH**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	-0-	11,873,100	11,943,200
General Fund	300,000	66,670,100	52,433,100
Restricted Funds	-0-	84,625,500	87,483,100
Federal Funds	-0-	499,477,100	263,241,400
<b>TOTAL</b>	<b>300,000</b>	<b>662,645,800</b>	<b>415,100,800</b>

**(1) Tobacco Settlement Funds:** Included in the above General Fund (Tobacco) appropriation is \$7,000,000 in each fiscal year for the Health Access Nurturing Development Services (HANDS) Program, \$942,000 in fiscal year 2020-2021 and \$965,000 in fiscal year 2021-2022 for Healthy Start initiatives, \$942,000 in fiscal year 2020-2021 and \$965,000 in fiscal year 2021-2022 for Early Childhood Mental Health, \$989,100 in fiscal year 2020-2021 and \$1,013,200 in 2021-2022 for Early Childhood Oral Health, and \$2,000,000 in each fiscal year for Smoking Cessation.

(2) **Local and District Health Department Retirement Cost:** Included in the above General Fund appropriation is \$25,394,600 in fiscal year 2020-2021 for Local and District Health Departments to assist them with employer contributions for the Kentucky Employees Retirement System. In July and January of each year, the Department for Public Health shall obtain the total creditable compensation reported by each Local and District Health Department Board to the Kentucky Retirement System and utilize that number to determine how much of this total appropriation shall be distributed to each department. Payments to the Local and District Health Departments shall be made on September 1 and April 1 of each fiscal year.

(3) **Local and District Health Department Fees:** Notwithstanding KRS 211.170 and 211.180, local and district health departments shall retain 90 percent of the fees collected for delivering foundational public health program services to fund the costs of operations, services, and the employer contributions for the Kentucky Employees Retirement System.

(4) **Kentucky Poison Control Center and COVID-19 Hotline:** Included in the above General Fund appropriation is \$300,000 in fiscal year 2019-2020, and \$1,850,000 in fiscal year 2020-2021 for the Kentucky Poison Control Center and COVID-19 Hotline. Included in the above General Fund appropriation is \$750,000 in fiscal year 2021-2022 for the Kentucky Poison Control Center. If federal emergency relief funds become available for COVID-19-related poison control expenditures, those Federal Funds shall be used first to support the Kentucky Poison Control Center and COVID-19 Hotline, and any unexpended General Fund balance from the appropriations set forth in this subsection shall lapse to the General Fund.

(5) **Kentucky Colon Cancer Screening Program:** Included in the above General Fund appropriation is \$500,000 in each fiscal year to support the Kentucky Colon Cancer Screening Program.

(6) **Kentucky Pediatric Cancer Research Trust Fund:** Included in the above General Fund appropriation is \$2,500,000 in each fiscal year to the Kentucky Pediatric Cancer Research Trust Fund for general pediatric cancer research and support of expansion of clinical trials at the University of Kentucky and the University of Louisville.

(7) **Folic Acid Program:** General Fund (Tobacco) continuing appropriation reserves allotted to the Folic Acid Program shall be utilized by the Department for Public Health during the 2020-2022 fiscal biennium to continue the Folic Acid Program.

## 6. FAMILY RESOURCE CENTERS AND VOLUNTEER SERVICES

	2020-21	2021-22
General Fund	11,348,900	12,451,200
Federal Funds	7,053,300	7,053,300
TOTAL	18,402,200	19,504,500

(1) **Family Resource and Youth Services Centers Funds:** No more than three percent of the total funds transferred from the Department of Education to the Family Resource and Youth Services Centers, as consistent with KRS 156.496, shall be used for administrative purposes in each fiscal year.

If 70 percent or more of the funding level provided by the state is utilized to support the salary of the director of a Family Resource and Youth Services Center, that center shall provide a report to the Cabinet for Health and Family Services and the State Budget Director identifying the salary of the director. The Cabinet for Health and Family Services shall transmit any reports received from Family Resource and Youth Services Centers pursuant to this paragraph to the Legislative Research Commission.

(2) **Additional Centers:** Included in the above General Fund appropriation is \$1,100,000 in fiscal year 2021-2022 to support the operations of an additional 24 Family Resource and Youth Services Centers.

## 7. INCOME SUPPORT

	2020-21	2021-22
General Fund	13,616,600	13,616,600
Restricted Funds	13,053,500	12,930,900
Federal Funds	90,521,000	91,020,200
TOTAL	117,191,100	117,567,700

## 8. COMMUNITY BASED SERVICES

	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	12,250,000	12,311,000
General Fund	505,418,400	504,340,900
Restricted Funds	202,178,300	202,239,400
Federal Funds	710,631,100	650,370,100
<b>TOTAL</b>	<b>1,430,477,800</b>	<b>1,369,261,400</b>

(1) **Tobacco Settlement Funds:** Included in the above General Fund (Tobacco) appropriation is \$9,750,000 in each fiscal year for the Early Childhood Development Program. Included in the above General Fund (Tobacco) appropriation is \$2,500,000 in fiscal year 2020-2021 and \$2,561,000 in fiscal year 2021-2022 for the Early Childhood Adoption and Foster Care Supports Program.

(2) **Contracted Entities Retirement Cost:** Included in the above General Fund appropriation is \$1,498,900 in fiscal year 2020-2021 for domestic violence shelters, rape crisis centers, and child advocacy centers to assist them with employer contribution rates for the Kentucky Employees Retirement System. In the interim, the contracted entities shall evaluate the feasibility of continued participation in the Kentucky Employees Retirement System as provided in KRS 61.522.

(3) **Fostering Success:** Included in the above General Fund appropriation is \$500,000 in each fiscal year for the Fostering Success Program. The Cabinet for Health and Family Services shall submit a report containing the results of the program, including but not limited to the number of participants, number and type of job placements, job training provided, and any available information pertaining to individual outcomes to the Interim Joint Committee on Appropriations and Revenue by July 1 of each fiscal year.

(4) **Relative Placement Support Benefit:** Included in the above General Fund appropriation is \$1,000,000 in each fiscal year for start-up costs associated with placing children with non-parental relatives.

(5) **Domestic Violence Shelters:** Included in the above General Fund appropriation is \$500,000 in each fiscal year for operational costs.

(6) **Rape Crisis Centers:** Included in the above General Fund appropriation is \$500,000 in each fiscal year for operational costs.

(7) **Dually Licensed Pediatric Facilities:** Included in the above General Fund appropriation is \$550,000 in each fiscal year to provide supplemental payments to dually licensed pediatric facilities for emergency shelter services for children.

(8) **Child Care Assistance Program:** Included in the above General Fund appropriation is \$10,600,000 in each fiscal year to provide services to families at or below 160 percent of the federal poverty level as determined annually by the U.S. Department of Health and Human Services.

(9) **Family Counseling and Trauma Remediation:** Included in the above General Fund appropriation is \$50,000 in each fiscal year to provide forensic interviews, family counseling, and trauma remediation services primarily in Jefferson County and surrounding Kentucky counties.

(10) **Child Advocacy Centers:** Included in the above General Fund appropriation is \$500,000 in each fiscal year to support the operations of the child advocacy centers.

(11) **Family Scholar House:** Included in the above General Fund appropriation is \$1,000,000 in each fiscal year to support the operations of the Family Scholar House.

(12) **Personal Care Homes:** Included in the above General Fund appropriation is \$2,200,000 in each fiscal year to support an increase in the reimbursements provided to personal care homes.

(13) **Transition Aged Foster Youth:** Notwithstanding KRS 610.110(6), 620.140(1)(e), and 625.025, through September 30, 2021, youth in extended foster care may remain committed in the custody of the Cabinet for Health and Family Services or receive transitional living support past twenty-one years of age. Any youth over the age of eighteen who ended their commitment with the Cabinet during the COVID-19 public health emergency shall be permitted to voluntarily re-enter foster care and extend commitment. Extended commitment shall not be terminated solely due to age or noncompliance with education or work requirements because of COVID-19.

(14) **Children's Services Contractors:** Notwithstanding KRS Chapter 45A, no contracts awarded for the use and benefit of the Department for Community Based Services shall interfere with the contractor's freedom of

religion as set forth in KRS 446.350. Any such contracts shall contain a provision allowing a contractor to allow a substitute contractor who is also licensed or approved by the Cabinet to deliver the contracted services if the contractor cannot perform a contracted service because of religiously held beliefs as outlined in KRS 446.350.

#### 9. AGING AND INDEPENDENT LIVING

	2020-21	2021-22
General Fund	45,269,700	45,293,900
Restricted Funds	2,816,700	2,787,400
Federal Funds	45,754,300	24,829,300
TOTAL	93,840,700	72,910,600

(1) **Local Match Requirements:** Notwithstanding KRS 205.460, entities contracting with the Cabinet for Health and Family Services to provide essential services under KRS 205.455 and 205.460 shall provide local match equal to or greater than the amount in effect during fiscal year 2019-2020. Local match may include any combination of materials, commodities, transportation, office space, personal services, or other types of facility services or funds. The Secretary of the Cabinet for Health and Family Services shall prescribe the procedures to certify the local match compliance.

#### 10. HEALTH DATA AND ANALYTICS

	2020-21	2021-22
General Fund	481,400	482,000
Restricted Funds	16,318,900	23,301,900
Federal Funds	25,095,200	9,287,700
TOTAL	41,895,500	33,071,600

(1) **Kentucky Access Fund:** Notwithstanding KRS 304.17B-021, funds from this source are transferred to the Health Benefit Exchange in each fiscal year.

#### TOTAL - HEALTH AND FAMILY SERVICES CABINET

	2019-20	2020-21	2021-22
General Fund (Tobacco)	-0-	26,039,100	26,204,700
General Fund	300,000	2,893,763,800	2,788,557,200
Restricted Funds	-0-	1,325,664,400	2,125,768,400
Federal Funds	-0-	13,451,910,700	12,844,472,500
TOTAL	300,000	17,697,378,000	17,785,002,800

#### H. JUSTICE AND PUBLIC SAFETY CABINET

##### Budget Units

#### 1. JUSTICE ADMINISTRATION

	2020-21	2021-22
General Fund (Tobacco)	3,516,600	3,593,800
General Fund	34,937,200	35,817,200
Restricted Funds	8,025,500	6,733,900
Federal Funds	45,119,800	45,125,000
TOTAL	91,599,100	91,269,900

(1) **Operation UNITE:** (a) Notwithstanding KRS 48.005(4), included in the above Restricted Funds appropriation is \$1,500,000 in each fiscal year for the Operation UNITE Program from settlement funds resulting from the suit against Purdue Pharma, et al.. Included in the above General Fund appropriation is \$500,000 in each fiscal year for the Operation UNITE Program.



(b) For the period ending June 30, 2020, the Secretary of the Justice and Public Safety Cabinet, in coordination with the Chief Executive Officer of Operation UNITE, shall prepare a report detailing for what purpose and function the funds were utilized. This report shall be submitted to the Interim Joint Committee on Appropriations and Revenue by September 1 of fiscal year 2020-2021.

(2) **Office of Drug Control Policy:** Included in the above General Fund (Tobacco) appropriation is \$3,166,600 in fiscal year 2020-2021 and \$3,243,800 in fiscal year 2021-2022 for the Office of Drug Control Policy.

(3) **Access to Justice:** Included in the above General Fund appropriation is \$500,000 in each fiscal year to support the Access to Justice Program.

(4) **Court Appointed Special Advocate Funding:** (a) Included in the above General Fund appropriation is \$1,500,000 in each fiscal year for grants to support Court Appointed Special Advocate (CASA) funding programs.

(b) No administrative costs shall be paid from the appropriation provided in paragraph (a) of this subsection.

(5) **Restorative Justice:** Included in the above General Fund (Tobacco) appropriation is \$350,000 in each fiscal year to support the Restorative Justice Program administered by the Volunteers of America.

(6) **State Medical Examiner Offices:** (a) Included in the above General Fund appropriation is \$50,000 in fiscal year 2020-2021 and \$325,000 in fiscal year 2021-2022 for the realignment of staffing to address caseloads.

(b) Included in the above Restricted Funds appropriation is \$900,000 in fiscal year 2021-2022 to support toxicology needs.

(c) Included in the above General Fund appropriation is \$593,700 in fiscal year 2021-2022 to reestablish the Northern Kentucky Regional Medical Examiner's Office.

(d) The Secretary of the Justice and Public Safety Cabinet shall prepare a report detailing the realignment of existing Medical Examiner offices in order to best meet the needs of the program. This report shall be submitted to the Interim Joint Committee on Appropriations and Revenue by July 1, 2022.

**2. CRIMINAL JUSTICE TRAINING**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	81,686,200	83,373,900
Federal Funds	120,000	120,000
<b>TOTAL</b>	<b>81,806,200</b>	<b>83,493,900</b>

(1) **Kentucky Law Enforcement Foundation Program Fund:** Included in the above Restricted Funds appropriation is \$76,878,700 in fiscal year 2020-2021 and \$78,704,300 in fiscal year 2021-2022 for the Kentucky Law Enforcement Foundation Program Fund.

(2) **Training Incentive Payments:** Notwithstanding Part III, 2. of this Act, Restricted Funds appropriations may be increased to ensure sufficient funding to support the provision of training incentive payments.

(3) **Administrative Reimbursement:** Notwithstanding KRS 15.450(3), the Department of Criminal Justice Training shall not receive reimbursement for the salaries and other costs of administering the fund, to include the Kentucky Law Enforcement Council operations and expenses, Peace Officers Professional Standards Office, attorney positions in the Department of Justice Administration, the Professional Development and Wellness Branch, Office of the State School Security Marshal, debt service, capital outlay, and Department personnel costs and expenses in excess of \$30,096,600 in fiscal year 2020-2021 and \$30,247,100 in fiscal year 2021-2022. The Department shall submit a report detailing reimbursed expenditures for the prior fiscal year to the Interim Joint Committee on Appropriations and Revenue by August 1 of each fiscal year.

(4) **Criminal Justice Council:** Pursuant to KRS 15.410 to 15.518, the Department of Criminal Justice Training shall not transfer funds from the Kentucky Law Enforcement Foundation Program Fund to support the Criminal Justice Council.

**3. JUVENILE JUSTICE**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	80,948,400	98,791,100

Restricted Funds	15,480,000	13,961,500
Federal Funds	25,046,100	9,272,800
TOTAL	121,474,500	122,025,400

**4. STATE POLICE**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	94,247,000	183,805,400
Restricted Funds	34,402,100	32,102,100
Federal Funds	75,146,600	14,665,900
Road Fund	78,100,200	56,980,300
TOTAL	281,895,900	287,553,700

(1) **Call to Extraordinary Duty:** There is appropriated from the General Fund to the Department of Kentucky State Police, subject to the conditions and procedures provided in this Act, funds which are required as a result of the Governor's call of the Kentucky State Police to extraordinary duty when an emergency situation has been declared to exist by the Governor. Funding is authorized to be provided from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

(2) **Restricted Funds Uses:** Notwithstanding KRS 24A.179, 42.320(2)(h), 65.7631, 189A.050(3)(a), 237.110(18), and 281A.160(2)(b), funds are included in the above Restricted Funds appropriation to maintain the operations and administration of the Kentucky State Police.

(3) **Telecommunicator Training Incentive:** Included in the above General Fund appropriation is sufficient funding for a \$3,100 annual training incentive stipend for telecommunicators.

(4) **Debt Service:** Included in the above General Fund appropriation is \$295,000 in fiscal year 2020-2021 to support debt service for the Emergency Radio System Replacement, Phase II capital project set forth in Part II, H., 4., 001. of this Act.

(5) **Statewide Law Enforcement Initiatives:** (a) Included in the above General Fund appropriation is \$3,000,000 in each fiscal year to support rapid DNA laboratory analysis.

(b) Included in the above General Fund appropriation is \$180,000 in each fiscal year to support service contracts for mass spectrometry instruments.

(6) **Police Officer Salary Schedule:** Notwithstanding KRS 16.052(5), no salary of any officer shall be adjusted annually to incorporate any increase in the nonseasonally adjusted Consumer Price Index for all urban consumers, U.S. city average, all items, published by the United States Department of Labor, Bureau of Labor Statistics, in fiscal year 2020-2021.

Notwithstanding KRS 16.052, no salary of any officer shall be adjusted annually to incorporate the base compensation of officers based on years of service and rank, nor provide any increase in the nonseasonally adjusted Consumer Price Index for all urban consumers, U.S. city average, all items, published by the United States Department of Labor, Bureau of Labor Statistics, in fiscal year 2021-2022.

(7) **State Police Recruitment:** Included in the above General Fund appropriation is \$500,000 in fiscal year 2021-2022 to support recruitment efforts.

(8) **Capitol Campus Security Personnel:** Included in the above General Fund appropriation is \$125,600 in fiscal year 2021-2022 to support two Trooper R contracts designated specifically for the Capitol campus.

(9) **Retention and Incentive Pay Program:** (a) Included in the above appropriation is \$4,098,700 in General Fund and \$1,024,700 in Road Fund in fiscal year 2021-2022 to provide a retention and incentive pay program for sworn officers, as provided by KRS 16.052, to be determined by the Commissioner of the Department of Kentucky State Police.

(b) Notwithstanding KRS 16.505(8) and 61.510(13), retention and incentive pay awarded to sworn officers as outlined in paragraph (a) of this subsection shall not be considered as creditable compensation, and no employer or employee contributions shall be paid to any retirement system administered by the Kentucky Retirement Systems for retention and incentive pay.

**(10) Forensic Laboratory Technician Salary Increases:** Included in the above General Fund appropriation is \$1,845,500 in fiscal year 2021-2022 to support a 15 percent increase in forensic laboratory personnel salaries.

**5. CORRECTIONS**

**a. Corrections Management**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	13,875,600	13,896,700
Restricted Funds	150,000	150,000
Federal Funds	893,800	75,000
<b>TOTAL</b>	<b>14,919,400</b>	<b>14,121,700</b>

**(1) Local Correctional Facilities:** Notwithstanding KRS 441.420, no funds are provided for reimbursement to counties for design fees for architectural and engineering services associated with any new local correctional facility approved by the Local Correctional Facilities Construction Authority.

**(2) Facility Reporting:** (a) The Department of Corrections shall continuously monitor its bed utilization of county jails, halfway houses, Recovery Kentucky Drug treatment centers, and all other community correctional residential facilities that are under contract with the Department. This monitoring shall include periodic review of its classification system to ensure that all offenders are placed in the least restrictive housing that provides appropriate security to protect public safety and provide ample opportunity for treatment and successful re-entry.

(b) On a quarterly basis, the Department shall submit a report detailing the average occupancy rate for each of these facility types outlined in paragraph (a) of this subsection to the Legislative Research Commission.

**b. Adult Correctional Institutions**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund	13,415,600	298,527,100	359,193,500
Restricted Funds	-0-	17,597,400	17,921,900
Federal Funds	-0-	56,587,000	30,000
<b>TOTAL</b>	<b>13,415,600</b>	<b>372,711,500</b>	<b>377,145,400</b>

**(1) Debt Service:** Included in the above General Fund appropriation is \$460,000 in fiscal year 2020-2021 and \$586,000 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**(2) Transfer to State Institutions:** Notwithstanding KRS 532.100(8), state prisoners, excluding the Class C and Class D felons qualifying to serve time in county jails, may be transferred to a state institution within 90 days of final sentencing, if the county jail does not object to the additional 45 days.

**(3) Operational Costs for Inmate Population:** In the event that actual operational costs exceed the amounts appropriated to support the budgeted average daily population of state felons for each fiscal year, the additional payments shall be deemed necessary government expenses and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705), subject to notification as to necessity and amount by the State Budget Director who shall report any certified expenditure to the Interim Joint Committee on Appropriations and Revenue.

**(4) Substance Abuse Treatment and Job Training Pilot Project:** (a) It is the intent of the General Assembly to reduce recidivism, enhance public safety, reduce overcrowding across the Commonwealth's correctional institutions and jails, promote workforce preparedness within the justice-involved population, and encourage successful re-entry of offenders.

(b) No later than September 1, 2020, the Department shall, in conformance with the provisions of KRS Chapter 45A, issue a solicitation for a Substance Abuse Treatment and Job Training pilot project that will include inpatient/residential treatment services for offenders with substance use disorders to receive evidence-based treatment, provide job training services, and coordinate work assignments for offenders within a centrally located facility.

(c) Any cost avoidance pursuant to the provisions of this subsection shall be reported on a quarterly basis to the Legislative Research Commission in each fiscal year. This report shall include but not be limited to the costs

associated with the pilot project, the number of offenders participating in the pilot project, and the total number of days of sentence credit awarded by program type for offenders participating in the pilot project.

(d) Within ninety days after the effective date of this Act, the Department for Medicaid Services shall develop and submit an application for a Section 1115 demonstration waiver under 42 U.S.C. sec. 1315 to provide Medicaid coverage for substance use disorder treatment, including peer support services, to individuals incarcerated for a conviction under KRS Chapter 218A. Upon approval of the waiver, the cost of treatment for a substance use disorder or patient navigation provided by a licensed clinical social worker shall be a covered Medicaid benefit for an incarcerated individual.

(5) **Long-term Facility and Capacity Planning:** The Department of Corrections shall submit a report to the Interim Joint Committee on Appropriations and Revenue by July 1, 2021, detailing the overall long-term plan for each adult correctional institution, their individual services and facilities, operational capacity of each institution, and how each of those items corresponds with the Department's overall strategic plan and objectives.

**c. Community Services and Local Facilities**

	2019-20	2020-21	2021-22
General Fund	3,801,300	202,873,100	206,298,500
Restricted Funds	-0-	10,228,900	9,500,600
Federal Funds	-0-	694,900	695,000
TOTAL	3,801,300	213,796,900	216,494,100

(1) **Excess Local Jail Per Diem Costs:** In the event that actual local jail per diem payments exceed the amounts appropriated to support the budgeted average daily population of state felons in county jails for each fiscal year, the payments shall be deemed necessary government expenses and may be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705), subject to notification as to necessity and amount by the State Budget Director who shall report any certified expenditure to the Interim Joint Committee on Appropriations and Revenue.

(2) **Local Jails Funding:** Notwithstanding KRS 441.605 to 441.695, funds in the amount of \$3,000,000 in each fiscal year shall be expended from the Kentucky Local Correctional Facilities Construction Authority for local correctional facility and operational support.

(3) **Parole for Infirm Inmates:** (a) The Commissioner of the Department of Corrections shall certify and notify the Parole Board when a prisoner meets the requirements of paragraph (c) of this subsection for parole.

(b) Notwithstanding any statute to the contrary, within 30 days of receiving notification as prescribed by paragraph (a) of this subsection, the Parole Board shall grant parole.

(c) A prisoner who has been determined by the Department of Corrections to be physically or mentally debilitated, incapacitated, or infirm as a result of advanced age, chronic illness, disease, or any other qualifying criteria that constitutes an infirm prisoner shall be eligible for parole if:

1. The prisoner was not convicted of a capital offense and sentenced to death or was not convicted of a sex crime as defined in KRS 17.500;

2. The prisoner has reached his or her parole eligibility date or has served one-half of his or her sentence, whichever occurs first;

3. The prisoner is substantially dependent on others for the activities of daily living; and

4. There is a low risk of the prisoner presenting a threat to society if paroled.

(d) Unless a new offense is committed that results in a new conviction subsequent to a prisoner being paroled, paroled prisoners shall not be considered to be under the custody of the state in any way.

(e) Prisoners paroled under this subsection shall be paroled to a licensed long-term-care facility, nursing home, or family placement in the Commonwealth.

(f) The Cabinet for Health and Family Services and the Justice and Public Safety Cabinet shall provide all needed assistance and support in seeking and securing approval from the United States Department of Health and Human Services for federal assistance, including Medicaid funds, for the provision of long-term-care services to those eligible for parole under paragraph (c) of this subsection.

(g) The Cabinet for Health and Family Services and the Justice and Public Safety Cabinet shall have the authority to contract with community providers that meet the requirements of paragraph (e) of this subsection and that are willing to house any inmates deemed to meet the requirements of this subsection so long as contracted rates do not exceed current expenditures related to the provisions of this subsection.

(h) The Cabinet for Health and Family Services and the Justice and Public Safety Cabinet are encouraged to collaborate with other states that are engaged in similar efforts so as to achieve the mandates of this subsection.

(i) The Cabinet for Health and Family Services and the Justice and Public Safety Cabinet shall provide a report to the Interim Joint Committee on Appropriations and Revenue by December 15 of each fiscal year concerning these provisions. The report shall include the number of persons paroled, the identification of the residential facilities utilized, an estimate of cost savings as a result of the project, and any other relevant material to assist the General Assembly in assessing the value of continuing and expanding the project.

**(4) Participation in Transparent Governing - Full Disclosure of Inmate Population Forecasts and Related Materials:** The Office of State Budget Director shall provide the methodology, assumptions, data, and all other related materials used to project biennial offender population forecasts conducted by the Office of State Budget Director, the Kentucky Department of Corrections, and any consulting firms, to the Interim Joint Committee on Appropriations and Revenue by November 1, 2021. This submission shall include but not be limited to the projected state, county, and community offender populations for the 2022-2024 fiscal biennium and must coincide with the budgeted amount for these populations. This submission shall clearly divulge the methodology and reasoning behind the budgeted and projected offender population in a commitment to participate in transparent governing.

**(5) Calculating Avoided Costs Relating to Legislative Action:** Notwithstanding KRS 196.288(5)(a), \$4,630,200 has been determined to meet the intent of the statute for the amount of avoided costs to be provided to the Local Corrections Assistance Fund. The actions implemented pursuant to the implementation of 2011 Ky. Acts ch. 2 now are no longer able to be calculated validly due to the length of time they have been embedded in the criminal justice system.

**d. Local Jail Support**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	16,633,600	16,633,600

**(1) Local Corrections Assistance Fund Allocation:** Notwithstanding KRS 196.288(5)(a), included in the above General Fund appropriation is \$4,630,200 in each fiscal year for the Local Corrections Assistance Fund. Moneys in the fund shall be distributed to the counties each year. Amounts distributed from the fund shall be used to support local correctional facilities and programs, including the transportation of prisoners, as follows:

(a) In each fiscal year, the first \$3,000,000 received by the fund, or, if the fund receives less than \$3,000,000, the entire balance of the fund, shall be divided equally among all counties; and

(b) Any moneys remaining after making the distributions required by paragraph (a) of this subsection shall be distributed to each county based on a ratio, the numerator of which shall be the county's county inmate population on the second Thursday in January during the prior fiscal year, and the denominator of which shall be the total counties' county inmate population for the entire state on the second Thursday in January during the prior fiscal year.

**(2) Jailers' Allowance:** Notwithstanding KRS 441.115(2), each jailer shall receive an expense allowance of \$2,400 annually, at the rate of \$200 per month in the 2020-2022 fiscal biennium, for participation in the Jail Staff Training Program.

**(3) Life Safety or Closed Jails:** Included in the above General Fund appropriation is \$860,000 in each fiscal year to provide a monthly payment of an annual amount of \$20,000 to each county with a life safety jail or closed jail. The payment shall be in addition to the payment required by KRS 441.206(2).

**(4) Inmate Medical Care Expenses:** Included in the above General Fund appropriation is \$792,800 in each fiscal year for medical care contracts to be distributed, upon approval of the Department of Corrections, to counties by the formula codified in KRS 441.206, and \$851,800 in each fiscal year, on a partial reimbursement basis, for medical claims in excess of the statutory threshold pursuant to KRS 441.045. The funding support for medical contracts and catastrophic medical expenses for indigents shall be maintained in discrete accounts. Any medical claim that exceeds the statutory threshold may be reimbursed for that amount in excess of the statutory threshold.

**(5) County Jail Incentive Program:** (a) It is the intent of the General Assembly to incentivize county jails to offer evidence-based programs to state inmates housed in county jails. Program completions shall result in sentence credit awards to state inmates.

(b) No later than July 1, 2020, the Department shall issue guidance to counties, and submit a copy to the Legislative Research Commission, detailing the dollar amount of each incentive, the number of days of sentence credit awarded to eligible state inmates for each eligible program, standards that eligible county jails must achieve to be eligible for participation, and for which inmates county jails are incentivized to offer evidence-based programs.

(c) Any cost avoidance pursuant to the provisions of this subsection shall be reported on a quarterly basis to the Legislative Research Commission in each fiscal year. This report shall include but is not limited to the number of program completions by program type, the number of county jails participating in the incentive program, the total number of days of sentence credit awarded by program type, and the total amount of incentive payments awarded to each county by program type.

**TOTAL - CORRECTIONS**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund	17,216,900	531,909,400	596,022,300
Restricted Funds	-0-	27,976,300	27,572,500
Federal Funds	-0-	58,175,700	800,000
<b>TOTAL</b>	<b>17,216,900</b>	<b>618,061,400</b>	<b>624,394,800</b>

**6. PUBLIC ADVOCACY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	66,576,800	66,663,700
Restricted Funds	5,792,000	5,792,000
Federal Funds	2,664,300	1,841,400
<b>TOTAL</b>	<b>75,033,100</b>	<b>74,297,100</b>

(1) **Compensatory Leave Conversion to Sick Leave:** If the Department of Public Advocacy determines that internal budgetary pressures warrant further austerity measures, the Public Advocate may institute a policy to suspend payment of 50-hour blocks of compensatory time for those attorneys who have accumulated 240 hours of compensatory time and instead convert those hours to sick leave.

**TOTAL - JUSTICE AND PUBLIC SAFETY CABINET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	-0-	3,516,600	3,593,800
General Fund	17,216,900	808,618,800	981,099,700
Restricted Funds	-0-	173,362,100	169,535,900
Federal Funds	-0-	206,272,500	71,825,100
Road Fund	-0-	78,100,200	56,980,300
<b>TOTAL</b>	<b>17,216,900</b>	<b>1,269,870,200</b>	<b>1,283,034,800</b>

**I. LABOR CABINET**

**Budget Units**

**1. SECRETARY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	289,700	464,700
Restricted Funds	12,483,100	14,825,300
Federal Funds	17,261,200	139,100
<b>TOTAL</b>	<b>30,034,000</b>	<b>15,429,100</b>

**2. WORKPLACE STANDARDS**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	1,774,000	1,775,300
Restricted Funds	6,524,100	8,054,300
Federal Funds	3,517,200	4,196,300
TOTAL	11,815,300	14,025,900
<b>3. WORKERS' CLAIMS</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	71,231,900	71,061,800
<b>4. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	715,700	707,700
<b>5. WORKERS' COMPENSATION FUNDING COMMISSION</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	97,020,700	103,627,800
<b>6. WORKERS' COMPENSATION NOMINATING COMMITTEE</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	1,100	1,100
<b>7. EMPLOYMENT SERVICES</b>		
	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	9,507,200	9,530,200
Federal Funds	1,421,879,000	546,559,600
TOTAL	1,431,386,200	556,089,800

(1) **Sale of Properties:** Notwithstanding KRS 45A.045(4), the Finance and Administration Cabinet may sell, trade, or otherwise dispose of the three properties used by the Labor Cabinet located in the cities of Winchester, Morehead, and Hazard at a selling price that is below the appraised value. Notwithstanding KRS 45.777, up to \$3,000,000 of proceeds from the disposal of the above-mentioned properties shall be used to reduce the Wagner-Peyser deficit.

(2) **Unemployment Insurance Program Positions:** Included in the above Federal Funds appropriation is \$1,054,800 in fiscal year 2020-2021 and \$8,441,500 in fiscal year 2021-2022 to support 90 additional Office of Unemployment Insurance Program positions.

**TOTAL - LABOR CABINET**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	2,063,700	2,240,000
Restricted Funds	197,483,800	207,808,200
Federal Funds	1,442,657,400	550,895,000
TOTAL	1,642,204,900	760,943,200

**J. PERSONNEL CABINET**

**Budget Units**

**1. GENERAL OPERATIONS**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	30,121,500	31,197,500

Federal Funds	650,000	-0-
<b>TOTAL</b>	<b>30,771,500</b>	<b>31,197,500</b>

(1) **Pro Rata Assessment:** Included in the above Restricted Funds appropriation is \$2,690,700 in fiscal year 2020-2021 to be transferred to the General Fund to support debt service on bonds previously issued for the Kentucky Human Resources Information System.

**2. PUBLIC EMPLOYEES DEFERRED COMPENSATION AUTHORITY**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	8,284,500	8,242,500

**3. WORKERS' COMPENSATION BENEFITS AND RESERVE**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	24,094,200	24,266,400

**4. FIXED ALLOCATION NON-HAZARDOUS PENSION FUND**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	-0-	102,064,000

(1) **Quasi-State Agency Subsidy Distributions:** (a) Included in the above General Fund appropriation is \$53,477,900 in fiscal year 2021-2022 to cover each employer's share of the anticipated increase in retirement costs over each employer's fiscal year 2019-2020 baseline contribution as outlined in the fiscal note for 2021 Regular Session House Bill 8, as passed by the General Assembly and located on the Legislative Research Commission's Web site.

(b) Included in the above General Fund appropriation is an additional \$332,100 in fiscal year 2021-2022 to maintain each Non-P1 State Agency's fiscal year 2019-2020 baseline subsidy as adjusted and outlined in the fiscal note for 2021 Regular Session House Bill 8, as passed by the General Assembly and located on the Legislative Research Commission's Web site.

(c) Included in the above General Fund appropriation is an additional \$23,084,600 in fiscal year 2021-2022 to maintain each Regional Mental Health Unit's fiscal year 2019-2020 baseline subsidy as adjusted and outlined in the fiscal note for 2021 Regular Session House Bill 8, as passed by the General Assembly and located on the Legislative Research Commission's Web site.

(d) Included in the above General Fund appropriation is an additional \$25,169,400 in fiscal year 2021-2022 to maintain each Health Department's fiscal year 2019-2020 baseline subsidy as adjusted and outlined in the fiscal note for 2021 Regular Session House Bill 8, as passed by the General Assembly and located on the Legislative Research Commission's Web site.

(e) The distribution of the baseline subsidy to each employer classification identified in paragraphs (b), (c), and (d) of this subsection shall be distributed in the following manner: In July and January of fiscal year 2021-2022, the Office of State Budget Director shall obtain the total creditable compensation reported by each employer to the Kentucky Retirement System and utilize that number to determine how much of each total appropriation shall be distributed to each employer within its own unique employer classification. Payments to each employer shall be made on September 1 and April 1 of fiscal year 2021-2022. The Office of State Budget Director shall provide a report to the Interim Joint Committee on Appropriations and Revenue by May 1, 2022. The report shall detail the disbursement of funds in this subsection and include the creditable compensation, by employer, for which disbursements are made.

**TOTAL - PERSONNEL CABINET**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	-0-	102,064,000
Restricted Funds	62,500,200	63,706,400
Federal Funds	650,000	-0-
<b>TOTAL</b>	<b>63,150,200</b>	<b>165,770,400</b>

**K. POSTSECONDARY EDUCATION**



**Budget Units****1. COUNCIL ON POSTSECONDARY EDUCATION**

	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	7,526,100	7,693,800
General Fund	8,086,400	11,598,800
Restricted Funds	6,435,200	4,923,900
Federal Funds	17,796,200	3,997,100
<b>TOTAL</b>	<b>39,843,900</b>	<b>28,213,600</b>

**(1) Interest Earnings Transfer from the Strategic Investment and Incentive Trust Fund Accounts:** Notwithstanding KRS 164.7911 to 164.7927, any expenditures from the Strategic Investment and Incentive Trust Fund accounts in excess of appropriated amounts by the Council on Postsecondary Education shall be subject to KRS 48.630.

**(2) Cancer Research and Screening:** Included in the above General Fund (Tobacco) appropriation is \$6,876,100 in fiscal year 2020-2021 and \$7,043,800 in fiscal year 2021-2022 for cancer research and screening. The appropriation in each fiscal year shall be equally shared between the University of Kentucky and the University of Louisville.

**(3) Southern Regional Education Board Dues:** Included in the above General Fund appropriation is \$211,600 in fiscal year 2020-2021 and \$214,800 in fiscal year 2021-2022 for Southern Regional Education Board dues.

**(4) Doctoral Scholars:** Included in the above General Fund appropriation is \$50,000 in each fiscal year for the Southern Regional Education Board Doctoral Scholars Program.

**(5) Ovarian Cancer Screening:** Included in the above General Fund appropriation is \$500,000 in each fiscal year for the Ovarian Cancer Screening Outreach Program at the University of Kentucky.

**(6) Redistribution of Resources:** Notwithstanding KRS 164.028 to 164.0282, no General Fund is provided for Professional Education Preparation in order to increase funding for Veterinary Medicine and Optometry contract spaces.

**(7) Postsecondary Education Debt:** Notwithstanding KRS 45.750 to 45.810, in order to lower the cost of borrowing, any university that has issued or caused to be issued debt obligations through a not-for-profit corporation or a municipality or county government for which the rental or use payments of the university substantially meet the debt service requirements of those debt obligations is authorized to refinance those debt obligations if the principal amount of the debt obligations is not increased and the rental payments of the university are not increased. Any funds used by a university to meet debt obligations issued by a university pursuant to this subsection shall be subject to interception of state-appropriated funds pursuant to KRS 164A.608.

**(8) Disposition of Postsecondary Institution Property:** Notwithstanding KRS 45.777, a postsecondary institution's governing board may elect to sell or dispose of real property or major items of equipment and proceeds from the sale shall be designated to the funding sources, on a proportionate basis, used for acquisition of the equipment or property to be sold.

**(9) Spinal Cord and Head Injury Research:** Included in the above General Fund (Tobacco) appropriation is \$650,000 in each fiscal year for spinal cord and head injury research. In accordance with KRS 211.500 to 211.504, the appropriation in each fiscal year shall be shared between the University of Kentucky and the University of Louisville.

**2. KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	288,393,600	291,702,400
Restricted Funds	32,703,300	32,767,000
Federal Funds	78,700	33,800
<b>TOTAL</b>	<b>321,175,600</b>	<b>324,503,200</b>

(1) **College Access Program:** Notwithstanding KRS 154A.130(4), included in the above General Fund appropriation is \$96,655,200 in fiscal year 2020-2021 and \$95,847,200 in fiscal year 2021-2022 for the College Access Program.

(2) **Kentucky Tuition Grant Program:** Notwithstanding KRS 154A.130(4), included in the above General Fund appropriation is \$44,078,100 in each fiscal year for the Kentucky Tuition Grant Program.

(3) **Kentucky National Guard Tuition Award Program:** Notwithstanding KRS 154A.130(4), included in the above General Fund appropriation is \$7,398,100 in each fiscal year for the National Guard Tuition Award Program.

(4) **Kentucky Educational Excellence Scholarships (KEES):** Notwithstanding KRS 154A.130(4), included in the above General Fund appropriation is \$113,768,600 in fiscal year 2020-2021 and \$116,126,600 in fiscal year 2021-2022 for the Kentucky Educational Excellence Scholarships (KEES). Included in the above Restricted Funds appropriation is \$10,000,000 in each fiscal year for KEES.

(5) **Work Ready Scholarship Program:** Notwithstanding KRS 154A.130(4), included in the above General Fund appropriation is \$7,300,000 in fiscal year 2020-2021 and \$7,800,000 in fiscal year 2021-2022 for the Work Ready Scholarship Program. Notwithstanding KRS 164.787, the dual credit component of the Work Ready Scholarship Program for high school students shall be funded and administered through the Dual Credit Scholarship Program.

(6) **Dual Credit Scholarship Program:** Notwithstanding KRS 154A.130(4), included in the above General Fund appropriation is \$13,150,000 in each fiscal year for the Dual Credit Scholarship Program. Notwithstanding KRS 164.786(1)(f) and 164.787(2)(d), the dual credit tuition rate ceiling shall be two-fifths of the per credit hour tuition amount charged by the Kentucky Community and Technical College System for in-state students. Notwithstanding KRS 164.786(1)(g)2. and (4)(b), priority for awarding scholarships shall be given in order to high school seniors, juniors, sophomores, and freshmen. Notwithstanding KRS 164.786(4)(c), eligible high school students may receive a dual credit scholarship for two career and technical education dual credit courses per academic year and two general education dual credit courses over the junior and senior years, up to a maximum of ten approved dual credit courses. Notwithstanding KRS 164.786(4)(d), dual credit scholarships awarded for the Spring 2020 semester shall not be reduced if the dual credit course is not successfully completed by the student as a result of the student's inability to properly access the new course delivery method due to the novel coronavirus (COVID-19).

(7) **Veterinary Medicine Contract Spaces:** Included in the above General Fund appropriation is \$5,248,000 in fiscal year 2020-2021 and \$5,494,000 in fiscal year 2021-2022 to fund 164 veterinary slots.

(8) **Optometry Contract Spaces and Scholarships:** Included in the above General Fund appropriation is \$795,600 in fiscal year 2020-2021 to fund 44 optometry slots and \$808,400 in fiscal year 2021-2022 for the Optometry Scholarship Program.

(9) **Use of Lottery Revenues:** Notwithstanding KRS 154A.130(3) and (4), lottery revenues in the amount of \$282,350,000 in fiscal year 2020-2021 and \$285,400,000 in fiscal year 2021-2022 are appropriated to the Kentucky Higher Education Assistance Authority. Notwithstanding KRS 154A.130(4) and any provisions of this Act to the contrary, if lottery receipts received by the Commonwealth, excluding any unclaimed prize money received under Part III, 20. of this Act, exceed \$286,100,000 in fiscal year 2020-2021 or \$292,000,000 in fiscal year 2021-2022, the first \$3,000,000 of excess funds in each fiscal year shall be transferred to the Kentucky Higher Education Assistance Authority and appropriated in accordance with KRS 154A.130(4)(b), and any additional excess shall be held in a trust and agency account and shall not be expended or appropriated without the express authority of the General Assembly.

(10) **Redistribution of Resources:** Notwithstanding KRS 164.518, 164.740 to 164.764, 164.7890(11)(c), 164.7891(11)(b), and 164.7894, no General Fund is provided for Early Childhood Development Scholarships, Work Study, Coal County Pharmacy Scholarships, Osteopathic Medicine Scholarships, and Coal County College Completion Scholarships in order to provide additional funding to the College Access Program and Kentucky Tuition Grant Program.

(11) **Teacher Scholarship Program:** Notwithstanding KRS 154A.130(4), included in the above General Fund appropriation is \$1,000,000 in fiscal year 2021-2022 for the Teacher Scholarship Program. The Kentucky Higher Education Assistance Authority and the Council on Postsecondary Education shall submit a report on teacher scholarship programs, including but not limited to the history of state-funded teacher scholarship programs and the effects of teacher scholarship programs on recruitment and retention of teachers in the Commonwealth, to the Interim Joint Committee on Education by December 1, 2021.

**3. EASTERN KENTUCKY UNIVERSITY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	63,825,100	74,323,900
Restricted Funds	210,611,400	210,611,400
Federal Funds	137,011,900	135,500,000
TOTAL	411,448,400	420,435,300

(1) **Mandated Programs:** Included in the above General Fund appropriation are the following:

- (a) \$4,571,900 in each fiscal year for the Model Laboratory School; and
- (b) \$8,909,700 in fiscal year 2021-2022 for the fixed allocation non-hazardous retirement plan's employer contribution.

(2) **Debt Service:** Included in the above General Fund appropriation is \$317,000 in fiscal year 2020-2021 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**4. KENTUCKY STATE UNIVERSITY**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund	497,400	25,859,200	27,186,100
Restricted Funds	-0-	23,000,000	23,500,000
Federal Funds	-0-	20,965,600	20,531,900
TOTAL	497,400	69,824,800	71,218,000

(1) **Mandated Programs:** Included in the above General Fund appropriation are the following:

- (a) \$8,210,400 in each fiscal year to fund the state match payments required of land-grant universities under federal law; and
- (b) \$558,200 in fiscal year 2021-2022 for the fixed allocation non-hazardous retirement plan's employer contribution.

(2) **Debt Service:** Included in the above General Fund appropriation is \$182,000 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**5. MOREHEAD STATE UNIVERSITY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	37,447,000	43,324,900
Restricted Funds	117,811,000	120,145,300
Federal Funds	30,869,200	30,578,100
TOTAL	186,127,200	194,048,300

(1) **Mandated Programs:** Included in the above General Fund appropriation are the following:

- (a) \$3,151,400 in fiscal year 2020-2021 and \$3,480,400 in fiscal year 2021-2022 for the Craft Academy for Excellence in Science and Mathematics;
- (b) \$250,000 in fiscal year 2020-2021 for installation of the Jet Propulsion Laboratory antenna; and
- (c) \$4,913,000 in fiscal year 2021-2022 for the fixed allocation non-hazardous retirement plan's employer contribution.

**6. MURRAY STATE UNIVERSITY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	42,742,600	47,024,700
Restricted Funds	120,152,400	120,152,400

Federal Funds	23,720,200	22,709,000
TOTAL	186,615,200	189,886,100

(1) **Mandated Programs:** Included in the above General Fund appropriation are the following:

(a) \$3,200,000 in each fiscal year for the Breathitt Veterinary Center; and

(b) \$3,270,900 in fiscal year 2021-2022 for the fixed allocation non-hazardous retirement plan's employer contribution.

#### 7. NORTHERN KENTUCKY UNIVERSITY

	2020-21	2021-22
General Fund	50,073,000	52,247,500
Restricted Funds	199,178,300	199,178,300
Federal Funds	14,283,100	13,075,600
TOTAL	263,534,400	264,501,400

(1) **Mandated Programs:** Included in the above General Fund appropriation is \$1,323,900 in each fiscal year for the Kentucky Center for Mathematics.

#### 8. UNIVERSITY OF KENTUCKY

	2020-21	2021-22
General Fund	252,479,200	266,243,800
Restricted Funds	3,972,440,600	4,302,810,200
Federal Funds	286,352,000	300,095,200
TOTAL	4,511,271,800	4,869,149,200

(1) **Mandated Programs:** Included in the above General Fund appropriation are the following:

(a) \$31,275,300 in each fiscal year for the College of Agriculture, Food, and Environment's Cooperative Extension Service;

(b) \$29,479,600 in each fiscal year for the Kentucky Agricultural Experiment Station;

(c) \$5,176,200 in each fiscal year for the Center for Applied Energy Research;

(d) \$4,076,300 in each fiscal year for the Kentucky Geological Survey;

(e) \$4,034,200 in each fiscal year for the Veterinary Diagnostic Laboratory;

(f) \$2,040,500 in each fiscal year for the Sanders-Brown Center on Aging;

(g) \$1,800,000 in each fiscal year for the College of Agriculture, Food, and Environment's Division of Regulatory Services;

(h) \$ 600,000 in each fiscal year for the College of Agriculture, Food, and Environment's Kentucky Small Business Development Center;

(i) \$586,300 in each fiscal year for the University Press of Kentucky;

(j) Notwithstanding KRS 154A.130(4), \$500,000 in each fiscal year for the Human Development Institute for the Supported Higher Education Project;

(k) \$450,200 in each fiscal year for the Center of Excellence in Rural Health;

(l) \$450,200 in each fiscal year for the Kentucky Cancer Registry; and

(m) \$100,000 in each fiscal year for the Sports Medicine Research Institute.

(2) **Debt Service:** Included in the above General Fund appropriation is \$1,013,000 in fiscal year 2021-2022 to provide new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**(3) Restricted Funds Transfer:** Notwithstanding KRS 138.510 and 230.265, \$1,500,000 in Restricted Funds shall be transferred in fiscal year 2020-2021 from the Equine Drug Research Council under the Horse Racing Commission budget unit to the Equine Analytical Chemistry Lab.

**9. UNIVERSITY OF LOUISVILLE**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	121,181,400	127,156,800
Restricted Funds	1,052,772,700	1,068,081,000
Federal Funds	123,020,900	123,686,900
<b>TOTAL</b>	<b>1,296,975,000</b>	<b>1,318,924,700</b>

**(1) Mandated Programs:** Included in the above General Fund appropriation are the following:

- (a) \$695,200 in each fiscal year for the Rural Health Education Program;
- (b) \$150,000 in each fiscal year for the Kentucky Autism Training Center; and
- (c) \$100,000 in fiscal year 2021-2022 for the School of Dentistry to provide dental care to patients with dental issues related to drug use.

**10. WESTERN KENTUCKY UNIVERSITY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	70,900,800	76,946,600
Restricted Funds	280,768,200	280,768,200
Federal Funds	34,035,400	32,340,000
<b>TOTAL</b>	<b>385,704,400</b>	<b>390,054,800</b>

**(1) Mandated Programs:** Included in the above General Fund appropriation are the following:

- (a) \$4,985,100 in each fiscal year for the Gatton Academy of Mathematics and Science;
- (b) \$750,000 in each fiscal year for the Kentucky Mesonet; and
- (c) \$3,592,500 in fiscal year 2021-2022 for the fixed allocation non-hazardous retirement plan's employer contribution.

**11. KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	167,230,900	175,435,900
Restricted Funds	453,871,900	451,448,300
Federal Funds	224,517,700	220,482,800
<b>TOTAL</b>	<b>845,620,500</b>	<b>847,367,000</b>

**(1) Mandated Programs:** Included in the above General Fund appropriation are the following:

- (a) \$4,149,800 in each fiscal year for KCTCS-TRAINS;
- (b) \$1,869,900 in each fiscal year for the Kentucky Fire Commission;
- (c) \$1,799,700 in each fiscal year for the Kentucky Board of Emergency Medical Services;
- (d) \$1,000,000 in each fiscal year for Adult Agriculture Education; and
- (e) \$854,900 in fiscal year 2021-2022 for the fixed allocation non-hazardous retirement plan's employer contribution.

**(2) Firefighters Foundation Program Fund:** (a) Included in the above Restricted Funds appropriation is \$50,560,000 in each fiscal year for the Firefighters Foundation Program Fund.

(b) Notwithstanding Part III, 2. of this Act, Restricted Funds appropriations may be increased to ensure sufficient funding to support the provision of training incentive payments.

(c) Notwithstanding KRS 95A.200 to 95A.300, \$6,400,000 in fiscal year 2020-2021 shall be transferred to support projects as set forth in Part II, Capital Projects Budget, of this Act.

(d) Notwithstanding KRS 95A.200 to 95A.300, \$1,250,000 in each fiscal year shall be made available from the fund for a program to care for and treat firefighters affected by Post-Traumatic Stress Injury and Post-Traumatic Stress Disorder.

(3) **Firefighters Training Center Fund:** Notwithstanding KRS 95A.262(3), \$500,000 in Restricted Funds is provided in each fiscal year for the Firefighters Training Center Fund.

(4) **Guaranteed Energy Savings Performance Contracts:** Notwithstanding KRS 56.770 and 56.774, guaranteed energy savings performance contracts may be executed for buildings operated by the Kentucky Community and Technical College System under agreements governed by KRS 164.593.

## 12. POSTSECONDARY EDUCATION PERFORMANCE FUND

	<b>2020-21</b>	<b>2021-22</b>
General Fund	14,994,800	17,307,100

(1) **Postsecondary Education Performance Fund:** Notwithstanding KRS 164.092(1)(e), "formula base amount" for fiscal year 2020-2021 means an institution's enacted General Fund appropriation in fiscal year 2019-2020, plus adjustments reflecting the performance distribution in fiscal year 2019-2020, plus any additional appropriations for mandated programs in fiscal year 2020-2021, minus debt service on bonds in fiscal year 2019-2020, and minus appropriations for mandated programs.

### TOTAL - POSTSECONDARY EDUCATION

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	-0-	7,526,100	7,693,800
General Fund	497,400	1,143,214,000	1,210,498,500
Restricted Funds	-0-	6,469,745,000	6,814,386,000
Federal Funds	-0-	912,650,900	903,030,400
TOTAL	497,400	8,533,136,000	8,935,608,700

## L. PUBLIC PROTECTION CABINET

### Budget Units

#### 1. SECRETARY

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	8,883,300	9,293,800
Federal Funds	40,000,000	-0-
TOTAL	48,883,300	9,293,800

#### 2. PROFESSIONAL LICENSING

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	5,123,100	5,044,400
Federal Funds	541,300	-0-
TOTAL	5,664,400	5,044,400

#### 3. BOXING AND WRESTLING AUTHORITY

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	183,000	177,300

#### 4. ALCOHOLIC BEVERAGE CONTROL

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	6,485,200	6,387,500
Federal Funds	622,400	439,100
TOTAL	7,107,600	6,826,600

**5. CHARITABLE GAMING**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	3,795,200	3,804,100

**6. FINANCIAL INSTITUTIONS**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	13,114,000	12,773,100

**7. HORSE RACING COMMISSION**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	1,677,700	3,686,100
Restricted Funds	42,569,200	42,055,500
TOTAL	44,246,900	45,741,600

(1) **Administration and Regulation of Racing:** Included in the above General Fund appropriation is \$500,000 in each fiscal year to support one full-time Safety Steward and additional Investigator positions.

(2) **Restricted Funds Transfer:** Notwithstanding KRS 138.510 and 230.265, \$1,500,000 in Restricted Funds shall be transferred in fiscal year 2020-2021 from the Equine Drug Research Council to the Equine Analytical Chemistry Lab at the University of Kentucky.

**8. HOUSING, BUILDINGS AND CONSTRUCTION**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	2,629,800	2,632,100
Restricted Funds	22,355,700	21,385,500
TOTAL	24,985,500	24,017,600

(1) **Building Code Enforcement Positions:** Included in the above Restricted Funds appropriation is \$150,700 in fiscal year 2020-2021 to support Building Codes Field Inspector positions.

(2) **School Building Plan Reviews and Inspections:** Notwithstanding KRS 198B.060, local governments may have jurisdiction for plan review, inspection, and enforcement responsibilities over buildings intended for educational purposes, other than licensed day-care centers, at the discretion of the local school districts.

**9. INSURANCE**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	16,660,800	15,622,900
Federal Funds	600,000	576,000
TOTAL	17,260,800	16,198,900

**10. CLAIMS AND APPEALS**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	1,005,400	1,006,000
Restricted Funds	911,200	911,200
Federal Funds	157,200	157,200
TOTAL	2,073,800	2,074,400

**TOTAL - PUBLIC PROTECTION CABINET**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	5,312,900	7,324,200
Restricted Funds	120,080,700	117,455,300
Federal Funds	41,920,900	1,172,300
<b>TOTAL</b>	<b>167,314,500</b>	<b>125,951,800</b>

**M. TOURISM, ARTS AND HERITAGE CABINET****Budget Units****1. SECRETARY**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	3,276,300	3,279,400
Restricted Funds	15,263,200	17,500,000
<b>TOTAL</b>	<b>18,539,500</b>	<b>20,779,400</b>

(1) **Tourism Grants:** Included in the above Restricted Funds appropriation are the following allocations for the 2020-2022 fiscal biennium:

- (a) \$500,000 in each fiscal year for the Kentucky Mountain Regional Recreation Authority;
- (b) \$150,000 in each fiscal year to the Kenton County Fiscal Court to execute the planning, marketing, and implementation of the regional Jacob Spears Licking River Water Trail from Paris, Kentucky, to the Ohio River;
- (c) \$190,000 in fiscal year 2020-2021 for the Judge Joseph Holt House;
- (d) \$100,000 in each fiscal year for EP Tom Sawyer Park Tennis/Pickleball Courts; and
- (e) \$60,000 in fiscal year 2020-2021 for the Trail of Tears Pow Wow.

(2) **Kentucky Center for African American Heritage:** Included in the above General Fund appropriation is \$100,000 in each fiscal year for the Kentucky Center for African American Heritage.

**2. ARTISANS CENTER**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	290,300	1,066,300
Restricted Funds	1,801,300	1,601,300
Road Fund	573,800	-0-
<b>TOTAL</b>	<b>2,665,400</b>	<b>2,667,600</b>

**3. TOURISM**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	3,145,000	3,209,100
Restricted Funds	60,000	22,700
<b>TOTAL</b>	<b>3,205,000</b>	<b>3,231,800</b>

(1) **Whitehaven Welcome Center:** Included in the above General Fund appropriation is \$130,000 in each fiscal year to support the Whitehaven Welcome Center.

**4. PARKS**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund	2,700,000	58,547,900	47,626,400
Restricted Funds	-0-	41,285,900	52,261,400



TOTAL	2,700,000	99,833,800	99,887,800
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(1) **Park Capital Maintenance and Renovation Fund:** Notwithstanding KRS 148.810, no transfer to the Park Capital Maintenance and Renovation Fund shall be made.

(2) **Debt Service:** Included in the above General Fund appropriation is \$398,000 in fiscal year 2020-2021 and \$364,000 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

(3) **Capitol Annex Cafeteria:** Included in the above General Fund appropriation is \$234,400 in each fiscal year to support the Capitol Annex cafeteria operated by the Department of Parks.

#### 5. HORSE PARK COMMISSION

	2020-21	2021-22
General Fund	9,329,000	1,731,700
Restricted Funds	1,425,500	10,979,900
TOTAL	10,754,500	12,711,600

#### 6. STATE FAIR BOARD

	2020-21	2021-22
General Fund	19,616,400	4,170,400
Restricted Funds	32,661,900	49,767,600
TOTAL	52,278,300	53,938,000

(1) **Debt Service:** Included in the above General Fund appropriation is \$302,500 in fiscal year 2020-2021 and \$56,500 in fiscal year 2021-2022 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

#### 7. FISH AND WILDLIFE RESOURCES

	2020-21	2021-22
Restricted Funds	49,139,400	48,575,600
Federal Funds	19,381,900	19,412,000
TOTAL	68,521,300	67,987,600

(1) **Fish and Wildlife Resources Peace Officers' Stipend:** Notwithstanding Part III, 2. of this Act, Restricted Funds appropriations may be increased to ensure sufficient funding to support the provisions of KRS 15.460(1)(a).

(2) **Fees-in-Lieu-of Stream Mitigation Reporting:** The Department of Fish and Wildlife Resources shall develop a report of all projects managed by the Fees-in-Lieu-of Stream Mitigation Program. The Department shall present this report to the Interim Joint Committee on Tourism, Small Business, and Information Technology by August 1, 2021.

#### 8. HISTORICAL SOCIETY

	2020-21	2021-22
General Fund	6,456,700	6,463,500
Restricted Funds	894,300	894,300
Federal Funds	170,000	170,000
TOTAL	7,521,000	7,527,800

#### 9. ARTS COUNCIL

	2020-21	2021-22
General Fund	1,537,900	1,739,600
Restricted Funds	352,600	352,700

Federal Funds	892,500	759,400
TOTAL	2,783,000	2,851,700

**10. HERITAGE COUNCIL**

	2020-21	2021-22
General Fund	738,400	739,400
Restricted Funds	779,900	748,900
Federal Funds	869,200	983,800
TOTAL	2,387,500	2,472,100

**11. KENTUCKY CENTER FOR THE ARTS**

	2020-21	2021-22
General Fund	558,300	2,084,300

(1) **Kentucky Center for the Arts:** Included in the above General Fund appropriation is \$1,026,000 for operations and \$500,000 for maintenance in fiscal year 2021-2022 to support the Kentucky Center for the Arts. Any federal funds received related to COVID-19 emergency response or pandemic relief, including the American Rescue Plan Act of 2021, shall be expended prior to General Fund. Notwithstanding KRS 45.229, any portion of General Fund not expended for this purpose shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705).

**TOTAL - TOURISM, ARTS AND HERITAGE CABINET**

	2019-20	2020-21	2021-22
General Fund	2,700,000	103,496,200	72,110,100
Restricted Funds	-0-	143,664,000	182,704,400
Federal Funds	-0-	21,313,600	21,325,200
Road Fund	-0-	573,800	-0-
TOTAL	2,700,000	269,047,600	276,139,700

**N. BUDGET RESERVE TRUST FUND****Budget Unit****1. BUDGET RESERVE TRUST FUND**

	2020-21	2021-22
General Fund	134,346,300	608,598,500

**PART II****CAPITAL PROJECTS BUDGET**

(1) **Capital Construction Fund Appropriations and Reauthorizations:** Moneys in the Capital Construction Fund are appropriated for the following capital projects subject to the conditions and procedures in this Act. Items listed without appropriated amounts are previously authorized for which no additional amount is required. These items are listed in order to continue their current authorization into the 2020-2022 fiscal biennium. Unless otherwise specified, reauthorized projects shall conform to the original authorization enacted by the General Assembly.

(2) **Expiration of Existing Line-Item Capital Construction Projects:** All appropriations to existing line-item capital construction projects expire on June 30, 2020, unless reauthorized in this Act with the following exceptions: (a) A construction or purchase contract for the project shall have been awarded by June 30, 2020; (b) Permanent financing or a short-term line of credit sufficient to cover the total authorized project scope shall have been obtained in the case of projects authorized for bonds, if the authorized project completes an initial draw on the line of credit within the fiscal biennium immediately subsequent to the original authorization; and (c) Grant or loan agreements, if applicable, shall have been finalized and properly signed by all necessary parties by June 30, 2020. Notwithstanding the criteria set forth in this subsection, the disposition of 2020-2022 fiscal biennium nonstatutory

appropriated maintenance pools funded from Capital Construction Investment Income shall remain subject to KRS 45.770(5)(c).

**(3) Bond Proceeds Investment Income:** Investment income earned from bond proceeds beyond that which is required to satisfy Internal Revenue Service arbitrage rebates and penalties and excess bond proceeds upon the completion of a bond-financed capital project shall be used to pay debt service according to the Internal Revenue Service Code and accompanying regulations.

**(4) Appropriations for Projects Not Line-Itemized:** Inasmuch as the identification of specific projects in a variety of areas of the state government cannot be ascertained with absolute certainty at this time, amounts are appropriated for specific purposes to projects which are not individually identified in this Act in the following areas: Kentucky Infrastructure Authority Water and Sewer projects; Flood Control projects; Repair of State-Owned Dams; Guaranteed Energy Savings Performance Contract projects; Wetland and Stream Mitigation projects; Bond-funded, Restricted Fund, and Aircraft maintenance pools; Postsecondary Education pools; Commonwealth Office of Technology Infrastructure Upgrades; Legacy System Retirement Pool; and the Wastewater Treatment Upgrades pool. Notwithstanding any statute to the contrary, projects estimated to cost \$1,000,000 and over and equipment estimated to cost \$200,000 and over shall be reported to the Capital Projects and Bond Oversight Committee.

**(5) Capital Construction and Equipment Purchase Contingency Account:** If funds in the Capital Construction and Equipment Purchase Contingency Account are not sufficient, then expenditures of the fund are to be paid first from the General Fund Surplus Account (KRS 48.700), if available, or from the Budget Reserve Trust Fund Account (KRS 48.705), subject to the conditions and procedures provided in this Act.

**(6) Emergency Repair, Maintenance, and Replacement Account:** If funds in the Emergency Repair, Maintenance, and Replacement Account are not sufficient, then expenditures of the fund are to be paid first from the General Fund Surplus Account (KRS 48.700), if available, or from the Budget Reserve Trust Fund Account (KRS 48.705), subject to the conditions and procedures provided in this Act.

**(7) Appropriation-Supported Debt:** To lower the cost of borrowing, the agencies identified in KRS 45A.850(1)(a) and (2)(a) are authorized to refinance appropriation supported debt obligations that have previously been issued and for which the Commonwealth is currently making lease-rental payments to meet the current debt service requirements. Such action is authorized provided that the principal amount of any such debt obligation is not increased and the term of the debt obligation is not extended. Any such refinancing shall still be subject to the requirements of KRS 45.750 to 45.810 for reporting to the Capital Projects and Bond Oversight Committee.

**(8) Cash Defeasance:** State agencies identified in KRS 45A.850(1)(a) and (2)(a) are authorized to economically or legally defease debt obligations that have previously been issued by the agency, or through a third-party but for which the Commonwealth or the agency is currently making lease-rental payments to meet the current debt service requirements. If Restricted Funds are used for the defeasance of bonds, the agency may use a prior Agency Bond authorization for a new debt obligation so long as the debt service for the new debt obligation is not greater than the debt service of the defeased bonds and the term of the new debt obligation is not greater than the term of the defeased bonds. Any such refinancing shall still be subject to the requirements of KRS 45.750 to 45.810 for reporting to the Capital Projects and Bond Oversight Committee.

**A. GENERAL GOVERNMENT**

<b>Budget Units</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
<b>1. VETERANS' AFFAIRS</b>			
<b>001. Nurse Call System – Additional Reauthorization (\$1,550,000 Investment Income)</b>			
Restricted Funds	4,500,000	-0-	-0-
<b>002. Improve/Expand Pavement and Parking Areas</b>			
Restricted Funds	-0-	1,600,000	-0-
<b>003. Construct Bowling Green Veterans Center</b>			
Federal Funds	-0-	19,500,000	-0-
Bond Funds	-0-	10,500,000	-0-
TOTAL	-0-	30,000,000	-0-
<b>004. Maintenance Pool - 2020-2022</b>			

Investment Income	-0-	600,000	600,000
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**005. Replace Cooling Tower - Eastern Kentucky Veterans Center**

Restricted Funds	-0-	400,000	-0-
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**006. Replace Steam Boiler - Thomson-Hood Veterans Center**

Restricted Funds	-0-	300,000	-0-
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**2. KENTUCKY INFRASTRUCTURE AUTHORITY****001. KIA Fund A - Federally Assisted Wastewater Program - 2020-2022**

Federal Funds	-0-	20,428,000	20,428,000
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Bond Funds	-0-	4,086,000	4,086,000
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TOTAL	-0-	24,514,000	24,514,000
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(1) **Permitted Use of Funds:** The Bond Funds shall be used to meet the state match requirement for federal funds for the Wastewater State Revolving Loan Fund Program.

**002. KIA Fund F - Drinking Water Revolving Loan Program - 2020-2022**

Federal Funds	-0-	18,303,000	18,303,000
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Bond Funds	-0-	4,561,000	3,661,000
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TOTAL	-0-	22,864,000	21,964,000
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(1) **Permitted Use of Funds:** The Bond Funds shall be used to meet the state match requirement for federal funds for the Safe Drinking Water State Revolving Loan Fund Program.

**003. KIA Fund A - Federally Assisted Wastewater Program - 2018-2020 Reauthorization (\$30,000,000 Agency Bonds)****004. KIA Fund F - Drinking Water Revolving Loan Program - 2018-2020 Reauthorization (\$30,000,000 Agency Bonds)****3. MILITARY AFFAIRS****001. Maintenance Pool - 2020-2022**

Investment Income	-0-	1,500,000	1,500,000
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**002. Bluegrass Station Facility Maintenance Pool - 2020-2022**

Restricted Funds	-0-	1,000,000	1,000,000
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**003. Install Solar Panels at Armories Statewide Reauthorization (\$413,000 Restricted Funds, \$1,238,000 Federal Funds)****004. Construct Industrial Building at Bluegrass Station Reauthorization (\$15,000,000 Other Funds)**

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**005. Construct Multi-purpose Building at Bluegrass Station Reauthorization (\$15,000,000 Other Funds)**

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**006. Construct WHFRTC Qualification Training Range Reauthorization (\$6,515,000 Federal Funds)****4. DEPARTMENT FOR LOCAL GOVERNMENT****001. Flood Control Matching Fund**

Bond Funds	-0-	-0-	6,000,000
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**5. ATTORNEY GENERAL****001. Franklin County - Lease****002. Upgrade Technology**

Bond Funds	-0-	2,000,000	-0-
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<b>6. TREASURY</b>			
<b>001. Lease-Purchase Check Printer and Fold Sealers</b>			
Investment Income	-0-	66,000	66,000
<b>7. UNIFIED PROSECUTORIAL SYSTEM</b>			
<b>a. Commonwealth's Attorneys</b>			
<b>001. Jefferson County - Lease</b>			
<b>8. AGRICULTURE</b>			
<b>001. Inspection and Licensing Project</b>			
Restricted Funds	-0-	1,052,400	1,065,600
<b>002. Franklin County - Lease</b>			
<b>9. OCCUPATIONAL AND PROFESSIONAL BOARDS AND COMMISSIONS</b>			
<b>a. Nursing</b>			
<b>001. Jefferson County – Lease</b>			
<b>10. KENTUCKY RIVER AUTHORITY</b>			
<b>001. Locks 2 and 3 Upper Guide Wall Repair</b>			
Restricted Funds	-0-	4,131,000	-0-
<b>002. Design and Repair Lock 5</b>			
Restricted Funds	-0-	-0-	1,062,000
<b>003. Design and Repair Dam 7 Reauthorization (\$3,081,000 Agency Bonds)</b>			
<b>004. Design and Repair Dam 6 Reauthorization (\$2,299,000 Agency Bonds)</b>			
<b>11. SCHOOL FACILITIES CONSTRUCTION COMMISSION</b>			
<b>001. Offers of Assistance - 2018-2020</b>			
Bond Funds	-0-	58,000,000	-0-
<b>002. School Facilities Construction Commission Reauthorization (\$84,500,000 Bond Funds)</b>			
<b>003. Offers of Assistance - 2020-2022</b>			
Bond Funds	-0-	47,527,000	-0-

**B. ECONOMIC DEVELOPMENT CABINET**

(1) **Economic Development Bond Issues:** Before any economic development bonds are issued, the proposed bond issue shall be approved by the Secretary of the Finance and Administration Cabinet and the State Property and Buildings Commission under KRS 56.440 to 56.590. In addition to the terms and conditions of KRS 154.12-100, administration of the Economic Development Bond Program by the Secretary of the Cabinet for Economic Development is subject to the following guideline: project selection shall be documented when presented to the Secretary of the Finance and Administration Cabinet. Included in the documentation shall be the rationale for selection and expected economic development impact.

(2) **Use of New Economy Funds:** Notwithstanding KRS 154.12-100, 154.12-278(4) and (5), and 154.20.035, the Secretary of the Cabinet for Economic Development may use funds appropriated in the Economic Development Fund Program, High-Tech Construction/Investment Pool, and the Kentucky Economic Development Finance Authority Loan Pool interchangeably for economic development projects.

<b>Budget Unit</b>	<b>2020-21</b>	<b>2021-22</b>
<b>1. ECONOMIC DEVELOPMENT</b>		
<b>001. Economic Development Bond Programs - 2020-2022</b>		

Bond Funds	-0-	2,500,000
<b>002. High-Tech Construction/Investment Pool - 2020-2022</b>		
Bond Funds	-0-	2,500,000
<b>003. KY Economic Development Finance Authority Loan Pool - 2020-2022</b>		
Bond Funds	-0-	2,500,000

**C. DEPARTMENT OF EDUCATION**

<b>Budget Units</b>	<b>2020-21</b>	<b>2021-22</b>
<b>1. OPERATIONS AND SUPPORT SERVICES</b>		
<b>001. School Safety Facility Upgrades</b>		
Bond Funds	18,200,000	-0-
<b>002. State Schools HVAC Pool - 2020-2022</b>		
Bond Funds	5,000,000	5,000,000
<b>003. State Schools Roof Replacement Pool - 2020-2022</b>		
Bond Funds	3,272,000	-0-
<b>004. Maintenance Pool - 2020-2022</b>		
Investment Income	1,000,000	1,000,000

**D. EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

<b>Budget Units</b>	<b>2020-21</b>	<b>2021-22</b>
<b>1. GENERAL ADMINISTRATION AND PROGRAM SUPPORT</b>		
<b>001. Maintenance Pool - 2020-2022</b>		
Investment Income	600,000	600,000
<b>2. KENTUCKY EDUCATIONAL TELEVISION</b>		
<b>001. Maintenance Pool - 2020-2022</b>		
Investment Income	450,000	450,000
<b>3. LIBRARIES AND ARCHIVES</b>		
<b>a. General Operations</b>		
<b>001. Franklin County - Lease</b>		

**E. ENERGY AND ENVIRONMENT CABINET**

<b>Budget Units</b>	<b>2020-21</b>	<b>2021-22</b>
<b>1. SECRETARY</b>		
<b>001. Maintenance Pool – 2020-2022</b>		
Investment Income	300,000	300,000
<b>2. ENVIRONMENTAL PROTECTION</b>		
<b>001. State-Owned Dam Repair – 2020-2022</b>		
Bond Funds	7,000,000	-0-

**F. FINANCE AND ADMINISTRATION CABINET**

<b>Budget Units</b>	<b>2020-21</b>	<b>2021-22</b>
<b>1. FACILITIES AND SUPPORT SERVICES</b>		
<b>001. Capitol Campus Upgrade</b>		

Bond Funds	22,000,000	-0-
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**002. Maintenance Pool - 2020-2022**

Bond Funds	5,000,000	5,000,000
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**003. Air Handler Replacement and Repair - Central Lab Reauthorization and Reallocation (\$189,700 Bond Funds)**

Bond Funds	2,011,300	-0-
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(1) **Reauthorization and Reallocation:** The above project is authorized from a reallocation of the projects set forth in 2014 Ky. Acts ch. 117, Part II, F., 2., 002. and 2012 Ky. Acts ch. 144, Part II, F., 2., 002..

**004. Elevator Upgrades Phase 1**

Bond Funds	2,000,000	-0-
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**005. HVAC Replacement and Repair COT Building**

Investment Income	1,200,000	-0-
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**006. Guaranteed Energy Savings Performance Contracts****007. Fourth Floor Capitol Renovation**

Bond Funds	5,000,000	-0-
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(1) **Renovation Assessment:** The Finance and Administration Cabinet shall assess a fee in an amount equal to the debt service to be paid by the Legislative Research Commission.

**2. COMMONWEALTH OFFICE OF TECHNOLOGY**

(1) **Transfer of Restricted Funds from Operating Budget:** For the major equipment purchases displayed in this section funded from Restricted Funds, it is anticipated that these funds shall be transferred from the Operating Budget as funds are available and needed.

**001. Enterprise Infrastructure 2020-2022**

Restricted Funds	4,000,000	4,000,000
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**002. Boone County - Lease****3. KENTUCKY LOTTERY CORPORATION****001. Data Processing, Telecommunications, and Related Equipment**

Other Funds	500,000	-0-
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**G. HEALTH AND FAMILY SERVICES CABINET**

Budget Units	2020-21	2021-22
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**1. GENERAL ADMINISTRATION AND PROGRAM SUPPORT****001. Maintenance Pool - 2020-2022**

Bond Funds	5,000,000	5,000,000
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**002. KASPER**

Federal Funds	1,820,000	-0-
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Investment Income	180,000	-0-
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TOTAL	2,000,000	-0-
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**2. OFFICE FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS****001. Jefferson County - Lease****3. BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES****001. Oakwood Renovate/Replace Cottages - Phase II**

	Bond Funds	8,000,000	-0-
	<b>002.</b> Western State Hospital-Electrical Upgrade - Phase III		
	Bond Funds	3,493,000	-0-
	<b>003.</b> Oakwood Replace, Upgrade, and Enhance Generators		
	Bond Funds	1,825,000	-0-
<b>4.</b>	<b>PUBLIC HEALTH</b>		
	<b>001.</b> WIC Modernization		
	Federal Funds	10,756,000	-0-
<b>5.</b>	<b>INCOME SUPPORT</b>		
	<b>001.</b> Franklin County - Lease		
<b>6.</b>	<b>COMMUNITY BASED SERVICES</b>		
	<b>001.</b> Boone County - Lease		
	<b>002.</b> Boyd County - Lease		
	<b>003.</b> Campbell County - Lease		
	<b>004.</b> Daviess County - Lease		
	<b>005.</b> Greenup County - Lease		
	<b>006.</b> Fayette County - Lease		
	<b>007.</b> Franklin County - Lease		
	<b>008.</b> Hardin County - Lease		
	<b>009.</b> Johnson County - Lease		
	<b>010.</b> Kenton County - Lease		
	<b>011.</b> Madison County - Lease		
	<b>012.</b> Shelby County - Lease		
	<b>013.</b> Warren County - Lease		
	<b>014.</b> Perry County - Lease		
	<b>015.</b> Muhlenberg County - Lease		

#### H. JUSTICE AND PUBLIC SAFETY CABINET

Budget Units	2020-21	2021-22
<b>1. JUSTICE ADMINISTRATION</b>		
<b>001.</b> Franklin County - Lease		
<b>2. CRIMINAL JUSTICE TRAINING</b>		
<b>001.</b> Maintenance Pool - 2020-2022		
Restricted Funds	1,500,000	1,500,000
<b>3. JUVENILE JUSTICE</b>		
<b>001.</b> Maintenance Pool - 2020-2022		
Investment Income	1,500,000	1,500,000
<b>002.</b> Franklin County - Lease		
<b>4. STATE POLICE</b>		
<b>001.</b> Emergency Radio System Replacement, Phase II		



Bond Funds	52,450,000	-0-
<b>002. Maintenance Pool - 2020-2022</b>		
Investment Income	1,000,000	1,000,000
<b>003. Two Mass Spectrometry Instruments</b>		
General Fund	700,000	-0-
<b>004. Genetic Analyzer</b>		
General Fund	-0-	230,000
<b>005. Trace Analysis Equipment</b>		
General Fund	-0-	440,000
<b>5. CORRECTIONS</b>		
<b>a. Adult Correctional Institutions</b>		
<b>001. Maintenance Pool - 2020-2022</b>		
Bond Funds	5,000,000	5,000,000
<b>002. Design of the Expansion of Little Sandy Correctional Complex</b>		
Bond Funds	8,000,000	-0-
<b>003. Repair/Replace Roofs - Eastern Kentucky Correctional Complex</b>		
Bond Funds	6,531,000	-0-
<b>004. Install Emergency Generators - Luther Luckett and Green River</b>		
Bond Funds	5,700,000	-0-
<b>005. Design Relocation of Corrections Medical Facility Reauthorization and Reallocation (\$7,000,000 Bond Funds)</b>		
Bond Funds	3,100,000	-0-
<b>(1) Reauthorization and Reallocation:</b> The above project is authorized from a reallocation of the projects set forth in 2018 Ky. Acts ch. 169, Part II, H., 4., 002. and 003..		
<b>006. Kentucky Correctional Psychiatric Center - Maintenance and Repair Pool</b>		
Investment Income	-0-	3,000,000
<b>007. Floyd County - Lease</b>		
<b>b. Community Services and Local Facilities</b>		
<b>001. Fayette County - Lease</b>		
<b>002. Campbell County - Lease</b>		
<b>003. Jefferson County - Lease</b>		
<b>6. PUBLIC ADVOCACY</b>		
<b>001. Franklin County - Lease</b>		
<b>002. Fayette County - Lease</b>		

**I. LABOR CABINET**

Budget Units	2020-21	2021-22
<b>1. EMPLOYMENT SERVICES</b>		
<b>001. Replace Unemployment Insurance System – Additional Reauthorization (\$10,440,000 Restricted Funds) and Reauthorization and Reallocation (Bond Funds \$10,000,000)</b>		
General Fund	-0-	7,500,000

Restricted Funds	19,560,000	-0-
TOTAL	19,560,000	7,500,000

**(1) Reauthorization and Reallocation:** The above bond funds are authorized from a reauthorization and reallocation of the project set forth in 2018 Ky. Acts ch. 169, Part II, F., 2., 001..

**002.** Hardin County – Lease

**003.** Kenton County – Lease

#### J. POSTSECONDARY EDUCATION

Budget Units	2019-20	2020-21	2021-22
<b>1. COUNCIL ON POSTSECONDARY EDUCATION</b>			
<b>001.</b> Franklin County - Lease			
<b>2. KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION</b>			
<b>001.</b> Jefferson County – Lease			
<b>3. EASTERN KENTUCKY UNIVERSITY</b>			
<b>001.</b> Replace and Renovate Student Housing			
Other Funds	-0-	50,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>002.</b> Demolish Building Pool			
Restricted Funds	-0-	20,000,000	-0-
Other Funds	-0-	20,000,000	-0-
TOTAL	-0-	40,000,000	-0-
<b>003.</b> Upgrade/Approve Athletics Facilities/Fields Pool			
Agency Bonds	-0-	25,000,000	-0-
Other Funds	-0-	12,000,000	-0-
TOTAL	-0-	37,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>004.</b> Campus Infrastructure Upgrade			
Other Funds	-0-	35,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>005.</b> Miscellaneous Maintenance Pool - 2020-2022			
Restricted Funds	-0-	20,000,000	-0-
<b>006.</b> Repair/Replace Infrastructure/Building System Pool			
Restricted Funds	-0-	20,000,000	-0-
<b>007.</b> Construct Regional Health Facility			
Federal Funds	-0-	15,000,000	-0-
<b>008.</b> Campus Data Network Pool			
Restricted Funds	-0-	13,000,000	-0-
<b>009.</b> Construct Alumni and Welcome Center			
Other Funds	-0-	13,000,000	-0-
<b>010.</b> Innovation and Commercialization Pool			

Other Funds	-0-	10,000,000	-0-
<b>011. Renovate Mechanical Systems Pool</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>012. Steam Line Upgrades</b>			
Other Funds	-0-	10,000,000	-0-
<b>(1) Authorization:</b>	The above authorization is approved pursuant to KRS 45.763.		
<b>013. Upgrade and Improve Residence Halls</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>014. Academic Computing Pool</b>			
Restricted Funds	-0-	8,000,000	-0-
<b>015. Scientific and Research Equipment Pool</b>			
Restricted Funds	-0-	3,000,000	-0-
Federal Funds	-0-	2,200,000	-0-
Other Funds	-0-	2,200,000	-0-
TOTAL	-0-	7,400,000	-0-
<b>016. Administrative Computing Pool</b>			
Restricted Funds	-0-	6,500,000	-0-
<b>017. Commonwealth Hall Partial Repurposing and Renovation</b>			
Restricted Funds	-0-	6,000,000	-0-
<b>018. Property Acquisitions Pools</b>			
Restricted Funds	-0-	3,000,000	-0-
Other Funds	-0-	3,000,000	-0-
TOTAL	-0-	6,000,000	-0-
<b>(1) Authorization:</b>	The above authorization is approved pursuant to KRS 45.763.		
<b>019. Aviation Acquisition Pool</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>020. Construct Student Health Center</b>			
Other Funds	-0-	2,705,000	-0-
<b>021. University Services Space</b>			
Restricted Funds	-0-	2,000,000	-0-
Other Funds	-0-	500,000	-0-
TOTAL	-0-	2,500,000	-0-
<b>022. Chemistry and Translational Research Pool</b>			
Restricted Funds	-0-	675,000	-0-
Other Funds	-0-	350,000	-0-
TOTAL	-0-	1,025,000	-0-
<b>023. Natural Areas Improvement Pool</b>			
Restricted Funds	-0-	825,000	-0-

**024.** Improve Campus Pedestrian, Parking and Transport Reauthorization (\$15,000,000 Agency Bonds, \$12,000,000 Restricted Funds, \$3,000,000 Other Funds)

**025.** Guaranteed Energy Savings Performance Contracts

**026.** Aviation - Lease

**027.** New Housing Space - Lease

**028.** Madison County - Student Housing - Lease

**029.** Madison County - Land - Lease

**030.** Multi-Property-Multi-Use - Lease 1

**031.** Multi-Property-Multi-Use - Lease 2

**032.** Construct Aviation/Aerospace Instructional Facility

Bond Funds	-0-	3,016,000	-0-
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**033.** Purchase Aviation Maintenance Technician/Pilot Training Equipment

Bond Funds	-0-	5,000,000	-0-
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**034.** Residence Hall Renovation Pool

Agency Bonds	-0-	24,800,000	-0-
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**4. KENTUCKY STATE UNIVERSITY**

**001.** Construct New Residence Hall

Other Funds	-0-	55,562,000	-0-
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**(1) Authorization:** The above authorization is approved pursuant to KRS 45.763.

**002.** Roof Repair and Replacement Pool

Bond Funds	-0-	-0-	5,000,000
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**003.** Acquire Land/Master Plan - 2020-2022

Restricted Funds	-0-	1,044,000	-0-
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Federal Funds	-0-	1,044,000	-0-
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TOTAL	-0-	2,088,000	-0-
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**004.** Guaranteed Energy Savings Performance Contracts

**5. MOREHEAD STATE UNIVERSITY**

**001.** Construct New Residence Hall

Agency Bonds	-0-	37,956,000	-0-
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**002.** Capital Renewal and Maintenance Pool - Auxiliary

Agency Bonds	-0-	4,539,000	-0-
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**003.** Renovate Alumni Tower Ground Floor

Agency Bonds	-0-	3,812,000	-0-
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**004.** Replace Exterior Precast Panels - Nunn Hall

Agency Bonds	-0-	3,148,000	-0-
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**005.** Construct New Volleyball Facility - Phase 2

Agency Bonds	-0-	2,380,000	-0-
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**006.** Comply with ADA - Auxiliary

Agency Bonds	-0-	2,034,000	-0-
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**007.** Replace Turf on Jacobs Field

Agency Bonds	-0-	1,102,000	-0-
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**008.** Guaranteed Energy Savings Performance Contracts**009.** Renovate Cartmell Residence Hall Reauthorization (\$15,200,000 Agency Bonds)**6. MURRAY STATE UNIVERSITY****001.** Construct Residential Housing

Other Funds	-0-	66,000,000	-0-
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**(1) Authorization:** The above authorization is approved pursuant to KRS 45.763.**002.** Renovate/Replace Residence Hall

Agency Bonds	-0-	16,740,000	-0-
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**(1) Authorization:** In lieu of agency bonds, Murray State University is authorized to enter into a public-private partnership, built-to-suit, or lease-purchase for the above projects, not to exceed the above authorized amount. This authorization includes the authorization under KRS 45.763 and 45A.077.**003.** Construct/Renovate Alternate Dining Facility

Other Funds	-0-	12,000,000	-0-
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**(1) Authorization:** The above authorization is approved pursuant to KRS 45.763.**004.** Renovate Winslow Cafeteria

Restricted Funds	-0-	4,673,000	-0-
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**005.** Renovate Residence Hall Electrical System

Agency Bonds	-0-	4,180,000	-0-
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**(1) Authorization:** In lieu of agency bonds, Murray State University is authorized to enter into a public-private partnership, built-to-suit, or lease-purchase for the above projects, not to exceed the above authorized amount. This authorization includes the authorization under KRS 45.763 and 45A.077.**006.** Acquire Property

Restricted Funds	-0-	4,000,000	-0-
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**007.** Repairs of Biology Building

Restricted Funds	4,000,000	-0-	-0-
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**008.** Renovate Residence Hall HVAC System

Agency Bonds	-0-	3,503,000	-0-
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**(1) Authorization:** In lieu of agency bonds, Murray State University is authorized to enter into a public-private partnership, built-to-suit, or lease-purchase for the above projects, not to exceed the above authorized amount. This authorization includes the authorization under KRS 45.763 and 45A.077.**009.** Replace CFSB Center Seating

Restricted Funds	-0-	3,500,000	-0-
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**010.** Renovate Residence Hall Interior

Agency Bonds	-0-	1,601,000	-0-
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**(1) Authorization:** In lieu of agency bonds, Murray State University is authorized to enter into a public-private partnership, built-to-suit, or lease-purchase for the above projects, not to exceed the above authorized amount. This authorization includes the authorization under KRS 45.763 and 45A.077.**011.** Install CFSB Center Generator

Restricted Funds	-0-	1,541,000	-0-
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**012.** Acquire Agriculture Research Farm Land

Restricted Funds	-0-	1,200,000	-0-
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**013. Replace Residence Hall Domestic Water Piping**

Agency Bonds	-0-	1,143,000	-0-
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**(1) Authorization:** In lieu of agency bonds, Murray State University is authorized to enter into a public-private partnership, built-to-suit, or lease-purchase for the above projects, not to exceed the above authorized amount. This authorization includes the authorization under KRS 45.763 and 45A.077.

**014. Agriculture Instructional Laboratory and Technology Equipment**

Other Funds	-0-	800,000	-0-
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**015. Broadcasting Education Laboratory Equipment**

Other Funds	-0-	225,000	-0-
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**016. Guaranteed Energy Savings Performance Contracts****017. Renovate Residence Hall or Replace - LTF**

Other Funds	-0-	16,740,000	-0-
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**018. Renovate Residence Hall Electrical System - LTF**

Other Funds	-0-	4,180,000	-0-
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**019. Renovate Residence Hall HVAC System - LTF**

Other Funds	-0-	3,503,000	-0-
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**020. Renovate Residence Hall Interior - LTF**

Other Funds	-0-	1,601,000	-0-
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**021. Replace Campus Communications Infrastructure (Fiber Ring)**

Restricted Funds	-0-	4,640,000	-0-
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**022. Historic Building Preservation Pool**

Agency Bonds	-0-	-0-	12,200,000
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**7. NORTHERN KENTUCKY UNIVERSITY****001. Renew/Renovate Fine Arts Center Phase II**

Restricted Funds	-0-	45,000,000	-0-
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Other Funds	-0-	5,000,000	-0-
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TOTAL	-0-	50,000,000	-0-
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**002. Renovate/Expand Civic Center Building**

Other Funds	-0-	8,000,000	-0-
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**003. Renovate/Expand Business Academic Building**

Restricted Funds	-0-	33,000,000	-0-
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Other Funds	-0-	8,000,000	-0-
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TOTAL	-0-	41,000,000	-0-
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**004. Replace Event Center Technology**

Other Funds	-0-	4,000,000	-0-
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**(1) Authorization:** The above authorization is approved pursuant to KRS 45.763.

**005. Renew/Renovate Nunn Hall**

Restricted Funds	-0-	25,000,000	-0-
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Other Funds	-0-	5,000,000	-0-
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TOTAL	-0-	30,000,000	-0-
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**006. Expand/Renovate Soccer Stadium**

Other Funds	-0-	3,500,000	-0-
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**007. Acquire Land/Master Plan 2010-2012 Reauthorization (\$17,500,000 Agency Bonds, \$4,000,000 Restricted Funds, \$4,000,000 Other Funds)**

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**008. Replace Underground Utility Infrastructure**

Restricted Funds	-0-	6,700,000	-0-
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**009. Renew/Renovate Steely Library**

Restricted Funds	-0-	41,000,000	-0-
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**010. Renovate Brown Building**

Other Funds	-0-	3,000,000	-0-
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**011. Renew E&G Building Systems Projects Pool**

Restricted Funds	-0-	20,000,000	-0-
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**012. Construct Research/Innovation Building Reauthorization (\$30,000,000 Other Funds)**

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**013. Construct/Acquire New Residence Hall Reauthorization (\$4,571,000 Agency Bonds)****014. Reconstruct West Side Parking Reauthorization (\$6,529,000 Agency Bonds)****015. Renovate/Construct Campbell Hall**

Restricted Funds	-0-	9,000,000	-0-
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Other Funds	-0-	9,000,000	-0-
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TOTAL	-0-	18,000,000	-0-
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(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**016. Academic Space - Lease****017. Office Space - Lease****018. Guaranteed Energy Savings Performance Contracts****019. Renovate Residence Halls**

Agency Bonds	-0-	10,000,000	-0-
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**020. Renovate/Expand Baseball Field Additional Reauthorization**

Other Funds	-0-	6,700,000	-0-
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**021. Upgrade Admin/IT Infrastructure Pool**

Restricted Funds	-0-	15,500,000	-0-
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Other Funds	-0-	6,000,000	-0-
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TOTAL	-0-	21,500,000	-0-
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(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**022. KERS Cessation**

Agency Bonds	-0-	320,000,000	-0-
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(1) **Authorization:** The Kentucky Asset/Liability Commission is authorized to issue notes to finance the above authorization. Notwithstanding KRS 56.8605(9) and (14), funding notes or project notes issued pursuant to the

above authorization may have a final maturity of up to 30 years. The provisions of KRS 164A.608 shall apply to any debt issuance made by the Kentucky Asset/Liability Commission pursuant to the above authorization.

**023. Enhance Student Union**

Restricted Funds	1,500,000	-0-	-0-
Other Funds	3,000,000	-0-	-0-
TOTAL	4,500,000	-0-	-0-

**8. UNIVERSITY OF KENTUCKY**

**001. Replace UK HealthCare IT Systems 1**

Restricted Funds	-0-	320,000,000	-0-
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**002. Improve UK HealthCare Facilities - UK Chandler Hospital**

Restricted Funds	-0-	310,000,000	-0-
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**003. Construct Library/Knowledge Center**

Restricted Funds	-0-	237,000,000	-0-
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**004. Improve Funkhouser Building**

Restricted Funds	-0-	92,000,000	-0-
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**005. Construct College of Medicine Building**

Restricted Funds	-0-	200,000,000	-0-
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**006. Construct Student Housing**

Restricted Funds	-0-	50,000,000	-0-
Other Funds	-0-	100,000,000	-0-
TOTAL	-0-	150,000,000	-0-

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**007. Improve Campus Parking and Transportation System**

Restricted Funds	-0-	150,000,000	-0-
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(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**008. Improve Parking/Transportation Systems UK HealthCare**

Restricted Funds	-0-	75,000,000	-0-
Other Funds	-0-	75,000,000	-0-
TOTAL	-0-	150,000,000	-0-

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**009. Construct Digital Village Building 3**

Restricted Funds	-0-	70,000,000	-0-
Other Funds	-0-	70,000,000	-0-
TOTAL	-0-	140,000,000	-0-

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**010. Facilities Renewal and Modernization**

Agency Bonds	-0-	125,000,000	-0-
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**011. Acquire/Renovate Housing**

Agency Bonds	-0-	40,000,000	-0-
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Other Funds	-0-	35,000,000	-0-
TOTAL	-0-	75,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>012. Construct Retail/Parking Facility 1</b>			
Other Funds	-0-	75,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>013. Construct Retail/Parking Facility 2</b>			
Other Funds	-0-	75,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>014. Improve Center for Applied Energy Research Facilities</b>			
Restricted Funds	-0-	75,000,000	-0-
<b>015. Improve Multi-Disciplinary Science Building</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>016. Construct/Improve Greek Housing</b>			
Restricted Funds	-0-	36,000,000	-0-
Other Funds	-0-	36,000,000	-0-
TOTAL	-0-	72,000,000	-0-
<b>017. Renovate/Improve King Library</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>018. Construct Office Park at Coldstream</b>			
Other Funds	-0-	65,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>019. Improve Memorial Coliseum</b>			
Other Funds	-0-	65,000,000	-0-
<b>020. Implement Land Use Plan - UK HealthCare</b>			
Restricted Funds	-0-	60,000,000	-0-
<b>021. Acquire Land</b>			
Restricted Funds	-0-	50,000,000	-0-
<b>022. Repair/Upgrade/Expand Central Plants</b>			
Restricted Funds	-0-	112,000,000	-0-
<b>023. Acquire Medical Facility 1</b>			
Restricted Funds	-0-	50,000,000	-0-
<b>024. Improve Whalen Building &amp; Bay Facility</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>025. Acquire Medical Facility 2</b>			
Restricted Funds	-0-	50,000,000	-0-
<b>026. Acquire/Renovate Clinical Research Facility</b>			
Restricted Funds	-0-	8,000,000	-0-
<b>027. Acquire/Improve Clinical Administrative Facility 1</b>			

Restricted Funds	-0-	50,000,000	-0-
<b>028.</b> Construct Ambulatory Facility - UK HealthCare			
Restricted Funds	-0-	50,000,000	-0-
<b>029.</b> Improve McVey Hall			
Restricted Funds	-0-	35,000,000	-0-
<b>030.</b> Construct Clinical/Administrative Facility 1			
Restricted Funds	-0-	50,000,000	-0-
<b>031.</b> Improve Building Systems - UK HealthCare			
Restricted Funds	-0-	50,000,000	-0-
<b>032.</b> Improve Campus Core Quadrangle Facilities			
Restricted Funds	-0-	65,000,000	-0-
<b>033.</b> Improve Clinical/Ambulatory Services Facilities UK HealthCare			
Restricted Funds	-0-	50,000,000	-0-
<b>034.</b> Improve Reynolds Building 1			
Restricted Funds	-0-	35,000,000	-0-
<b>035.</b> Improve Coldstream Research Campus			
Restricted Funds	-0-	50,000,000	-0-
<b>036.</b> Improve Scovell Hall			
Restricted Funds	-0-	45,000,000	-0-
<b>037.</b> Improve Pence Hall			
Restricted Funds	-0-	20,000,000	-0-
<b>038.</b> Upgrade/Renovate/Expand Research Labs			
Restricted Funds	-0-	50,000,000	-0-
<b>039.</b> Expand/Improve Kastle Hall			
Restricted Funds	-0-	43,000,000	-0-
<b>040.</b> Expand/Improve Barnhart Building			
Other Funds	-0-	40,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>041.</b> Improve Memorial Hall			
Restricted Funds	-0-	13,000,000	-0-
<b>042.</b> Purchase/Construct CO2 Capture Process Plant			
Federal Funds	-0-	40,000,000	-0-
<b>043.</b> Construct New Alumni Center			
Other Funds	-0-	38,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>044.</b> Improve Chemistry/Physics Building Phase 3			
Restricted Funds	-0-	65,000,000	-0-
<b>045.</b> Construct Tennis Facility			
Restricted Funds	-0-	17,500,000	-0-

Other Funds	-0-	17,500,000	-0-
TOTAL	-0-	35,000,000	-0-

**(1) Authorization:** The above authorization is approved pursuant to KRS 45.763.

**046. Improve Jacobs Science Building**

Restricted Funds	-0-	32,000,000	-0-
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**047. Construct Clinical/Administrative Facility 2**

Restricted Funds	-0-	30,000,000	-0-
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**048. Construct/Improve Parking I**

Restricted Funds	-0-	30,000,000	-0-
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**049. Improve Barnhart Building**

Restricted Funds	-0-	40,000,000	-0-
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**050. Construct/Improve Parking II**

Restricted Funds	-0-	30,000,000	-0-
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**051. Decommission Facilities**

Restricted Funds	-0-	30,000,000	-0-
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**052. Improve Parking Garage 1**

Restricted Funds	-0-	30,000,000	-0-
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**053. Improve Parking Garage 2**

Restricted Funds	-0-	30,000,000	-0-
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**054. Improve Sanders-Brown Building**

Restricted Funds	-0-	35,000,000	-0-
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**055. Research Equipment Replacement**

Restricted Funds	-0-	30,000,000	-0-
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**056. Construct Teaching Pavilion**

Restricted Funds	-0-	28,000,000	-0-
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**057. Acquire/Improve Clinical/Administrative Facility 2**

Restricted Funds	-0-	25,000,000	-0-
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**058. Improve Dentistry Facility**

Restricted Funds	-0-	25,000,000	-0-
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**059. Improve Good Samaritan Hospital Facilities UK HealthCare**

Restricted Funds	-0-	25,000,000	-0-
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**060. Improve Taylor Education Building**

Restricted Funds	-0-	40,000,000	-0-
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**061. Improve Medical Facility 1**

Restricted Funds	-0-	25,000,000	-0-
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**062. Improve Dickey Hall**

Restricted Funds	-0-	20,000,000	-0-
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**063. Improve Medical Facility 2**

Restricted Funds	-0-	25,000,000	-0-
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**064.** Improve Anderson Tower

Restricted Funds	-0-	6,000,000	-0-
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**065.** Renovate/Upgrade UK HealthCare Facilities - Additional Reauthorization (\$75,000,000 Agency Bonds)

Agency Bonds	-0-	25,000,000	-0-
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**066.** Repair Emergency Infrastructure/Building Systems

Restricted Funds	-0-	25,000,000	-0-
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**067.** Construct Agriculture Research Facility 1

Restricted Funds	-0-	20,000,000	-0-
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**068.** Construct Library Depository Facility

Restricted Funds	-0-	20,000,000	-0-
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**069.** Construct Indoor Track

Other Funds	-0-	20,000,000	-0-
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**(1) Authorization:** The above authorization is approved pursuant to KRS 45.763.**070.** Improve W.T. Young Facility

Restricted Funds	-0-	5,000,000	-0-
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**071.** Construct Research/Incubator Facility

Other Funds	-0-	20,000,000	-0-
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**(1) Authorization:** The above authorization is approved pursuant to KRS 45.763.**072.** Renovate/Improve Nursing Building

Restricted Funds	-0-	2,000,000	-0-
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**073.** Construct/Expand/Renovate Ambulatory Care - UK HealthCare

Restricted Funds	-0-	20,000,000	-0-
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**074.** Renovate/Improve Frazee Hall

Restricted Funds	-0-	11,000,000	-0-
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**075.** Expand/Improve Johnson Center

Restricted Funds	-0-	30,000,000	-0-
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**076.** Improve Markey Cancer Center - UK HealthCare

Restricted Funds	-0-	20,000,000	-0-
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**077.** Improve Library Facility

Restricted Funds	-0-	20,000,000	-0-
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**078.** Improve Student Center Space 2

Restricted Funds	-0-	20,000,000	-0-
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**079.** Upgrade Dining Facilities

Restricted Funds	-0-	10,000,000	-0-
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Other Funds	-0-	10,000,000	-0-
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TOTAL	-0-	20,000,000	-0-
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**(1) Authorization:** The above authorization is approved pursuant to KRS 45.763.**080.** Acquire Data Center Hardware - UK HealthCare

Restricted Funds	-0-	15,000,000	-0-
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<b>081.</b> Expand/Improve Willard Medical Education Building			
Restricted Funds	-0-	20,000,000	-0-
<b>082.</b> Acquire/Improve Elevator System - UK HealthCare			
Restricted Funds	-0-	15,000,000	-0-
<b>083.</b> Construct Engineering Center Building			
Restricted Funds	-0-	110,000,000	-0-
<b>084.</b> Construct/Improve Clinical/Administrative Facilities - UK HealthCare			
Restricted Funds	-0-	15,000,000	-0-
<b>085.</b> Construct/Improve Recreation Quad 1			
Restricted Funds	-0-	15,000,000	-0-
<b>086.</b> Improve Life Safety			
Restricted Funds	-0-	15,000,000	-0-
<b>087.</b> Construct/Fit-Up Retail Space			
Restricted Funds	-0-	10,000,000	-0-
Other Funds	-0-	5,000,000	-0-
TOTAL	-0-	15,000,000	-0-
<b>088.</b> Renovate/Improve Mineral Industries Building			
Restricted Funds	-0-	6,000,000	-0-
<b>089.</b> Improve Lancaster Aquatic Center 1			
Other Funds	-0-	12,000,000	-0-
<b>090.</b> Improve Medical Center Library			
Restricted Funds	-0-	12,000,000	-0-
<b>091.</b> Improve University Storage Facility			
Restricted Funds	-0-	12,000,000	-0-
<b>092.</b> Construct Equine Campus, Phase 2			
Restricted Funds	-0-	11,000,000	-0-
<b>093.</b> Improve Peterson Service Building			
Restricted Funds	-0-	14,000,000	-0-
<b>094.</b> Acquire Telemedicine/Virtual ICU - UK HealthCare			
Restricted Funds	-0-	10,000,000	-0-
<b>095.</b> Acquire/Renovate Administrative Facility			
Restricted Funds	-0-	10,000,000	-0-
<b>096.</b> Acquire/Upgrade IT System - UK HealthCare			
Restricted Funds	-0-	10,000,000	-0-
<b>097.</b> Construct Agriculture Research Facility 2			
Restricted Funds	-0-	10,000,000	-0-
<b>098.</b> Construct Metal Arts/Digital Media Building			
Restricted Funds	-0-	10,000,000	-0-
<b>099.</b> Construct/Renovate Gymnastic Practice Facility			

Other Funds	-0-	10,000,000	-0-
<b>100. Implement Patient Communication System - UK HealthCare</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>101. Improve Moloney Building</b>			
Restricted Funds	-0-	17,000,000	-0-
<b>102. Improve Athletics Facility 1</b>			
Other Funds	-0-	10,000,000	-0-
<b>103. Improve Athletics Facility 2</b>			
Other Funds	-0-	10,000,000	-0-
<b>104. Improve Spindletop Hall Facilities</b>			
Restricted Funds	-0-	15,000,000	-0-
<b>105. Expand/Renovate/Improve Sturgill Development Building</b>			
Restricted Funds	-0-	4,000,000	-0-
<b>106. Improve DLAR Facilities</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>107. Construct/Improve Office Building</b>			
Restricted Funds	-0-	55,000,000	-0-
<b>108. Improve Wildcat Coal Lodge</b>			
Other Funds	-0-	10,000,000	-0-
<b>109. Construct Facilities Shops &amp; Storage Facility</b>			
Restricted Funds	-0-	27,000,000	-0-
<b>110. Lease-Purchase Campus Infrastructure</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>111. Improve Academic Facility 1</b>			
Restricted Funds	-0-	16,000,000	-0-
<b>112. Lease-Purchase Campus IT Systems</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>113. Expand/Renovate/Improve LTS Facility</b>			
Restricted Funds	-0-	20,000,000	-0-
<b>114. Improve Lancaster Aquatic Center 2</b>			
Other Funds	-0-	8,000,000	-0-
<b>115. Construct Childcare Center Facility</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>116. Improve Kroger Field Stadium</b>			
Other Funds	-0-	7,000,000	-0-
<b>117. Improve Carnahan House</b>			
Restricted Funds	-0-	8,000,000	-0-
<b>118. Lease - Purchase High Performance Computer</b>			
Restricted Funds	-0-	7,000,000	-0-

<b>119.</b> Renovate/Improve Nursing Units - UK HealthCare			
Restricted Funds	-0-	7,000,000	-0-
<b>120.</b> Acquire/Improve Golf Facility			
Other Funds	-0-	6,000,000	-0-
<b>121.</b> Expand Kentucky Geological Survey Well Sample and Core Repository			
Restricted Funds	-0-	6,000,000	-0-
<b>122.</b> Improve Academic/Administrative Space 1			
Restricted Funds	-0-	10,000,000	-0-
<b>123.</b> Improve Athletics Facility 3			
Other Funds	-0-	6,000,000	-0-
<b>124.</b> Improve Academic/Administrative Space 2			
Restricted Funds	-0-	10,000,000	-0-
<b>125.</b> Improve Seaton Center			
Restricted Funds	-0-	6,000,000	-0-
<b>126.</b> Acquire Equipment/Furnishings Pool			
Other Funds	-0-	5,000,000	-0-
<b>127.</b> Improve Academic/Administrative Space 3			
Restricted Funds	-0-	10,000,000	-0-
<b>128.</b> ADA Compliance Pool			
Restricted Funds	-0-	5,000,000	-0-
<b>129.</b> Improve Academic/Administrative Space 4			
Restricted Funds	-0-	10,000,000	-0-
<b>130.</b> Construct Hospice Facility - UK HealthCare			
Restricted Funds	-0-	5,000,000	-0-
<b>131.</b> Construct/Improve Athletics Facility			
Other Funds	-0-	5,000,000	-0-
<b>132.</b> Construct/Improve Campus Recreation Field 1			
Restricted Funds	-0-	5,000,000	-0-
<b>133.</b> Improve Student Center Space 3			
Restricted Funds	-0-	25,000,000	-0-
<b>134.</b> Construct/Improve Campus Recreation Field 2			
Restricted Funds	-0-	5,000,000	-0-
<b>135.</b> Construct/Improve Campus Recreation Field 3			
Restricted Funds	-0-	5,000,000	-0-
<b>136.</b> Improve Patterson Hall			
Restricted Funds	-0-	12,000,000	-0-
<b>137.</b> Improve Athletics Facility 4			
Other Funds	-0-	5,000,000	-0-
<b>138.</b> Improve Athletics Facility 5			

Other Funds	-0-	5,000,000	-0-
<b>139. Improve Baseball Facility Phase II</b>			
Other Funds	-0-	5,000,000	-0-
<b>140. Improve Campus Infrastructure</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>141. Improve Enterprise Networking 1</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>142. Improve Civil/Site Infrastructure</b>			
Restricted Funds	-0-	50,000,000	-0-
<b>143. Improve Enterprise Networking 2</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>144. Improve Electrical Infrastructure</b>			
Restricted Funds	-0-	28,000,000	-0-
<b>145. Improve Joe Craft Center</b>			
Other Funds	-0-	5,000,000	-0-
<b>146. Improve Mechanical Infrastructure</b>			
Restricted Funds	-0-	26,000,000	-0-
<b>147. Improve Medical Plaza</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>148. Improve Building Mechanical Systems</b>			
Restricted Funds	-0-	35,000,000	-0-
<b>149. Improve Nutter Training Facility</b>			
Other Funds	-0-	5,000,000	-0-
<b>150. Improve Soccer/Softball Facility</b>			
Other Funds	-0-	5,000,000	-0-
<b>151. Improve Building Electrical Systems</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>152. Lease - Purchase Campus Call Center System</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>153. Acquire/Improve Elevator Systems</b>			
Restricted Funds	-0-	10,000,000	-0-
<b>154. Lease - Purchase Network Security</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>155. Improve Building Shell Systems</b>			
Restricted Funds	-0-	40,000,000	-0-
<b>156. Renovate Space for a Testing Center</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>157. Expand/Improve Cooper House</b>			
Restricted Funds	-0-	4,000,000	-0-



<b>158.</b> Improve Fume Hood Systems			
Restricted Funds	-0-	10,000,000	-0-
<b>159.</b> Repair/Replace Campus Cable Infrastructure			
Restricted Funds	-0-	4,000,000	-0-
<b>160.</b> Acquire Transportation Buses Pool			
Restricted Funds	-0-	3,000,000	-0-
<b>161.</b> Construct Cross Country Trail			
Other Funds	-0-	3,000,000	-0-
<b>162.</b> Construct/Improve Athletics Playing Fields 1			
Other Funds	-0-	3,000,000	-0-
<b>163.</b> Construct/Improve Athletics Playing Fields 2			
Other Funds	-0-	3,000,000	-0-
<b>164.</b> Construct/Relocate Data Center			
Restricted Funds	-0-	50,000,000	-0-
<b>165.</b> Lease - Purchase Voice Infrastructure			
Restricted Funds	-0-	3,000,000	-0-
<b>166.</b> Relocate/Replace Greenhouses			
Restricted Funds	-0-	3,000,000	-0-
<b>167.</b> Acquire Information Technology Systems			
Other Funds	-0-	2,000,000	-0-
<b>168.</b> Construct North Farm Agriculture Research Facility			
Restricted Funds	-0-	2,000,000	-0-
<b>169.</b> Improve Joe Craft Football Practice Facility			
Other Funds	-0-	2,000,000	-0-
<b>170.</b> Improve Nutter Field House			
Other Funds	-0-	2,000,000	-0-
<b>171.</b> Improve Senior Center			
Restricted Funds	-0-	2,000,000	-0-
<b>172.</b> Construct Data Center - UKHC			
Restricted Funds	-0-	45,000,000	-0-
<b>173.</b> Improve Sanders-Brown Center on Aging/Neuroscience Facilities			
Completion			
Bond Funds	-0-	14,000,000	-0-
Other Funds	-0-	14,000,000	-0-
TOTAL	-0-	28,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>174.</b> Construct Police Headquarters			
Restricted Funds	-0-	27,000,000	-0-
<b>175.</b> Construct Indoor Track			

Restricted Funds	-0-	20,000,000	-0-
<b>176.</b> Upgrade/Expand Campus Security Platform			
Restricted Funds	-0-	10,000,000	-0-
<b>177.</b> Construct Beam Institute 1			
Restricted Funds	-0-	10,000,000	-0-
<b>178.</b> Construct Beam Institute 2			
Restricted Funds	-0-	10,000,000	-0-
<b>179.</b> Construct/Fit-Up Retail Space			
Other Funds	-0-	5,000,000	-0-
<b>180.</b> Construct Housing Reauthorization (\$50,000,000 Agency Bonds)			
<b>181.</b> Renovate/Modernize Facilities Reauthorization (\$63,000,000 Agency Bonds)			
<b>182.</b> Renovate/Improve Housing Reauthorization (\$50,000,000 Agency Bonds)			
<b>183.</b> Lease - College of Medicine 1			
<b>184.</b> Lease - College of Medicine 2			
<b>185.</b> Lease - College of Medicine 3			
<b>186.</b> Lease - College of Medicine 4			
<b>187.</b> Lease - College of Medicine 5			
<b>188.</b> Lease - Administrative Space			
<b>189.</b> Lease - Good Samaritan - UK HealthCare			
<b>190.</b> Lease - Off Campus Athletics 1			
<b>191.</b> Lease - Off Campus Athletics 2			
<b>192.</b> Lease - Off Campus Housing 1			
<b>193.</b> Lease - Off Campus Housing 2			
<b>194.</b> Lease - Off Campus 2			
<b>195.</b> Lease - Grant Projects 1			
<b>196.</b> Lease - Grant Projects 2			
<b>197.</b> Lease - Grant Projects 3			
<b>198.</b> Lease - Health Affairs Office 1			
<b>199.</b> Lease - Health Affairs Office 2			
<b>200.</b> Lease - Health Affairs Office 3			
<b>201.</b> Lease - Health Affairs Office 4			
<b>202.</b> Lease - Health Affairs Office 5			
<b>203.</b> Lease - Health Affairs Office 6			
<b>204.</b> Lease - Health Affairs Office 7			
<b>205.</b> Lease - Health Affairs Office 8			
<b>206.</b> Lease - Health Affairs Office 9			
<b>207.</b> Lease - Health Affairs Office 10			
<b>208.</b> Lease - Health Affairs Office 11			
<b>209.</b> Lease - Health Affairs Office 12			

210.	Lease - Health Affairs Office 13			
211.	Lease - Health Affairs Office 14			
212.	Lease - Health Affairs Office 15			
213.	Lease - Off Campus 1			
214.	Lease - Off Campus 2			
215.	Lease - Off Campus 3			
216.	Lease - Off Campus 4			
217.	Lease - Off Campus 5			
218.	Lease - Off Campus 6			
219.	Lease - Off Campus 7			
220.	Lease - Off Campus 8			
221.	Lease - Off Campus 9			
222.	Lease - Off Campus 10			
223.	Lease - Off Campus 11			
224.	Lease - Off Campus 12			
225.	Lease - Off Campus 13			
226.	Lease - UK HealthCare Grant Project 1			
227.	Lease - UK HealthCare Grant Project 2			
228.	Lease - UK HealthCare Off Campus Facility 1			
229.	Lease - UK HealthCare Off Campus Facility 2			
230.	Lease - UK HealthCare Off Campus Facility 3			
231.	Lease - UK HealthCare Off Campus Facility 4			
232.	Lease - UK HealthCare Off Campus Facility 5			
233.	Lease - UK HealthCare Off Campus Facility 6			
234.	Lease - UK HealthCare Off Campus Facility 7			
235.	Lease - UK HealthCare Off Campus Facility 8			
236.	Lease - UK HealthCare Off Campus Facility 9			
237.	Lease - UK HealthCare Off Campus Facility 10			
238.	Lease - UK HealthCare Off Campus Facility 11			
239.	Lease - UK HealthCare Off Campus Facility 12			
240.	Guaranteed Energy Savings Performance Contracts - UK HealthCare			
241.	Guaranteed Energy Savings Performance Contracts			
242.	Construct Agriculture Federal Research Facility I			
	Federal Funds	-0-	-0-	80,000,000
243.	Construct Agriculture Federal Research Facility II			
	Federal Funds	-0-	-0-	80,000,000
<b>9.</b>	<b>UNIVERSITY OF LOUISVILLE</b>			
	<b>001.</b> Construct College of Business			
	Agency Bonds	-0-	40,000,000	-0-

## ACTS OF THE GENERAL ASSEMBLY

Other Funds	-0-	80,000,000	-0-
TOTAL	-0-	120,000,000	-0-
<b>002. Construct Athletics Village</b>			
Other Funds	-0-	90,000,000	-0-
<b>003. Purchase Housing Facilities</b>			
Restricted Funds	-0-	75,000,000	-0-
<b>004. Renovate Vivarium Facilities</b>			
Restricted Funds	-0-	75,000,000	-0-
<b>005. Renovate Ekstrom Library</b>			
Restricted Funds	-0-	57,200,000	-0-
<b>006. Public/Private Partnership Residence Hall</b>			
Other Funds	-0-	51,000,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>007. Renovation and Adaptation Projects for Various Buildings</b>			
Restricted Funds	-0-	50,000,000	-0-
<b>008. Renovate School of Medicine Building 55A</b>			
Restricted Funds	-0-	42,000,000	-0-
<b>009. Acquisition of Dormitories</b>			
Restricted Funds	-0-	41,150,000	-0-
<b>010. Construct New Natatorium</b>			
Other Funds	-0-	25,000,000	-0-
<b>011. Replace HVAC Various Buildings</b>			
Restricted Funds	-0-	25,000,000	-0-
<b>012. Construct/Upgrade Utility Infrastructure</b>			
Restricted Funds	-0-	21,975,000	-0-
<b>013. Purchase Next Generation/ERP Support System</b>			
Restricted Funds	-0-	20,000,000	-0-
<b>014. Renovate Health Sciences Center Instructional and Student Services Space</b>			
Restricted Funds	-0-	20,000,000	-0-
<b>015. Vivarium Equipment Pool - 2020-2022</b>			
Restricted Funds	-0-	20,000,000	-0-
<b>016. Public/Private Partnership Dormitory Students and Athletes</b>			
Other Funds	-0-	17,202,000	-0-
<b>(1) Authorization:</b> The above authorization is approved pursuant to KRS 45.763.			
<b>017. Construct Indoor Facility</b>			
Other Funds	-0-	15,000,000	-0-
<b>018. Purchase Land</b>			
Restricted Funds	-0-	15,000,000	-0-

<b>019.</b> Exterior Envelope Replacement School of Medicine Building 55A			
Restricted Funds	-0-	15,000,000	-0-
<b>020.</b> Renovate School of Nursing Building			
Restricted Funds	-0-	11,380,000	-0-
<b>021.</b> Regional Biocontainment Laboratory Pressurization Upgrade			
Restricted Funds	-0-	10,868,800	-0-
<b>022.</b> Basketball/Lacrosse Practice Facility Expansion			
Other Funds	-0-	19,000,000	-0-
<b>023.</b> Improve Housing Facilities Pool - 2020-2022			
Restricted Funds	-0-	10,000,000	-0-
<b>024.</b> Renovate Cardinal Football Stadium			
Other Funds	-0-	10,000,000	-0-
<b>025.</b> Expand Jim Patterson Stadium and Construct Indoor Facility			
Other Funds	-0-	16,000,000	-0-
<b>026.</b> Expand Ulmer Softball Stadium			
Other Funds	-0-	8,000,000	-0-
<b>027.</b> Purchase Networking System			
Restricted Funds	-0-	8,000,000	-0-
<b>028.</b> Capital Renewal for Athletic Venues - 2020-2022			
Other Funds	-0-	7,500,000	-0-
<b>029.</b> Construct Athletics Office Building			
Other Funds	-0-	7,500,000	-0-
<b>030.</b> Purchase Research Computing Infrastructure			
Restricted Funds	-0-	7,000,000	-0-
<b>031.</b> Replace Seats in Athletic Venues			
Other Funds	-0-	7,000,000	-0-
<b>032.</b> Law School HVAC			
Restricted Funds	-0-	6,715,000	-0-
<b>033.</b> Cardinal Stadium WiFi			
Other Funds	-0-	6,000,000	-0-
<b>034.</b> College of Education HVAC Upgrade			
Restricted Funds	-0-	5,456,000	-0-
<b>035.</b> Expand Marshall Center Complex			
Other Funds	-0-	5,000,000	-0-
<b>036.</b> Renovate Office Building			
Restricted Funds	-0-	4,350,000	-0-
<b>037.</b> Construct Practice Bubble			
Other Funds	-0-	4,000,000	-0-
<b>038.</b> Purchase Content Management System			

Restricted Funds	-0-	4,000,000	-0-
<b>039. Renovate Parking Structures</b>			
Restricted Funds	-0-	3,600,000	-0-
<b>040. Purchase Fiber Instructure</b>			
Restricted Funds	-0-	3,500,000	-0-
<b>041. Belknap Brandeis Corridor Improvements</b>			
Restricted Funds	-0-	3,100,000	-0-
<b>042. Renovate Bass Rudd Tennis Center</b>			
Other Funds	-0-	3,000,000	-0-
<b>043. Renovate Cardinal Park</b>			
Other Funds	-0-	8,000,000	-0-
<b>044. Resurface and Repair Parking Lot</b>			
Restricted Funds	-0-	2,500,000	-0-
<b>045. Belknap 3rd Street Improvements</b>			
Restricted Funds	-0-	2,180,000	-0-
<b>046. Athletics Enhancements in New Dormitory</b>			
Other Funds	-0-	2,000,000	-0-
<b>047. Demolish and Construct Golf Maintenance/Chemical Building</b>			
Other Funds	-0-	2,000,000	-0-
<b>048. Football Practice Field Lighting</b>			
Other Funds	-0-	2,000,000	-0-
<b>049. Purchase Identity Management</b>			
Restricted Funds	-0-	2,000,000	-0-
<b>050. Renovate Garvin Brown Boathouse</b>			
Other Funds	-0-	2,000,000	-0-
<b>051. Cardinal Stadium Club Upgrades</b>			
Other Funds	-0-	2,000,000	-0-
<b>052. Replace Electronic Video Boards</b>			
Other Funds	-0-	2,000,000	-0-
<b>053. Construct Athletic Grounds Building</b>			
Other Funds	-0-	1,550,000	-0-
<b>054. Renovate Ville Grill</b>			
Restricted Funds	-0-	2,100,000	-0-
<b>055. Replace Artificial Turf Field III</b>			
Other Funds	-0-	1,250,000	-0-
<b>056. Replace Artificial Turf Field IV</b>			
Other Funds	-0-	1,250,000	-0-
<b>057. Renovate Dental School Administrative Space</b>			
Restricted Funds	-0-	1,000,000	-0-

<b>058.</b> Renovate Marshall Center			
Other Funds	-0-	1,000,000	-0-
<b>059.</b> Renovate Golf Club Shelby County			
Other Funds	-0-	1,000,000	-0-
<b>060.</b> Renovate Lynn Soccer Stadium			
Other Funds	-0-	1,000,000	-0-
<b>061.</b> Renovate Thornton's Academic Center			
Other Funds	-0-	1,000,000	-0-
<b>062.</b> Renovate Trager Football Practice Facility			
Other Funds	-0-	1,000,000	-0-
<b>063.</b> Renovate Patterson Baseball Stadium			
Other Funds	-0-	1,000,000	-0-
<b>064.</b> Construct LARRI Facility			
Other Funds	-0-	-0-	5,500,000

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**065.** Demolish and Construct Residence Halls Reauthorization and Reallocation (\$90,000,000 Agency Bonds)

(1) **Reauthorization and Reallocation:** The above project is authorized from a reallocation of the projects set forth in 2018 Ky. Acts ch. 169, Part II, J., 075. and 077..

**066.** Steam Plant Modernization

(1) **Authorization:** The above authorization is approved pursuant to KRS 45.763.

**067.** Academic Space 1 - Lease

**068.** Academic Space 2 - Lease

**069.** Housing 1 - Lease

**070.** Housing 2 - Lease

**071.** Housing 3 - Lease

**072.** Housing 4 - Lease

**073.** Jefferson County - Clinic Space 1 - Lease

**074.** Jefferson County - Clinic Space 2 - Lease

**075.** Jefferson County - Clinic Space 3 - Lease

**076.** Jefferson County - Clinic Space - State of Kentucky - Lease

**077.** Jefferson County - Office Space 1 - Lease

**078.** Jefferson County - Office Space 2 - Lease

**079.** Jefferson County - Office Space 3 - Lease

**080.** Jefferson County - Office Space 4 - Lease

**081.** Nucleus 1 Building - Lease

**082.** Nucleus 1 Building 2 - Lease

**083.** Medical Center One - Lease

**084.** Medical Center One 2 - Lease

**085.** University Pointe and Cardinal Towne - Lease

- 086. Trager Institute - Lease
- 087. Arthur Street - Lease
- 088. Housing Facilities - Lease
- 089. Support Space 1 - Lease
- 090. Athletic/Student Dormitory - Lease
- 091. Guaranteed Energy Savings Performance Contracts

**10. WESTERN KENTUCKY UNIVERSITY**

<b>001. Renovate and Expand Innovation Campus</b>			
Other Funds	-0-	80,000,000	-0-
<b>002. Construct Parking Structure IV</b>			
Agency Bonds	-0-	25,000,000	-0-
<b>003. Renovate Grise Hall</b>			
Restricted Funds	-0-	32,200,000	-0-
<b>004. Renovate and Expand Clinical Education Complex</b>			
Other Funds	-0-	8,000,000	-0-
<b>005. Demolish Tate Page Hall/Improve Site</b>			
Restricted Funds	-0-	6,000,000	-0-
<b>006. Renovate Center for Research and Development Phase 1</b>			
Restricted Funds	-0-	6,000,000	-0-
<b>007. Replace Underground Infrastructure</b>			
Restricted Funds	-0-	25,000,000	-0-
<b>008. Renovate South Campus</b>			
Restricted Funds	-0-	5,000,000	-0-
<b>009. Demolish Garrett Conference Center/Improve Site</b>			
Restricted Funds	-0-	7,000,000	-0-
<b>010. Construct South Plaza</b>			
Other Funds	-0-	3,600,000	-0-
<b>011. Renovate Raymond Cravens Library</b>			
Restricted Funds	-0-	40,300,000	-0-
<b>012. Acquire Fixtures, Furnishings, and Equipment Pool - 2020-2022</b>			
Restricted Funds	-0-	3,000,000	-0-
<b>013. Renovate Ogden College of Science &amp; Engineering Facility</b>			
Restricted Funds	-0-	75,800,000	-0-
<b>014. Renovate Potter College Arts &amp; Letters Facilities</b>			
Restricted Funds	-0-	96,400,000	-0-
<b>015. Renovate Academic Complex</b>			
Restricted Funds	-0-	27,500,000	-0-
<b>016. Demolish Foundation Building/Improve Site</b>			
Other Funds	-0-	3,000,000	-0-



<b>017.</b>	Purchase Property for Campus Expansion 2020-2022			
	Restricted Funds	-0-	3,000,000	-0-
<b>018.</b>	Improve Life Safety Pool/Academic Buildings			
	Restricted Funds	-0-	27,500,000	-0-
<b>019.</b>	Purchase Property/Parking and Street Improvements 2020-2022			
	Restricted Funds	-0-	3,000,000	-0-
<b>020.</b>	Repair/Replace Roof at Center for Research and Development			
	Restricted Funds	-0-	5,100,000	-0-
<b>021.</b>	Renovate Police Department			
	Restricted Funds	-0-	2,000,000	-0-
<b>022.</b>	Remove and Replace Student Housing at Farm			
	Other Funds	-0-	1,500,000	-0-
<b>023.</b>	Renovate Kentucky Building			
	Restricted Funds	-0-	17,500,000	-0-
<b>024.</b>	Renovate State and Normal Street Properties			
	Restricted Funds	-0-	1,500,000	-0-
<b>025.</b>	Renovate Tate Page Hall			
	Restricted Funds	-0-	1,200,000	-0-
<b>026.</b>	Alumni Center - Lease			
<b>027.</b>	Renovate Central Heat Plant			
	Restricted Funds	-0-	5,100,000	-0-
<b>028.</b>	Nursing and Physical Therapy - Lease			
<b>029.</b>	Renovate Jones Jagers Interior			
	Restricted Funds	-0-	1,000,000	-0-
<b>030.</b>	Parking Garage - Lease			
<b>031.</b>	Guaranteed Energy Savings Performance Contracts			
<b>032.</b>	Construct, Renovate and Improve Athletic Facilities			
	Agency Bonds	-0-	50,000,000	-0-
<b>033.</b>	Capital Renewal Pool - 2020-2022			
	Restricted Funds	-0-	10,000,000	-0-
<b>034.</b>	Renovate Health Sciences Complex Classroom			
	Restricted Funds	-0-	1,500,000	-0-
<b>11.</b>	<b>KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM</b>			
<b>001.</b>	Renovate Instructional Space - Gateway CTC			
	Restricted Funds	-0-	7,000,000	-0-
<b>002.</b>	Construct Fire Commission NRPC Classroom Building			
	Restricted Funds	-0-	5,200,000	-0-
<b>003.</b>	Acquire and Improve Parking Lots - Jefferson CTC			
	Restricted Funds	-0-	5,000,000	-0-

<b>004.</b>	Construct/Procure Transportation Center - Elizabethtown CTC			
	Restricted Funds	-0-	5,000,000	-0-
<b>005.</b>	KCTCS Equipment Pool - 2020-2022			
	Restricted Funds	-0-	5,000,000	-0-
<b>006.</b>	KCTCS Property Acquisition Pool - 2020-2022			
	Restricted Funds	-0-	5,000,000	-0-
<b>007.</b>	Renovate Newtown Campus North Buildings - Bluegrass CTC			
	Restricted Funds	-0-	4,900,000	-0-
<b>008.</b>	Renovate Advanced Manufacturing and Construction Center - Hazard CTC			
	Restricted Funds	-0-	1,000,000	-0-
	Federal Funds	-0-	3,900,000	-0-
	TOTAL	-0-	4,900,000	-0-
<b>009.</b>	Renovate Industrial Education Building - Hazard CTC			
	Federal Funds	-0-	2,500,000	-0-
<b>010.</b>	Renovate Parking Lot and Sidewalks - West Ky CTC			
	Restricted Funds	-0-	2,100,000	-0-
<b>011.</b>	Upgrade IT Infrastructure - Gateway CTC			
	Restricted Funds	-0-	1,500,000	-0-
<b>012.</b>	Construct Fire Commission Five Story Training Drill Tower			
	Restricted Funds	-0-	1,200,000	-0-
<b>013.</b>	Renovate Dental Hygiene Clinic - Big Sandy CTC - Mayo Campus Reauthorization (\$3,000,000 Restricted Funds)			
<b>014.</b>	Upgrade Welding Shop - Big Sandy CTC - Mayo Campus Reauthorization (\$1,500,000 Restricted Funds)			
<b>015.</b>	Jefferson CTC - Bullitt County Campus - Lease			
<b>016.</b>	Jefferson CTC - Jefferson Education Center - Lease			
<b>017.</b>	KCTCS System Office - Lease			
<b>018.</b>	Maysville CTC - Rowan Campus - Lease			
<b>019.</b>	Elizabethtown CTC - Hardin County - Lease			
<b>020.</b>	Guaranteed Energy Savings Performance Contracts			

#### K. TOURISM, ARTS AND HERITAGE CABINET

Budget Units	2019-20	2020-21	2021-22	
<b>1. PARKS</b>				
<b>001.</b> Maintenance Pool - 2020-2022				
	Bond Funds	-0-	5,000,000	5,000,000
<b>002.</b> Wastewater Treatment Upgrades Pool - 2020-2022				
	Bond Funds	-0-	5,000,000	5,000,000
<b>2. HORSE PARK COMMISSION</b>				
<b>001.</b> Maintenance Pool - 2020-2022				

Investment Income	-0-	900,000	900,000
<b>3. STATE FAIR BOARD</b>			
<b>001. Prestonia Grounds and Infrastructure Improvements</b>			
Bond Funds	3,000,000	1,000,000	-0-
<b>002. Maintenance Pool - 2020-2022</b>			
Bond Funds	-0-	1,500,000	1,500,000
<b>4. FISH AND WILDLIFE RESOURCES</b>			
<b>001. Fees-in-Lieu-of Stream Mitigation Projects Pool - Reauthorization (\$40,000,000 Restricted Funds)</b>			
Restricted Funds	-0-	11,000,000	65,000,000
<b>5. HERITAGE COUNCIL</b>			
<b>001. Records Digitization Reauthorization and Reallocation (\$1,000,000 Bond Funds)</b>			
(1) <b>Reauthorization and Reallocation:</b> The above project is authorized from a reallocation of the project set forth in 2014 Ky. Acts ch. 117 Part II, L., 5, 001..			
<b>6. KENTUCKY CENTER FOR THE ARTS</b>			
<b>001. Maintenance Pool - 2020-2022</b>			
Investment Income	-0-	240,000	240,000

### PART III

#### GENERAL PROVISIONS

**1. Funds Designations:** Restricted Funds designated in the biennial budget bills are classified in the state financial records and reports as the Agency Revenue Fund, State Enterprise Funds (State Parks, State Fair Board, Insurance Administration, and Kentucky Horse Park), Internal Services Funds (Fleet Management, Computer Services, Correctional Industries, Central Printing, Risk Management, and Property Management), and selected Fiduciary Funds (Other Expendable Trust Funds). Separate fund records and reports shall be maintained in a manner consistent with the branch budget bills.

The sources of Restricted Funds appropriations in this Act shall include all fees (which includes fees for room and board, athletics, and student activities) and rentals, admittances, sales, bond proceeds, licenses collected by law, gifts, subventions, contributions, income from investments, and other miscellaneous receipts produced or received by a budget unit, except as otherwise specifically provided, for the purposes, use, and benefit of the budget unit as authorized by law. Restricted Funds receipts shall be credited and allotted to the respective fund or account out of which a specified appropriation is made in this Act. All receipts of Restricted Funds shall be deposited in the State Treasury and credited to the proper account as provided in KRS Chapters 12, 42, 45, and 48.

The sources of Federal Funds appropriations in this Act shall include federal subventions, grants, contracts, or other Federal Funds received, income from investments, other miscellaneous federal receipts received by a budget unit, and the Unemployment Compensation Fund, except as otherwise provided, for the purposes, use, and benefit of the budget unit as authorized by law. Federal Funds receipts shall be credited and allotted to the respective fund account out of which a specified appropriation is made in this Act. All Federal Funds receipts shall be deposited in the State Treasury and credited to the proper account as provided in KRS Chapters 12, 42, 45, and 48.

**2. Expenditure of Excess Federal Funds Receipts:** If receipts received or credited to the Federal Funds accounts of a budget unit during fiscal year 2020-2021 or fiscal year 2021-2022, and any balance forwarded to the credit of these same accounts from the previous fiscal year, exceed the appropriation made by a specific sum for these accounts of the budget unit as provided in Part I, Operating Budget, of this Act, for the fiscal year in which the excess occurs, the excess funds in the accounts of the budget unit shall become available for expenditure for the purpose of the account during the fiscal year only upon compliance with the conditions and procedures specified in KRS 48.400, 48.500, 48.600, 48.605, 48.610, 48.620, 48.630, 48.730, and 48.800, and with the authorization of the State Budget Director and approval of the Secretary of the Finance and Administration Cabinet.

Any request made by a budget unit pursuant to KRS 48.630 that relates to Federal Funds shall include documentation showing a comparative statement of revised estimated receipts by fund source and the proposed

expenditures by proposed use, with the appropriated sums specified in the Budget of the Commonwealth, and statements which explain the cause, source, and use for any variances which may exist.

Each budget unit shall submit its reports in print and electronic format consistent with the Federal Funds records contained in the fiscal biennium 2020-2022 Branch Budget Request Manual and according to the following schedule in each fiscal year: (a) on or before the beginning of each fiscal year; (b) on or before October 1; (c) on or before January 1; and (d) on or before April 1.

Notwithstanding KRS 48.630, no unbudgeted Restricted Funds shall be allotted or expended without the express authority of the General Assembly, with the exceptions of the Public Service Commission and institutions of higher education.

**3. Interim Appropriation Increases:** No appropriation from any fund source shall exceed the sum specified in this Act until the agency has documented the necessity, purpose, use, and source, and the documentation has been submitted to the Interim Joint Committee on Appropriations and Revenue for its review and action in accordance with KRS 48.630 and Part III, 2. of this Act. Proposed revisions to an appropriation contained in the enacted Executive Budget or allotment of an unbudgeted appropriation shall conform to the conditions and procedures of KRS 48.630 and this Act.

Notwithstanding KRS 48.630(3), (4), and (5), any proposed and recommended actions to increase appropriations for funds specified in Section 2. of this Part shall be scheduled consistent with the timetable contained in that section in order to provide continuous and timely budget information.

**4. Revision of Appropriation Allotments:** Allotments within appropriated sums for the activities and purposes contained in the enacted Executive Budget shall conform to KRS 48.610 and may be revised pursuant to KRS 48.605 and this Act.

**5. Permitted Appropriation Obligations:** No state agency, cabinet, department, office, or program shall incur any obligation against the General Fund or Road Fund appropriations contained in this Act unless the obligation may be reasonably determined to have been contemplated in the enacted budget and is based upon supporting documentation considered by the General Assembly and legislative and executive records.

**6. Lapse of General Fund or Road Fund Appropriations Supplanted by Federal Funds:** Any General Fund or Road Fund appropriation made in anticipation of a lack, loss, or reduction of Federal Funds shall lapse to the General Fund or Road Fund Surplus Account, respectively, to the extent the Federal Funds otherwise become available.

**7. Federally Funded Agencies:** A state agency entitled to Federal Funds, which would represent 100 percent of the cost of a program, shall conform to KRS 48.730.

**8. Lapse of General Fund or Road Fund Excess Debt Service Appropriations:** Pursuant to KRS 48.720, any excess General Fund or Road Fund debt service shall lapse to the respective surplus account unless otherwise directed in this Act.

**9. Statutes in Conflict:** All statutes and portions of statutes in conflict with any of the provisions of this Act, to the extent of the conflict, are suspended unless otherwise provided by this Act.

**10. Interpretation of Appropriations:** Notwithstanding KRS 48.500, all questions that arise in interpreting this Act and the Transportation Cabinet budget shall be decided by the Attorney General, and the decision of the Attorney General shall be final and conclusive.

**11. Publication of the Budget of the Commonwealth:** The State Budget Director shall cause the Governor's Office for Policy and Management, within 60 days of adjournment of the 2020 and 2021 Regular Sessions of the General Assembly, to publish a final enacted budget document, styled the Budget of the Commonwealth, based upon the Legislative Budget, Executive Budget, Transportation Cabinet Budget, and Judicial Budget as enacted by the 2020 and 2021 Regular Sessions, as well as other Acts which contain appropriation provisions for the 2020-2022 fiscal biennium, and based upon supporting documentation and legislative records as considered by the 2020 and 2021 Regular Sessions. This document shall include, for each agency and budget unit, a consolidated budget summary statement of available regular and continuing appropriated revenue by fund source, corresponding appropriation allocations by program or subprogram as appropriate, budget expenditures by principal budget class, and any other fiscal data and commentary considered necessary for budget execution by the Governor's Office for Policy and Management and oversight by the Interim Joint Committee on Appropriations and Revenue. The enacted Executive Budget and Transportation Cabinet Budget shall be revised or adjusted only upon approval by the Governor's Office for Policy and Management as provided in each Part of this Act and by KRS 48.400 to 48.810, and upon review and approval by the Interim Joint Committee on Appropriations and Revenue.

**12. State Financial Condition:** Pursuant to KRS 48.400, the State Budget Director shall monitor and report on the financial condition of the Commonwealth.

**13. Prorating Administrative Costs:** The Secretary of the Finance and Administration Cabinet is authorized to establish a system or formula or a combination of both for prorating the administrative costs of the Finance and Administration Cabinet, the Department of the Treasury, and the Office of the Attorney General relative to the administration of programs in which there is joint participation by the state and federal governments for the purpose of receiving the maximum amount of participation permitted under the appropriate federal laws and regulations governing the programs. The receipts and allotments under this section shall be reported to the Interim Joint Committee on Appropriations and Revenue prior to any transfer of funds.

**14. Construction of Budget Provisions Regarding Executive Reorganization Orders:** Nothing in this Act shall be construed to confirm or ratify, under KRS 12.027 or 12.028, any executive reorganization order unless the executive order was confirmed or ratified by appropriate amendment to the Kentucky Revised Statutes in another Act of the 2020 or 2021 Regular Sessions of the General Assembly.

**15. Budget Planning Report:** By August 15, 2021, the State Budget Director, in conjunction with the Consensus Forecasting Group, shall provide to each branch of government, pursuant to KRS 48.120, a budget planning report.

**16. Tax Expenditure Revenue Loss Estimates:** By October 15, 2021, the Office of State Budget Director shall provide to each branch of government detailed estimates for the General Fund and Road Fund for the current and next two fiscal years of the revenue loss resulting from tax expenditures. The Department of Revenue shall provide assistance and furnish data, which is not restricted by KRS 131.190. "Tax expenditure" as used in this section means an exemption, exclusion, or deduction from the base of a tax, a credit against the tax, a deferral of a tax, or a preferential tax rate. The estimates shall include for each tax expenditure the amount of revenue loss, a citation of the legal authority for the tax expenditure, the year in which it was enacted, and the tax year in which it became effective.

**17. Duplicate Appropriations:** Any appropriation item and sum in Parts I to X of this Act and in an appropriation provision in any Act of the 2020 or 2021 Regular Sessions which constitutes a duplicate appropriation shall be governed by KRS 48.312.

**18. Priority of Individual Appropriations:** KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

**19. Severability of Budget Provisions:** Appropriation items and sums in Parts I to X of this Act shall conform to KRS 48.311. If any section, any subsection, or any provision is found by a court of competent jurisdiction in a final, unappealable order to be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

**20. Unclaimed Lottery Prize Money:** For fiscal year 2020-2021 and fiscal year 2021-2022, all unclaimed lottery prize money under KRS 154A.110(3) shall be credited to the Kentucky Educational Excellence Scholarship Reserve Account to be held as a subsidiary account within the Finance and Administration Cabinet for the purpose of funding the KEES Program as appropriated in this Act. If the Kentucky Higher Education Assistance Authority certifies to the State Budget Director that the appropriations in this Act for the KEES Program under the existing award schedule are insufficient to meet funds required for eligible applicants, then the State Budget Director shall provide the necessary allotment of funds in the balance of the KEES Reserve Account to fund the KEES Program. Actions taken under this section shall be reported to the Interim Joint Committee on Appropriations and Revenue on a timely basis.

**21. Workers' Compensation:** Notwithstanding KRS 342.340(1) and 803 KAR 25:021, Section 5, the Personnel Cabinet shall be exempt from procuring excess risk insurance in fiscal year 2020-2021 and fiscal year 2021-2022 for the Workers' Compensation Benefits and Reserve Program administered by the Cabinet.

**22. Carry Forward and Undesignated General Fund and Road Fund Carry Forward:** Notwithstanding KRS 48.700 and 48.705, and other Parts of this Act, the Secretary of the Finance and Administration Cabinet shall determine and certify, within 30 days of the close of fiscal year 2019-2020 and fiscal year 2020-2021, the actual amount of undesignated balance of the General Fund and the Road Fund for the year just ended. The amounts from the undesignated fiscal year 2019-2020 and fiscal year 2020-2021 General Fund and Road Fund balances that are designated and carried forward for budgeted purposes in the 2020-2022 fiscal biennium shall be determined by the State Budget Director during the close of the respective fiscal year and shall be reported to the Interim Joint Committee on Appropriations and Revenue within 30 days of the close of the fiscal year. Any General Fund undesignated balance in excess of the amount designated for budgeted purposes under this section shall be made available for the General Fund Surplus Expenditure Plan contained in Part VII of this Act unless otherwise

provided in this Act. The Road Fund undesignated balance in excess of the amount designated for budgeted purposes under this section shall be made available for the Road Fund Surplus Expenditure Plan contained in Part IX of this Act unless otherwise provided in this Act.

**23. Reallocation of Appropriations Among Budget Units:** Notwithstanding any statute to the contrary, or provisions of this Act, the Secretary of a Cabinet, the Commissioner of the Department of Education, and other agency heads may request a reallocation among budget units under his or her administrative authority up to ten percent of General Fund appropriations contained in Part I, Operating Budget, of this Act for fiscal years 2019-2020, 2020-2021, and 2021-2022 for approval by the State Budget Director. A request shall explain the need and use for the transfer authority under this section. The amount of transfer of General Fund appropriations shall be separately recorded and reported in the system of financial accounts and reports provided in KRS Chapter 45. The State Budget Director shall report a transfer made under this section, in writing, to the Interim Joint Committee on Appropriations and Revenue.

**24. Local School District Expenditure Flexibility:** Notwithstanding KRS 160.470(6) or any statute to the contrary, during fiscal year 2020-2021 and fiscal year 2021-2022, local school districts may adopt and the Kentucky Board of Education may approve a working budget that includes a minimum reserve of less than two percent of the total budget. The Kentucky Department of Education shall monitor the financial position of any district that receives approval for a working budget with a reserve of less than two percent and shall provide a financial report for those districts at each meeting of the Kentucky Board of Education.

**25. Appropriations Expenditure Purpose and Transfer Restrictions:** Funds appropriated in this Act shall not be expended for any purpose not specifically authorized by the General Assembly in this Act nor shall funds appropriated in this Act be transferred to or between any cabinet, department, board, commission, institution, agency, or budget unit of state government unless specifically authorized by the General Assembly in this Act and KRS 48.400 to 48.810. Compliance with the provisions of this section shall be reviewed and determined by the Interim Joint Committee on Appropriations and Revenue.

**26. Budget Implementation:** The General Assembly directs that the Executive Branch shall carry out all appropriations and budgetary language provisions as contained in the State/Executive Budget. The Legislative Research Commission shall review quarterly expenditure data to determine if an agency is out of compliance with this directive. If the Legislative Research Commission suspects that any entity has acted in non-conformity with this section, the Legislative Research Commission may order an audit or review at the agency's expense. Such audit findings, reviews, and reports shall be subject to the Kentucky Open Records Law.

**27. Information Technology:** All authorized computer information technology projects shall submit a semiannual progress report to the Capital Projects and Bond Oversight Committee. The reporting process shall begin six months after the project is authorized and shall continue through completion of the project. The initial report shall establish a timeline for completion and cash disbursement schedule. Each subsequent report shall update the timeline and budgetary status of the project and explain in detail any issues with completion date and funding.

**28. Equipment Service Contracts and Energy Efficiency Measures:** The General Assembly mandates that the Finance and Administration Cabinet review all equipment service contracts to maximize savings to the Commonwealth to strictly adhere to the provisions of KRS 56.772, 56.782, and 56.784 in maximizing the use of energy efficiency measures.

**29. Debt Restructuring:** Notwithstanding any other provision of the Kentucky Revised Statutes, no General Fund or Road Fund debt restructuring transactions shall be undertaken during the 2020-2022 fiscal biennium.

**30. Effects of Subsequent Legislation:** If any measure enacted during the 2020 or 2021 Regular Session of the General Assembly subsequent to this Act contains an appropriation or is projected to increase or decrease General Fund revenues, the amount in the Budget Reserve Trust Fund shall be revised to accommodate the appropriation or the reduction or increase in projected revenues. Notwithstanding any provision of KRS 48.120(4) and (5) to the contrary, the official enacted revenue estimates of the Commonwealth described in KRS 48.120(5) shall be adjusted at the conclusion of the 2020 and 2021 Regular Sessions of the General Assembly, respectively, to incorporate any projected revenue increases or decreases that will occur as a result of actions taken by the General Assembly subsequent to the passage of this Act by both chambers.

**31. Permitted Use of Water and Sewer Bond Funds:** Notwithstanding Part II, (3) of this Act and any statute to the contrary, any balances remaining for either closed or open project grant agreements authorized pursuant to bond pools set forth in 2003 Ky. Acts ch. 156, Part II, A., 3., d. Water and Sewer Resources Development Fund for Tobacco Counties and e. Water and Sewer Resources Development Fund For Coal Producing Counties; 2005 Ky. Acts ch. 173, Part II, A., 3., 003. Infrastructure for Economic Development Fund for Coal-Producing Counties and

004. Infrastructure for Economic Development Fund for Tobacco Counties; 2006 Ky. Acts ch. 252, Part II, A., 2., 003. Infrastructure for Economic Development Fund for Non-Coal Producing Counties and 004. Infrastructure for Economic Development Fund for Coal-Producing Counties; 2008 Ky. Acts ch. 123, Section 3., 004. Infrastructure for Economic Development Fund for Coal-Producing Counties and 005. Infrastructure for Economic Development Fund for Non-Coal Producing Counties; and 2008 Ky. Acts ch. 174, Section 2.; and 2009 Ky. Acts ch. 87, Section 2. shall not lapse and shall remain to the credit of projects previously authorized by the General Assembly unless expressly reauthorized and reallocated by action of the General Assembly.

**32. Jailer Canteen Accounts:** Notwithstanding KRS 67.0802(6)(a), any compensation resulting from the disposal of real or personal property that was purchased from a canteen account under KRS 441.135 shall be returned to the canteen account from which the real or personal property was originally purchased. All proceeds resulting from the disposal of real or personal property purchased from a canteen account shall be reported to the Interim Joint Committee on Appropriations and Revenue by December 1 of each fiscal year.

**33. COVID-19 Federal Funds:** No Federal Funds received from the Coronavirus, Aid, Relief and Economic Security (CARES) Act or any other Federal Funds related to the COVID-19 emergency response shall be used to establish any new programs unless those new programs can be fully supported from existing appropriation amounts once all of the Federal Funds have been expended. No new positions shall be established unless those new positions are established as federally funded time-limited positions. The Office of State Budget Director shall submit a report to the Interim Joint Committee on Appropriations and Revenue by December 1 of each fiscal year on the expenditure of all Federal Funds and associated matching funds related to the COVID-19 emergency response.

**34. Approval of State Aircraft Travel:** Notwithstanding KRS 44.060, 45.101, 174.508, and any other statute or administrative regulation to the contrary, the use of state aircraft by any secretary of any Executive Branch cabinet for out-of-state travel shall be approved by the State Treasurer. The State Treasurer shall only approve requests which document that the use of state aircraft is the lowest cost option as measured by both travel costs and travel time. The State Treasurer shall not designate approval authority for out-of-state travel on state aircraft by Executive Branch cabinet secretaries to any other person. Any requests and documentation regarding the use of state aircraft collected by the State Treasurer shall be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884.

**35. Employee Layoffs, Furloughs, and Reduced Hours:** Notwithstanding any statute to the contrary, the following process and procedure is established for July 1, 2020, through June 30, 2022, in the event that the Commonwealth or any agency determines that it is desirable for the Executive Branch to layoff, furlough, or reduce hours of employees:

(1) For the purposes of this section:

(a) "Appointing authority" means the agency head or any person whom he or she has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions;

(b) "Secretary" means the Secretary of the Personnel Cabinet as provided for in KRS 18A.015;

(c) "Furlough" or "reduction in hours" means the temporary reduction of hours an employee is scheduled to work by the appointing authority within a pay period;

(d) "Layoff" means discharge of employment subject to the rights contained in this section; and

(e) "Employees" includes all persons employed by the Executive Branch, including but not limited to employees of KRS Chapter 18A, KRS Chapter 16, KRS Chapter 156, the Kentucky Teachers' Retirement System, the Kentucky Higher Education Student Loan Corporation, the Kentucky Housing Corporation, and the Kentucky Lottery Corporation;

(2) An appointing authority has the authority to layoff or furlough employees or reduce hours of employment for any of the following reasons:

(a) Lack of funds or budgetary constraints;

(b) A reduction in the agency's spending authorization;

(c) Lack of work;

(d) Abolishment of a position; or

(e) Other material change in duties or organization;

(3) The appointing authority shall determine the job classifications affected and the number of employees laid-off in each classification and each county to which a layoff applies. In the same department or office, county, and job classification, interim and probationary employees shall be laid-off before any full-time or part-time employees with status are laid-off. For purposes of layoff, "probationary employee" does not include an employee with status serving a promotional probation;

(4) The Secretary shall approve all actions taken under subsection (2) of this section and no such layoff, furlough, or reduction of hours may begin until such approval has been granted. The appointing authority with the approval of the Secretary has the authority to determine the extent, effective dates, and length of any action taken under subsection (2) of this section;

(5) In determining the employees to be laid-off, the appointing authority shall consider all employees under the same appointing authority, within the job classification affected, and within the county affected. Consideration shall be given to the following relevant factors:

- (a) Job performance evaluations;
- (b) Seniority;
- (c) Education, training, and experience; and
- (d) Disciplinary record;

(6) Any employee whose position is subject to layoff, furlough, or reduction of hours shall be provided written notice containing the reason for the action as set forth in subsection (2) of this section at least 15 days in advance of the effective date of the action;

(7) Any employee with status who is laid-off shall be eligible to apply as a reemployment applicant for positions with the same job classification from which he or she was laid-off, in the cabinet from which he or she was laid-off. For a period of two years, a reemployment applicant shall be hired before any applicant except another reemployment applicant with greater seniority who is on the same register. A reemployment applicant shall not be removed from any register except as provided by KRS 18A.032. When a reemployment applicant is removed from a register, he or she shall be notified in writing. A reemployment applicant who accepts any classified position, or who retires through the Kentucky Retirement Systems or Kentucky Teachers' Retirement System, shall cease to have eligibility rights as a reemployment applicant;

(8) With the approval of the Secretary, the Personnel Cabinet may place employees subject to a reduction in force;

(9) Furloughs or reduction of hours during a pay period shall not result in the loss of eligibility for any benefit otherwise due the employee;

(10) The Secretary shall have the authority to promulgate comprehensive administrative regulations governing this section; and

(11) A layoff, furlough, or reduction of hours implemented in accordance with this section shall not be considered a penalization of the employee for the purposes of KRS Chapters 16, 18A, and 156, and shall be appealable to the State Personnel Board, the Kentucky Technical Education Personnel Board, the Department of Kentucky State Police Personnel Board, or other applicable administrative body.

**36. Lapse of General Fund or Road Fund Appropriations Supplanted by Pandemic Relief Funds:** Notwithstanding KRS 45.229, any General Fund appropriations that become available due to supplantation of Federal Funds related to COVID-19 emergency response or pandemic relief shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705). Any Road Fund appropriations that become available due to supplantation of Federal Funds related to the COVID-19 emergency response or pandemic relief shall lapse to the Emergency Disaster Relief Account.

**37. Executive Orders:** Notwithstanding any statute or common law to the contrary, and except as provided in this Act, no state funds or state employee time shall be expended by any person or agency to implement or enforce any executive order issued other than as authorized by KRS Chapter 39A through 39F, as amended by 2021 Regular Session SB 1 and further amended by subsequent acts of the 2021 General Assembly, or other than as may be implemented or enforced for a total sum not exceeding \$10,000, inclusive of all state employee time and costs, or other than as may relate to an emergency order issued relative to a natural disaster, or other than as may be approved by the General Assembly. Further, for the purpose of ensuring transparent government, each and every executive order issued, whether or not subject to the aforesaid restrictions, shall provide simultaneously to the Legislative



Research Commission the following items in a comprehensive report as a condition precedent for the expenditure of any state funds or use of any state employee time:

- (1) A complete statement of each essential fact upon which the order is based;
- (2) A complete statement of each goal sought through issuance of the order;
- (3) A comprehensive analysis explaining how the executive order achieves each stated goal with the least burden placed upon the constitutional rights of the citizens of the Commonwealth of Kentucky and how each stated goal is accomplished with the most efficient use of tax payer money;
- (4) A detailed estimate of the anticipated expenditures of all state funds and all state employee time required for implementation or enforcement itemized in the smallest categories reasonably identifiable and stated in weekly increments; and
- (5) A detailed statement of all state funds and all state employee time actually expended for implementation or enforcement of each and every prior executive order upon the same issue or event, or substantially similar issue or event itemized in the smallest categories reasonably identifiable and stated in weekly increments.

Each comprehensive report shall be updated every 30 days subsequent to issuance of an executive order and provided to the Legislative Research Commission.

**38. American Rescue Plan Act:** Notwithstanding KRS 48.630, Part III, 2. of this Act, and any statute to the contrary, the state portion of the Coronavirus State and Local Fiscal Recovery Fund and the Coronavirus Capital Projects Fund of the American Rescue Plan Act of 2021 shall not be expended or appropriated without the express authority of the General Assembly.

**39. Pandemic Relief Funds:** No Federal Funds received related to COVID-19 emergency response or pandemic relief shall be used to establish any new programs unless those new programs can be fully supported from existing appropriation amounts once all of the Federal Funds have been expended. No new positions shall be established unless those new positions are established as federally funded time-limited positions. The Office of State Budget Director shall prepare a monthly report for all federal pandemic relief funds. The report shall include, at a minimum, the federal grant program name, the recipient, the purpose of the funding, the total award amount, monthly detail of actual expenditures by object code, and the fund source and amounts of any state funds that have been supplanted. The report shall be submitted to the Legislative Research Commission, Office of Budget Review, by the 15th of each month during the 2020-2022 fiscal biennium.

## PART IV

### STATE SALARY/COMPENSATION, BENEFIT, AND EMPLOYMENT POLICY

**1. Authorized Personnel Complement:** On July 1, 2020, and July 1, 2021, the Personnel Cabinet and the Office of State Budget Director shall establish a record for each budget unit of authorized permanent full-time and other positions based upon the enacted Executive Budget of the Commonwealth and any adjustments authorized by provisions in this Act. The total number of filled permanent full-time and all other positions shall not exceed the authorized complements pursuant to this section. An agency head may request an increase in the number of authorized positions to the State Budget Director. Upon approval of the State Budget Director, the Secretary of the Personnel Cabinet may authorize the employment of individuals in addition to the authorized complement. A report of the actions authorized in this section shall be provided to the Legislative Research Commission on a monthly basis.

**2. Salary Increment:** Notwithstanding KRS 18A.355 and 156.808(6)(e) and (12), no increment is provided in fiscal year 2020-2021 and fiscal year 2021-2022 on the base salary or wages of each eligible state employee on their anniversary date.

**3. Employee Cross-Reference:** The Personnel Cabinet may permit married couples who are both eligible to participate in the state health insurance plan to be covered under one family health benefit plan.

**4. Full-Time Positions:** Notwithstanding KRS 18A.005(18)(a), full-time positions in the state parks, where the work assigned is dependent upon fluctuation in tourism, may be assigned work hours from 25 hours per week and remain in full-time positions.

**5. Employer Retirement Contribution Rates:** (1) Notwithstanding KRS 61.565 and 61.702, the employer contribution rates for Kentucky Employees Retirement System from July 1, 2020, through June 30, 2021, and except as otherwise provided in this Act, shall be 84.43 percent, consisting of 73.28 percent for pension and 11.15 percent for health insurance for nonhazardous duty employees and 36.00 percent, consisting of 36.00 percent

for pension for hazardous duty employees; for the same period, the employer contribution for employees of the State Police Retirement System shall be 143.48 percent, consisting of 123.79 percent for pension and 19.69 percent for health insurance. Notwithstanding any other provision of this Act or KRS 61.565 or 61.702 to the contrary, the employer contribution rate from July 1, 2020, through June 30, 2021, shall be 49.47 percent, consisting of 41.06 percent for pension and 8.41 percent for health insurance for nonhazardous duty employees participating in the Kentucky Employees Retirement System who are employed by Mental Health/Mental Retardation Boards, Local and District Health Departments, domestic violence shelters, rape crisis centers, child advocacy centers, state-supported universities and community colleges, and any other agency eligible to voluntarily cease participating in the Kentucky Employees Retirement System pursuant to KRS 61.522.

(2) Notwithstanding KRS 61.565 and 61.702, the employer contribution rates for Kentucky Employees Retirement System from July 1, 2021, through June 30, 2022, and except as otherwise provided in this Act, shall be 33.43 percent, consisting of 33.43 percent for pension for hazardous duty employees; for the same period, the employer contribution for employees of the State Police Retirement System shall be 146.06 percent, consisting of 127.99 percent for pension and 18.07 percent for health insurance. Notwithstanding any other provision of this Act or KRS 61.565 or 61.702 to the contrary, the initial actuarially accrued liability employer contribution rate from July 1, 2021, through June 30, 2022, for nonhazardous employees in the Executive Branch departments shall be determined by the State Budget Director by May 1, 2021. The employer contribution rate shall include the normal cost contribution of 10.10 percent and be sufficient to adhere to the prorated amount of the actuarially accrued liability to each individual nonhazardous employer as determined by the Kentucky Employees Retirement System. The rates in subsections (1) and (2) of this section apply to wages and salaries earned for work performed during the described period regardless of when the employee is paid for the time worked.

**6. Issuance of Paychecks to State Employees:** Notwithstanding 101 KAR 2:095, Section 10, the state payroll that would normally be scheduled to be paid on June 30, 2020, and June 30, 2021, shall not be issued prior to July 1, 2020, and July 1, 2021, respectively.

**7. Health Care Spending Account:** Notwithstanding KRS 18A.2254(2)(a) and (b), if a public employee waives coverage provided by his or her employer under the Public Employee Health Insurance Program, the employer shall forward a monthly amount to be determined by the Secretary of the Personnel Cabinet for that employee as an employer contribution to a health reimbursement account or a health flexible spending account, but not less than \$175 per month, subject to any conditions or limitations imposed by the Secretary of the Personnel Cabinet to comply with applicable federal law. The administrative fees associated with a health reimbursement account or health flexible spending account shall be an authorized expense to be charged to the Public Employee Health Insurance Trust Fund.

**8. State Group Health Insurance Plan - Transfer Between Plan Years:** Notwithstanding KRS 18A.2254, the Secretary of the Finance and Administration Cabinet and the Secretary of the Personnel Cabinet are authorized to use the excess funds from Plan Year 2016, Plan Year 2017, Plan Year 2018, Plan Year 2019, and Plan Year 2020 or any combination thereof to satisfy claims or expenses in Plan Year 2021 and Plan Year 2022.

**9. Full-Time Work Schedules:** It is the intent of the General Assembly that, in effort to attract, develop, motivate, and retain a talented, diverse workforce, while achieving government efficiency and quality services to the public, any full-time Executive Branch employees who currently work 37.5 hour work weeks shall be required to work 40 hours per week in the 2022-2024 fiscal biennium.

## PART V

### FUNDS TRANSFER

The General Assembly finds that the financial condition of state government requires the following action.

Notwithstanding the statutes or requirements of the Restricted Funds enumerated below, there is transferred to the General Fund the following amounts in fiscal year 2020-2021 and fiscal year 2021-2022:

	2020-21	2021-22
<b>A. GENERAL GOVERNMENT</b>		
<b>1. Office of State Budget Director</b>		
Special Revenue Fund	43,947,400	-0-

These fund transfers represent federal Coronavirus Relief Fund Reimbursements from fiscal year 2019-2020 that were reimbursed in fiscal year 2020-2021.

<b>2. Department for Local Government</b>		
Local Government Economic		
Development Fund Investment Pool	1,500,000	582,000
(KRS 42.4582 and 42.4592)		
<b>3. Department for Local Government</b>		
Agency Revenue Fund	1,000,000	-0-
(KRS 65A.020(5))		
<b>4. Secretary of State</b>		
Agency Revenue Fund	2,000,000	2,000,000
<b>5. Attorney General</b>		
Agency Revenue Fund	500,000	-0-
(KRS 48.005(4))		
<b>6. School Facilities Construction Commission</b>		
Agency Revenue Fund	2,900,000	8,275,600
(KRS 157.618)		

**B. ECONOMIC DEVELOPMENT CABINET**

<b>1. Economic Development</b>		
Other Special Revenue Fund	-0-	114,700

**C. DEPARTMENT OF EDUCATION**

<b>1. Operations and Support Services</b>		
Agency Revenue Fund	200,000	-0-
<b>2. Learning and Results Services</b>		
Agency Revenue Fund	-0-	4,000,000

**D. ENERGY AND ENVIRONMENT CABINET**

<b>1. Secretary</b>		
Kentucky Pride Trust Fund	2,006,300	2,006,300
(KRS 224.43-505(2)(a)3.)		

Notwithstanding KRS 224.43-505(2)(a)3., these funds transfers to the General Fund support the General Fund debt service on the bonds sold as appropriated by 2003 Ky. Acts ch. 156, Part II, A., 3., c..

<b>2. Environmental Protection</b>		
Waste Tire Trust Fund	1,500,000	2,000,000
(KRS 224.50-880)		
<b>3. Environmental Protection</b>		
Insurance Administration Fund	30,000,000	13,000,000
(KRS 224.60-130, 224.60-140, 224.60-145, and 224.60-150)		
<b>4. Public Service Commission</b>		
Agency Revenue Fund	200,000	200,000
(KRS 278.5499)		

**E. FINANCE AND ADMINISTRATION CABINET**

<b>1. General Administration</b>		
Agency Revenue Fund	250,000	250,000
<b>2. General Administration</b>		
Other Expendable Trust Fund (KRS 42.205)	4,900,000	-0-
<b>3. Controller</b>		
Agency Revenue Fund	2,000,000	-0-
<b>4. Controller</b>		
Revenue Fund	-0-	66,000
<b>5. Controller</b>		
Unredeemed Check Fund	-0-	4,373,000
<b>6. Controller</b>		
Tobacco Fund Interest (KRS 194A.055, 200.151, 248.654, and 248.655)	1,663,700	-0-
<b>7. Facilities and Support Services</b>		
Agency Revenue Fund	700,000	-0-
<b>8. Facilities and Support Services</b>		
Capital Construction Investment Income Account	10,000,000	-0-
<b>9. Commonwealth Office of Technology</b>		
Computer Services Fund (KRS 45.253)	14,044,400	-0-

#### F. HEALTH AND FAMILY SERVICES CABINET

<b>1. General Administration and Program Support</b>		
Malt Beverage Education Fund	500,000	500,000
<b>2. Public Health</b>		
Agency Revenue Fund	4,000,000	-0-

#### G. JUSTICE AND PUBLIC SAFETY CABINET

<b>1. Juvenile Justice</b>		
Agency Revenue Fund	-0-	2,452,100

#### H. PERSONNEL CABINET

<b>1. General Operations</b>		
Agency Revenue Fund	2,690,700	-0-
These funds transfers to the General Fund support General Fund debt service on bonds for the new Personnel/Payroll system.		
<b>2. Workers' Compensation Benefits and Reserve</b>		
State Employees Workers' Compensation Reserve (KRS 18A.375(3))	2,500,000	2,500,000

**I. POSTSECONDARY EDUCATION**

<b>1. Council on Postsecondary Education</b>		
Other Special Revenue Fund	-0-	451,500
<b>2. Kentucky Higher Education Assistance Authority</b>		
Other Special Revenue	1,000,000	1,000,000
(KRS 164.7891(11))		
<b>3. Kentucky Higher Education Assistance Authority</b>		
Agency Revenue Fund	-0-	1,300,000
(KRS 199.990(3))		

**J. PUBLIC PROTECTION CABINET**

<b>1. Financial Institutions</b>		
Agency Revenue Fund	4,000,000	4,000,000
(KRS 286.1-485)		
<b>2. Housing, Buildings and Construction</b>		
Agency Revenue Fund	600,000	600,000
(KRS 198B.090(10), 198B.095(4), and 198B.4037)		
<b>3. Insurance</b>		
Agency Revenue Fund	31,000,000	31,000,000
(KRS 304.2-300 and 304.2-400)		

**K. TOURISM, ARTS AND HERITAGE CABINET**

<b>1. Secretary</b>		
Agency Revenue Fund	1,000,000	-0-
(KRS 142.406(2) and (3))		
<b>TOTAL - FUNDS TRANSFER</b>	<b>166,602,500</b>	<b>80,671,200</b>

**PART VI****GENERAL FUND BUDGET REDUCTION PLAN**

Pursuant to KRS 48.130 and 48.600, a General Fund Budget Reduction Plan is enacted for state government in the event of an actual or projected revenue shortfall in General Fund revenue receipts, excluding Tobacco Settlement – Phase I receipts, of \$11,448,237,100 in fiscal year 2019-2020, \$11,729,000,000 in fiscal year 2020-2021, and \$12,011,300,000 in fiscal year 2021-2022, as modified pursuant to Part III, 30. of this Act and by related Acts and actions of the General Assembly in an extraordinary or regular session. Notwithstanding KRS 48.130, direct services, obligations essential to the minimum level of constitutional functions, and other items that may be specified in this Act, are exempt from the requirements of this Plan. Each branch head shall prepare a specific plan to address the proportionate share of the General Fund revenue shortfall applicable to the respective branch. No budget revision action shall be taken by a branch head in excess of the actual or projected revenue shortfall.

The Governor, the Secretary of State, the Attorney General, the Treasurer, the Commissioner of Agriculture, the Auditor of Public Accounts, the Chief Justice, and the Legislative Research Commission shall direct and implement reductions in allotments and appropriations only for their respective branch budget units as may be necessary, as well as take other measures which shall be consistent with the provisions of this Part and biennial branch budget bills.

Pursuant to KRS 48.130(4), in the event of a revenue shortfall of five percent or less, the following General Fund budget reduction actions shall be implemented:

(1) The Local Government Economic Assistance and the Local Government Economic Development Funds shall be adjusted by the Secretary of the Finance and Administration Cabinet to equal revised estimates of receipts pursuant to KRS 42.4582 as modified by the provisions of this Act;

(2) Transfers of excess unappropriated Restricted Funds, notwithstanding any statutes to the contrary, other than fiduciary funds, to the General Fund shall be applied as determined by the head of each branch for its respective budget units. No transfers to the General Fund shall be made from the following:

(a) Local Government Economic Assistance and Local Government Economic Development Funds;

(b) Unexpended debt service from the Tobacco-Settlement Phase I Funds, including but not limited to unexpended debt service and the Tobacco Unbudgeted Interest Income-Rural Development Trust Fund, in either fiscal year; and

(c) The Kentucky Permanent Pension Fund;

(3) Unexpended debt service;

(4) Any unanticipated Phase I Master Settlement Agreement revenues in both fiscal years shall be appropriated according to Part X of this Act and shall not be transferred to the General Fund;

(5) Use of the unappropriated balance of the General Fund surplus shall be applied;

(6) Any language provision that expresses legislative intent regarding a specific appropriation shall not be reduced by a greater percentage than the reduction to the General Fund appropriation for that budget unit;

(7) Contributions appropriated to pensions in excess of statutory requirements;

(8) Contributions appropriated to pension insurance in excess of actuarially required contributions;

(9) Reduce General Fund appropriations in Executive Branch agencies' operating budget units by a sufficient amount to balance either fiscal year. No reductions of General Fund appropriations shall be made from the Local Government Economic Assistance Fund or the Local Government Economic Development Fund;

(10) Notwithstanding subsection (9) of this Part, no reductions shall be made to the Secretary of State, the Attorney General, the Treasurer, the Commissioner of Agriculture, or the Auditor of Public Accounts, or their offices, Commonwealth's Attorneys or their offices, or County Attorneys or their offices. The Governor may request their participation in a budget reduction; however, the level of participation shall be at the discretion of the Constitutional Officer or the Prosecutors Advisory Council, and shall not exceed the actual percentage of revenue shortfall;

(11) Excess General Fund appropriations which accrue as a result of personnel vacancies and turnover, and reduced requirements for operating expenses, grants, and capital outlay shall be determined and applied by the heads of the executive, judicial, and legislative departments of state government for their respective branches. The branch heads shall certify the available amounts which shall be applied to budget units within the respective branches and shall promptly transmit the certification to the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission. The Secretary of the Finance and Administration Cabinet shall execute the certified actions as transmitted by the branch heads.

Branch heads shall take care, by their respective actions, to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth;

(12) Funds available in the Budget Reserve Trust Fund shall be applied in an amount not to exceed 50 percent of the Trust Fund balance in fiscal year 2019-2020, 25 percent in fiscal year 2020-2021, and 25 percent in fiscal year 2021-2022; and

(13) Pursuant to KRS 48.130 and 48.600, if the actions contained in subsections (1) to (12) of this Part are insufficient to eliminate an actual or projected General Fund revenue shortfall, then the Governor is empowered and directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in this Part.

## PART VII

### GENERAL FUND SURPLUS EXPENDITURE PLAN

(1) Notwithstanding KRS 48.130(7), 48.140(3), 48.700, and 48.705, there is established a plan for the expenditure of General Fund surplus moneys pursuant to a General Fund Surplus Expenditure Plan contained in this Part for fiscal years 2020-2021 and 2021-2022. Pursuant to the enactment of the Surplus Expenditure Plan, General

Fund moneys made available for the General Fund Surplus Expenditure Plan pursuant to Part III, General Provisions, Section 22. of this Act are appropriated to the following:

For the surplus moneys from fiscal year 2019-2020:

(a) Authorized expenditures without a sum-specific appropriation amount, known as Necessary Government Expenses, including but not limited to Emergency Orders formally declared by the Governor in an Executive Order; and

(b) The remaining amount to the Budget Reserve Trust Fund; and

(2) The Secretary of the Finance and Administration Cabinet shall determine, within 30 days after the close of fiscal year 2019-2020, based on the official financial records of the Commonwealth, the amount of actual General Fund undesignated fund balance for the General Fund Surplus Account that may be available for expenditure pursuant to the Plan in fiscal year 2020-2021. The Secretary of the Finance and Administration Cabinet shall certify the amount of actual General Fund undesignated fund balance available for expenditure to the Legislative Research Commission.

## PART VIII

### ROAD FUND BUDGET REDUCTION PLAN

There is established a Road Fund Budget Reduction Plan for fiscal years 2019-2020, 2020-2021, and 2021-2022. Notwithstanding KRS 48.130(1) and (3) relating to statutory appropriation adjustments related to the revenue sharing of motor fuels taxes, in the event of an actual or projected revenue shortfall in Road Fund revenue receipts of \$1,551,800,000 in fiscal year 2019-2020, \$1,577,700,000 in fiscal year 2020-2021, and \$1,609,200,000 in fiscal year 2021-2022, as modified by related Acts and actions of the General Assembly in an extraordinary or regular session, the Governor shall implement sufficient reductions as may be required to protect the highest possible level of service.

## PART IX

### ROAD FUND SURPLUS EXPENDITURE PLAN

Notwithstanding KRS 48.110, 48.140, and 48.710, there is established a plan for the expenditure of the Road Fund Surplus Account. All moneys in the Road Fund Surplus Account shall be appropriated to the State Construction Account within the Highways budget unit and utilized to support projects in the 2020-2022 Biennial Highway Construction Program.

## PART X

### PHASE I TOBACCO SETTLEMENT

(1) **General Purpose:** This Part prescribes the policy implementing aspects of the national settlement agreement between the tobacco industry and the collective states as described in KRS 248.701 to 248.727. In furtherance of that agreement, the General Assembly recognizes that the Commonwealth of Kentucky is a party to the Phase I Master Settlement Agreement (MSA) between the Participating Tobacco Manufacturers and 46 Settling States which provides reimbursement to states for smoking-related expenditures made over time.

(2) **State's MSA Share:** The Commonwealth's share of the MSA is equal to 1.7611586 percent of the total settlement amount. Payments under the MSA are made to the states annually in April of each year.

(3) **MSA Payment Amount Variables:** The total settlement amount to be distributed on each payment date is subject to change pursuant to several variables provided in the MSA, including inflation adjustments, volume adjustments, previously settled states adjustments, and the nonparticipating manufacturers adjustment.

(4) **Distinct Identity of MSA Payment Deposits:** The General Assembly has determined that it shall be the policy of the Commonwealth that all Phase I Tobacco Settlement payments shall be deposited to the credit of the General Fund and shall maintain a distinct identity as Phase I Tobacco Settlement payments that shall not lapse to the credit of the General Fund surplus but shall continue forward from each fiscal year to the next fiscal year to the extent that any balance is unexpended.

(5) **MSA Payment Estimates and Adjustments:** Based on the official estimates of the Consensus Forecasting Group, the amount of MSA payments expected to be received in fiscal year 2020-2021 is \$106,300,000 and in fiscal year 2021-2022 is \$103,000,000. It is recognized that payments to be received by the Commonwealth are estimated and are subject to change. If MSA payments received are less than the official estimates, appropriation reductions shall be applied as follows: after exempting appropriations for debt service, the Attorney General, and the Department of Revenue, 50 percent to the Agricultural Development Fund, 30 percent to the Early Childhood

Development Fund, and 20 percent to the Health Care Improvement Fund. If MSA payments received exceed the official estimates, appropriation increases shall be applied as follows: after exempting appropriations for debt service, the Attorney General, and the Department of Revenue, 50 percent to the Agricultural Development Fund, 30 percent to the Early Childhood Development Fund, and 20 percent to the Health Care Improvement Fund.

**a. State Enforcement:** Notwithstanding KRS 248.654 and 248.703(4), a total of \$150,000 of the MSA payments in each fiscal year of the 2020-2022 biennium is appropriated to the Attorney General for the state's diligent enforcement of noncompliant nonparticipating manufacturers.

**b. State Enforcement:** Notwithstanding KRS 248.654 and 248.703(4), a total of \$250,000 of the MSA payments in each fiscal year of the 2020-2022 biennium is appropriated to the Finance and Administration Cabinet, Department of Revenue for the state's diligent enforcement of noncompliant nonparticipating manufacturers.

**c. Debt Service:** Notwithstanding KRS 248.654 and 248.703(4), \$30,863,200 in MSA payments in fiscal year 2020-2021 and \$26,601,200 in MSA payments in fiscal year 2021-2022 are appropriated to the Finance and Administration Cabinet, Debt Service budget unit.

**d. Agricultural Development Initiatives:** Notwithstanding KRS 248.654 and 248.703(4), \$38,481,600 in MSA payments in fiscal year 2020-2021 and \$38,892,200 in MSA payments in fiscal year 2021-2022 are appropriated to the Kentucky Agricultural Development Fund to be used for agricultural development initiatives as specified in this Part.

**e. Early Childhood Development Initiatives:** Notwithstanding KRS 248.654, \$25,439,100 in MSA payments in fiscal year 2020-2021 and \$25,604,700 in MSA payments in fiscal year 2021-2022 are appropriated to the Early Childhood Development Initiatives as specified in this Part.

**f. Health Care Initiatives:** Notwithstanding KRS 164.476, 248.654, and 304.17B-003(5), \$13,042,700 in MSA payments in fiscal year 2020-2021 and \$13,287,600 in MSA payments in fiscal year 2021-2022 are appropriated to the Health Care Improvement Fund for health care initiatives as specified in this Part.

#### A. STATE ENFORCEMENT

##### GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS

Notwithstanding KRS 248.654 and 248.703(4), appropriations for state enforcement shall be as follows:

#### 1. GENERAL GOVERNMENT

Budget Unit	2020-21	2021-22
a. Attorney General	150,000	150,000

#### 2. FINANCE AND ADMINISTRATION CABINET

Budget Unit	2020-21	2021-22
a. Revenue	250,000	250,000

#### B. DEBT SERVICE

##### GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS

Notwithstanding KRS 248.654 and 248.703(4), appropriations for debt service shall be as follows:

#### 1. FINANCE AND ADMINISTRATION CABINET

Budget Unit	2020-21	2021-22
a. Debt Service	30,863,200	26,601,200

(1) **Debt Service:** To the extent that revenues sufficient to support the required debt service appropriations are received from the Tobacco Settlement Program, those revenues shall be made available from those accounts to the appropriate account of the General Fund. All necessary debt service amounts shall be appropriated from the General Fund and shall be fully paid regardless of whether there is a sufficient amount available to be transferred from tobacco-supported funding program accounts to other accounts of the General Fund.

(2) **General Fund (Tobacco) Debt Service Lapse:** Notwithstanding Part X, (4) of this Act, \$1,926,600 in fiscal year 2020-2021 and \$1,785,700 in fiscal year 2021-2022 shall lapse to the General Fund.

(3) **Appropriation of Unexpended Tobacco Debt Service:** Any unexpended balance from the fiscal year 2020-2021 or fiscal year 2021-2022 General Fund (Tobacco) debt service appropriation in the Finance and



Administration Cabinet, Debt Service budget unit, shall continue and be appropriated to the Governor’s Office of Agricultural Policy.

**C. AGRICULTURAL DEVELOPMENT APPROPRIATIONS  
GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS**

Notwithstanding KRS 248.654 and 248.703(4), appropriations for Agricultural Development shall be as follows:

**1. GENERAL GOVERNMENT**

<b>Budget Unit</b>	<b>2020-21</b>	<b>2021-22</b>
a. Governor's Office of Agricultural Policy	34,594,800	-0-

(1) **Tobacco Settlement Funds - Allocations:** Notwithstanding KRS 248.711(2), and from the allocation provided therein, counties that are allocated in excess of \$20,000 in fiscal year 2020-2021 may provide up to four percent of the individual county allocation, not to exceed \$15,000 in fiscal year 2020-2021, to the county council in that county for administrative costs.

(2) **Counties Account:** Notwithstanding KRS 248.703(1), included in the above General Fund (Tobacco) appropriation is \$14,279,200 in fiscal year 2020-2021 for the counties account as specified in KRS 248.703(1)(a).

(3) **State Account:** Notwithstanding KRS 248.703(1), included in the above General Fund (Tobacco) appropriation is \$20,315,600 for the state account as specified in KRS 248.703(1)(b).

**2. DEPARTMENT OF AGRICULTURE**

<b>Budget Unit</b>	<b>2020-21</b>	<b>2021-22</b>
a. Agriculture	500,000	35,468,800

(1) **Farms to Food Banks:** Included in the above General Fund (Tobacco) appropriation is \$500,000 in each fiscal year to support the Farms to Food Banks Program. The use of the moneys provided by this appropriation shall be restricted to purchases of Kentucky-grown produce from Kentucky farmers who participate in the Farms to Food Banks Program.

(2) **Tobacco Settlement Funds - Allocations:** Notwithstanding KRS 248.711(2), and from the allocation provided therein, counties that are allocated in excess of \$20,000 in fiscal year 2021-2022 may provide up to four percent of the individual county allocation, not to exceed \$15,000 in fiscal year 2021-2022, to the county council in that county for administrative costs.

(3) **Counties Account:** Notwithstanding KRS 248.703(1), included in the above General Fund (Tobacco) appropriation is \$14,443,600 in fiscal year 2021-2022 for the counties account as specified in KRS 248.703(1)(a).

(4) **State Account:** Notwithstanding KRS 248.703(1), included in the above General Fund (Tobacco) appropriation is \$20,525,200 for the state account as specified in KRS 248.703(1)(b).

**3. ENERGY AND ENVIRONMENT CABINET**

<b>Budget Unit</b>	<b>2020-21</b>	<b>2021-22</b>
a. Natural Resources	3,386,800	3,423,400

(1) **Environmental Stewardship Program:** Included in the above General Fund (Tobacco) appropriation is \$2,479,500 in fiscal year 2020-2021 and \$2,516,100 in fiscal year 2021-2022 for the Environmental Stewardship Program.

(2) **Conservation District Local Aid:** Included in the above General Fund (Tobacco) appropriation is \$907,300 in each fiscal year for the Division of Conservation to provide direct aid to local conservation districts.

TOTAL - AGRICULTURAL APPROPRIATIONS	38,481,600	38,892,200
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**D. EARLY CHILDHOOD DEVELOPMENT  
GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS**

Notwithstanding KRS 248.654, appropriations for Early Childhood Development shall be as follows:

**1. EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

<b>Budget Unit</b>	<b>2020-21</b>	<b>2021-22</b>
a. General Administration and Program Support	1,400,000	1,400,000

(1) **Early Childhood Development:** Included in the above General Fund (Tobacco) appropriation is \$1,400,000 in each fiscal year for the Early Childhood Advisory Council.

**2. CABINET FOR HEALTH AND FAMILY SERVICES**

<b>Budget Units</b>	<b>2020-21</b>	<b>2021-22</b>
a. Community Based Services	12,250,000	12,311,000

(1) **Early Childhood Development Program:** Included in the above General Fund (Tobacco) appropriation is \$9,750,000 in each fiscal year for the Early Childhood Development Program.

(2) **Early Childhood Adoption and Foster Care Supports:** Included in the above General Fund (Tobacco) appropriation is \$2,500,000 in fiscal year 2020-2021 and \$2,561,000 in fiscal year 2021-2022 for the Early Childhood Adoption and Foster Care Supports Program.

	<b>2020-21</b>	<b>2021-22</b>
b. Public Health	9,873,100	9,943,200

(1) **HANDS Program, Healthy Start, Early Childhood Mental Health, and Early Childhood Oral Health:** Included in the above General Fund (Tobacco) appropriation is \$7,000,000 in each fiscal year for the Health Access Nurturing Development Services (HANDS) Program, \$942,000 in fiscal year 2020-2021 and \$965,000 in fiscal year 2021-2022 for Healthy Start initiatives, \$942,000 in fiscal year 2020-2021 and \$965,000 in fiscal year 2021-2022 for Early Childhood Mental Health, and \$989,100 in fiscal year 2020-2021 and \$1,013,200 in fiscal year 2021-2022 for Early Childhood Oral Health.

(2) **Folic Acid Program:** General Fund (Tobacco) continuing appropriation reserves allotted to the Folic Acid Program shall be utilized by the Department for Public Health in each fiscal year to continue the Folic Acid Program.

	<b>2020-21</b>	<b>2021-22</b>
c. Behavioral Health, Developmental and Intellectual Disabilities Services	1,916,000	1,950,500

(1) **Substance Abuse Prevention and Treatment:** Included in the above General Fund (Tobacco) appropriation is \$1,416,000 in fiscal year 2020-2021 and \$1,450,500 in fiscal year 2021-2022 for substance abuse prevention and treatment for pregnant women with a history of substance abuse problems.

(2) **Kentucky Rural Mental Health and Suicide Prevention Pilot Program:** Included in the above General Fund (Tobacco) appropriation is \$500,000 in each fiscal year to support the Kentucky Rural Mental Health and Suicide Prevention pilot program. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall coordinate with the Kentucky Department of Agriculture, the University of Kentucky Southeast Center for Agricultural Health and Injury Prevention, and other entities to enhance awareness of the National Suicide Prevention Lifeline (988) in rural communities in Kentucky and to improve access to information on mental health issues and available treatment services. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide cultural competency training to staff to address the unique mental health challenges affecting the state's rural communities. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall also provide outreach, treatment, and other necessary services to improve the mental health outcomes for rural communities in Kentucky. The Department for Behavioral Health, Developmental and Intellectual Disabilities, in conjunction with the Kentucky Department of Agriculture and the University of Kentucky Southeast Center for Agricultural Health and Injury Prevention, shall apply for federal funds as provided by the Agriculture Improvement Act of 2018, 7 U.S.C. sec. 5936, to supplement the General Fund (Tobacco) appropriation provided above. The Cabinet for Health and Family Services shall submit a report on the results of the pilot program, including but not limited to the number of participants, the mental health issues addressed, and the funding used to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Agriculture by June 30, 2022.

TOTAL - EARLY CHILDHOOD APPROPRIATIONS	25,439,100	25,604,700
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**E. HEALTH CARE IMPROVEMENT APPROPRIATIONS  
GENERAL FUND - PHASE I TOBACCO SETTLEMENT FUNDS**

Notwithstanding KRS 164.476, 248.654 and 304.17B-003(5), appropriations for health care improvement shall be as follows:

**1. CABINET FOR HEALTH AND FAMILY SERVICES**

<b>Budget Unit</b>	<b>2020-21</b>	<b>2021-22</b>
a. Public Health	2,000,000	2,000,000

(1) **Smoking Cessation Program:** Included in the above General Fund (Tobacco) appropriation is \$2,000,000 in each fiscal year for Smoking Cessation.

**2. JUSTICE AND PUBLIC SAFETY CABINET**

<b>Budget Unit</b>	<b>2020-21</b>	<b>2021-22</b>
a. Justice Administration	3,516,600	3,593,800

(1) **Office of Drug Control Policy:** Included in the above General Fund (Tobacco) appropriation is \$3,166,600 in fiscal year 2020-2021 and \$3,243,800 in fiscal year 2021-2022 for the Office of Drug Control Policy.

(2) **Restorative Justice:** Included in the above General Fund (Tobacco) appropriation is \$350,000 in each fiscal year to support the Restorative Justice Program administered by the Volunteers of America.

**3. POSTSECONDARY EDUCATION**

<b>Budget Unit</b>	<b>2020-21</b>	<b>2021-22</b>
a. Council on Postsecondary Education	7,526,100	7,693,800

(1) **Cancer Research and Screening:** Included in the above General Fund (Tobacco) appropriation is \$6,876,100 in fiscal year 2020-2021 and \$7,043,800 in fiscal year 2021-2022 for cancer research and screening. The appropriation in each fiscal year shall be equally shared between the University of Kentucky and the University of Louisville.

(2) **Spinal Cord and Head Injury Research:** Included in the above General Fund (Tobacco) appropriation is \$650,000 in each fiscal year for spinal cord and head injury research. In accordance with KRS 211.500 to 211.504, the appropriation in each fiscal year shall be shared between the University of Kentucky and the University of Louisville.

TOTAL - HEALTH CARE	13,042,700	13,287,600
TOTAL - PHASE I TOBACCO SETTLEMENT FUNDING PROGRAM	108,226,600	104,785,700

**PART XI**

**STATE/EXECUTIVE BRANCH BUDGET SUMMARY**

**OPERATING BUDGET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	-0-	108,226,600	104,785,700
General Fund	45,749,300	11,135,245,000	11,933,464,800
Restricted Funds	-0-	9,274,610,800	10,421,326,300
Federal Funds	-0-	18,044,279,500	15,772,115,100
Road Fund	-0-	83,613,900	56,980,300
SUBTOTAL	45,749,300	38,645,975,800	38,288,672,200

**CAPITAL PROJECTS BUDGET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
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## ACTS OF THE GENERAL ASSEMBLY

General Fund	-0-	700,000	8,170,000
Restricted Funds	10,000,000	5,888,416,200	73,627,600
Federal Funds	-0-	135,451,000	198,731,000
Bond Funds	3,000,000	329,772,300	57,747,000
Agency Bonds	-0-	766,938,000	12,200,000
Investment Income	-0-	9,536,000	11,156,000
Other Funds	3,000,000	1,774,918,000	5,500,000
SUBTOTAL	16,000,000	8,905,731,500	367,131,600

**TOTAL - STATE/EXECUTIVE BUDGET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund (Tobacco)	-0-	108,226,600	104,785,700
General Fund	45,749,300	11,135,945,000	11,941,634,800
Restricted Funds	10,000,000	15,163,027,000	10,494,953,900
Federal Funds	-0-	18,179,730,500	15,970,846,100
Road Fund	-0-	83,613,900	56,980,300
Bond Funds	3,000,000	329,772,300	57,747,000
Agency Bonds	-0-	766,938,000	12,200,000
Investment Income	-0-	9,536,000	11,156,000
Other Funds	3,000,000	1,774,918,000	5,500,000
TOTAL FUNDS	61,749,300	47,551,707,300	38,655,803,800

**Veto overridden in part March 29, 2021.**

**CHAPTER 170****( HB 195 )**

**Provisions of this bill that are to be deleted due to vetoes of the Governor that were not overridden by the General Assembly are displayed as bracketed and struck-through text enclosed in double asterisks, e.g.,**

**\*\*[text]\*\*.**

AN ACT making appropriations for the operations, maintenance, support, and functioning of the Judicial Branch of the government of the Commonwealth of Kentucky and its various officers, boards, commissions, subdivisions, and other state-supported activities.

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

→Section 1. The Judicial Branch Budget is as follows:

**PART I****OPERATING BUDGET**

(1) **Funds Appropriations:** There is appropriated out of the General Fund, Restricted Funds accounts, or Federal Funds accounts for the fiscal year beginning July 1, 2020, and ending June 30, 2021, and for the fiscal year beginning July 1, 2021, and ending June 30, 2022, the following sums to be used for the purposes of the Judicial Branch of the government of the Commonwealth of Kentucky, including the Supreme Court, Court of Appeals, Circuit Court, Family Court, District Court, the Administrative Office of the Courts, Judicial Retirement, Local

Facilities Fund, Local Facilities Use Allowance Contingency Fund, and for services performed by the Circuit Court Clerks' offices, including both Circuit and District Court support.

**A. JUDICIAL BRANCH**

**Budget Units**

**1. Court of Justice**

**a. Court Operations and Administration**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	270,755,000	260,286,700
Restricted Funds	52,343,600	57,112,200
Federal Funds	4,936,300	4,212,100
<b>TOTAL</b>	<b>328,034,900</b>	<b>321,611,000</b>

(1) **Civil Filing Fees:** Pursuant to its authority, if the Supreme Court retains the increases in civil filing fees that were effective in 2008 and 2018, the additional income resulting from the fee increases, not to exceed \$15,468,100 in each fiscal year, shall be deposited into a trust and agency account for court operations and salaries for non-elected personnel. Any revenue generated by these increases in excess of the \$15,468,100 in each fiscal year shall be deposited into the General Fund.

(2) **Night Court in Jefferson County:** The Administrative Office of the Courts shall continue the operations and current schedule of night court in Okolona and Middletown in Jefferson County in each fiscal year if the Court of Justice does not incur any costs.

~~\*(3) **Circuit Clerk Expense Allowance:** Notwithstanding KRS 64.058, each Circuit Clerk shall receive an expense allowance of \$2,400 annually, at the rate of \$200 per month, in fiscal year 2021-2022.]\*\*~~

(4) **Salary Increment:** Notwithstanding KRS 64.480(2), no salary adjustments are provided on the base salary or wages of the Clerk of the Supreme Court.

(5) **Office of Bar Admissions:** (a) Notwithstanding KRS 61.565, 61.702, and any statute to the contrary, the Office of Bar Admissions shall be an agency of the Judicial Branch for purposes of retirement contributions. Included in the above General Fund appropriation is \$62,000 in fiscal year 2021-2022 to cover the Office of Bar Admissions' anticipated increase in retirement costs over this employer's fiscal year 2019-2020 baseline contribution as outlined in the fiscal note for 2021 Regular Session House Bill 8, as passed by the General Assembly and located on the Legislative Research Commission's Web site.

(b) The provisions of paragraph (a) of this subsection shall neither be construed to signal future support for the Office of Bar Admissions from the General Assembly, nor express any intent that the Kentucky Retirement Systems grant the Administrative Office of the Courts its request to reclassify the Office of Bar Admissions as an agency of the Judicial Branch.

**b. Local Facilities Fund**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	114,514,200	114,618,400

(1) **Local Facility Projects:** (a) Included in the above General Fund appropriation is \$2,345,700 in each fiscal year to support use allowance payments for two judicial center projects authorized by the 2018 General Assembly.

(b) Included in the above General Fund appropriation is an additional \$175,000 in fiscal year 2021-2022 to support use allowance payments attributable to a project scope increase for the relocation of the Oldham County facility project authorized by the 2018 General Assembly.

(2) **Maintenance Pool:** Included in the above General Fund appropriation is \$3,000,000 in each fiscal year to create a maintenance pool for planned and unanticipated non-capital projects for local courthouses and judicial centers.

(3) **Local Court Facility Compensation:** Included in the above General Fund appropriation are moneys to compensate local units of government for providing court space and for costs incurred in the development of local

court facilities as defined in KRS Chapter 26A and provided in Part II of this Act, and to perform all other acts required or authorized by KRS Chapter 26A.

(4) **Use Allowance Payments to Counties:** Pursuant to KRS 26A.090(2), beginning with court facility construction or renovation projects authorized by the 2000 Regular Session of the General Assembly and all subsequent court facility projects, use allowance payments are restricted to the court's proportional share of the annual principal and interest costs in connection with the construction or renovation of the facility, not to exceed the authorized annual use allowance.

(5) **Court Facility Maintenance Fund:** (a) Notwithstanding KRS 26A.090(2), when there is no debt on court facility construction or renovation projects authorized prior to the 2000 Regular Session of the General Assembly, use allowance is restricted to compensation equal to two percent annually of capital costs to be paid to the county unit of government and two percent annually to be retained by the Administrative Office of the Courts and directed to a separate fund specifically for maintenance of court facilities.

(b) The fund created pursuant to paragraph (a) of this subsection shall be used for routine, ongoing, planned, and unanticipated maintenance for court facilities.

**c. Local Facilities Use Allowance Contingency Fund**

(1) **Funds Carry Forward:** Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2019-2020 shall not lapse and shall continue into fiscal year 2020-2021, and any unexpended balance remaining at the close of fiscal year 2020-2021 shall not lapse and shall continue into fiscal year 2021-2022 to provide for cost overruns in authorized court facilities projects not to exceed 15 percent of the use allowance in accordance with KRS Chapter 26A.

**TOTAL - Court of Justice**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	385,269,200	374,905,100
Restricted Funds	52,343,600	57,112,200
Federal Funds	4,936,300	4,212,100
<b>TOTAL</b>	<b>442,549,100</b>	<b>436,229,400</b>

**2. JUDICIAL RETIREMENT SYSTEM**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	7,147,500	7,147,500

(1) **Judicial Retirement Benefits:** General Fund amounts are included to provide actuarial-assessed judicial retirement benefits pursuant to KRS 21.345 to 21.580.

(2) **Administrative Expenses:** Pursuant to KRS 21.540, administrative expenses shall be paid out of an administrative account which shall be funded by transfers of the necessary moneys, in appropriate ratio, from the funds described in KRS 21.550 and 21.560. Notwithstanding Part III, 8. of this Act, Restricted Funds appropriations may be increased to ensure sufficient funding to support the Judicial Form Retirement System.

(3) **Pension Benefit Increase:** Notwithstanding KRS 21.405(5), no pension benefit increase shall be granted to recipients of a retirement allowance under KRS 21.345 to 21.580 on July 1, 2020, or July 1, 2021.

**TOTAL - JUDICIAL BRANCH**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	392,416,700	382,052,600
Restricted Funds	52,343,600	57,112,200
Federal Funds	4,936,300	4,212,100
<b>TOTAL</b>	<b>449,696,600</b>	<b>443,376,900</b>

**PART II**

**CAPITAL PROJECTS BUDGET**

**(1) Authorization of Capital Projects:** It is the intent of the General Assembly that any capital project proposed by any state government entity, including the agencies and subdivisions of the Court of Justice, shall be authorized by the General Assembly prior to the project's financing and construction, in accordance with KRS 7A.010, 7A.120, 45.750, 45.760, 45.763, 45.765, and 48.110. Pursuant to KRS 45.760(1), the amount allotted, from all sources, for expenditure on any capital project, including leases as defined by KRS 45.750, shall not exceed the estimated cost as shown in this Act.

**(2) Capital Projects and Bond Oversight Committee:** Capital construction projects and major items of equipment that are not specifically listed in this Act may be authorized only after submission of the project to the Capital Projects and Bond Oversight Committee and in accordance with the other requirements of KRS 45.760(7). Moneys may be transferred to the allotment account of any capital project only after submission of the project to the Capital Projects and Bond Oversight Committee and in accordance with the other requirements of KRS 45.760(6). As required by KRS 45.760, all capital construction items authorized in this Act shall be constructed in accordance with this Act, supporting documentation considered by the General Assembly, and Judicial Branch budget records. Any modifications to the scope of a capital construction project or to a lease shall be reported to the Capital Projects and Bond Oversight Committee before execution.

**(3) Court Facility Planning Process:** The county shall require the Project Development Board to hire a certified architect not otherwise involved with the project to conduct an independent feasibility study to determine whether the needs of the community and the Court of Justice can best be met through the construction of a freestanding building, or through an addition and/or renovation of the existing court facility. The cost for this study shall be an accepted and approved portion of the planning process, and shall be eligible for reimbursement from the bond proceeds.

**(4) Deferred Funding:** (a) General Fund support to provide operating costs totaling \$2,354,800, annualized use allowance payments totaling \$14,491,900, and nonrecurring furniture and equipment costs of \$4,075,000 for Barren, Butler, Clinton, Crittenden, Jessamine, Madison, and Scott Counties is deferred to the 2022-2024 fiscal biennium.

(b) General Fund support to provide operating costs totaling \$680,800 and \$2,000,000 for nonrecurring equipment and furniture costs for two judicial center projects authorized by the 2018 General Assembly is deferred to the 2022-2024 fiscal biennium.

(c) It is the intent of the General Assembly that all projects in paragraphs (a) and (b) of this subsection shall be funded using resources previously appropriated for projects that no longer require use allowance debt payments in the 2022-2024 fiscal biennium.

**(5) Local Facilities Use Allowance Contingency Fund:** For any court facility project which is occupied and use allowance funding is insufficient, the use allowance payments shall be approved from the Local Facilities Use Allowance Contingency Fund. If funds are not available in the Local Facilities Use Allowance Contingency Fund, the Chief Justice may transfer funds from other Judicial Branch accounts in accordance with Part III, General Provisions, Section 7. of this Act to make the necessary payments.

**(6) Edmonson County Courthouse Additional Parking Lot:** (a) General Fund support of \$70,800 in fiscal year 2020-2021 is contained in the Local Facilities Fund for an additional parking lot in Brownsville. This funding shall be contingent upon the local unit of government contributing \$20,000 towards the completion of the additional parking lot.

(b) Notwithstanding any statute to the contrary, any unexpended balance from the appropriation set forth in paragraph (a) of this subsection shall be transferred to the Budget Reserve Trust Fund Account (KRS 48.705).

**A. JUDICIAL BRANCH**

**Budget Units**

**1. Local Facilities Fund**

<b>Project</b>	<b>Project Scope</b>
<b>001.</b> Barren	31,615,000
<b>002.</b> Butler	11,860,000
<b>003.</b> Clinton	17,435,000
<b>004.</b> Crittenden	11,965,000

<b>005.</b>	Jessamine	28,440,000
<b>006.</b>	Madison	12,490,000
<b>007.</b>	Scott	37,330,000

**2. Lease Authorizations**

- 001.** Franklin County - Lease - Court of Appeals
- 002.** Jefferson County - Lease - Parking

**PART III**

**GENERAL PROVISIONS**

**1. Expenditure Authority:** The Director of the Administrative Office of the Courts, with the approval of the Chief Justice, may expend any of the funds appropriated for court operations and administration in any lawful manner and for any legal purpose that the Chief Justice shall authorize or direct. No executive agency of state government shall have the power to restrict or limit the expenditure of funds appropriated to the Judicial Branch of government.

**2. Severability of Budget Provisions:** Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provision thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

**3. Duplicate Appropriations:** Any appropriation item and sum in this Act and in an appropriation provision in another Act of the 2020 and 2021 Regular Sessions of the General Assembly which constitutes a duplicate appropriation shall be governed by KRS 48.312.

**4. Priority of Individual Appropriations:** KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

**5. Carry Forward of Funds:** Notwithstanding KRS 45.229, any unexpended balance remaining at the close of the fiscal years ending June 30, 2020, June 30, 2021, and June 30, 2022, shall not lapse and shall continue into the next fiscal year.

**6. Final Budget Document:** The Director of the Administrative Office of the Courts shall prepare a final budget document reflecting the 2020-2022 biennial budget of the Court of Justice. A copy shall be provided to the Legislative Research Commission, and an informational copy shall be furnished to the Finance and Administration Cabinet, within 60 days of the adjournment of the 2020 Regular Session of the General Assembly and the 2021 Regular Session of the General Assembly.

**7. Transferability of Funds:** The Chief Justice of the Commonwealth of Kentucky shall have the ability to transfer funds to other programs and budget units within the Judicial Branch. Any funds transferred to other budget units within the Judicial Branch may be used to support any activity, program, or operation of the budget unit or program receiving the respective funds.

**8. Appropriations Revisions:** Notwithstanding KRS 48.630(10), no revisions for unbudgeted Restricted Funds appropriations for expenditure shall be allotted or expended that have not been appropriated in any enacted branch budget bill or without the express authority of the General Assembly. Proposed revisions to unbudgeted Federal Funds appropriations for expenditure in this Act shall be made and reported to the Interim Joint Committee on Appropriations and Revenue. The Director of the Administrative Office of the Courts shall notify, on a timely basis, the Legislative Research Commission of the most current estimates of anticipated receipts for the affected fiscal year and an accompanying statement which explains variations from the anticipated amount.

**9. Issuance of Paychecks to Employees:** Notwithstanding 101 KAR 2:095, Section 10, the state payroll that would normally be scheduled to be paid on June 30, 2020, and June 30, 2021, shall not be issued prior to July 1, 2020, and July 1, 2021, respectively.

**10. Maximum Salary of Trial Commissioners:** Pursuant to KRS 24A.100(3), no trial commissioner shall be compensated at a rate greater than \$7,200. No funding is provided for trial commissioners commissioned in counties with a residing District Judge.

**11. Authorized Personnel Complement:** On July 1, 2020, the Administrative Office of the Courts shall establish a record for each budget unit of authorized permanent full-time and other positions based upon the enacted Judicial Budget of the Commonwealth and any adjustments authorized by provisions in this Act. The total number of filled permanent full-time and all other positions shall not exceed the authorized complements pursuant to this



section. The Director of the Administrative Office of the Courts may request an increase in the number of authorized positions to the Chief Justice. Upon approval, the Administrative Office of the Courts may authorize the employment of individuals in addition to the authorized complement. A report of the actions authorized in this section shall be provided to the Interim Joint Committee on Appropriations and Revenue on a monthly basis.

**12. Debt Restructuring:** Notwithstanding any other provision of the Kentucky Revised Statutes, use allowance payments shall not be amended to reflect debt restructuring transactions undertaken by a county during the 2020-2022 fiscal biennium.

**13. Court Facility Maintenance Fund Report:** For each of the periods ending June 30, 2020, June 30, 2021, and June 30, 2022, the Director of the Administrative Office of the Courts shall prepare a court facility maintenance report. This report shall detail all court facility maintenance undertaken by the Court of Justice, to include any cost-sharing with counties, as well as detail regarding future maintenance needs. This report shall include a statewide expenditure summary followed by individual county expenditures detailing the state's and county's respective share of expenditures. The Administrative Office of the Courts shall provide this report to the Interim Joint Committee on Appropriations and Revenue by September 15 of each fiscal year.

**14. Biennial Audits:** The Auditor of Public Accounts shall have the right to review, upon request, the accountant's work papers.

**15. Budgetary Restructuring:** The Court of Justice is hereby notified that it is the intent of the General Assembly that, beginning with the 2022-2024 biennium, the Court of Justice shall establish new appropriation units specific to the Supreme Court, Court of Appeals, Circuit Court, Family Court, District Court, Administrative Office of the Courts, Judicial Retirement, Local Facilities Fund, Local Facilities Use Allowance Contingency Fund, and for services performed by the Circuit Court Clerks' offices. The Court of Justice shall also begin tracking expenditures by location for each of the new appropriation units identified herein.

**16. Unexpended Use Allowance:** Notwithstanding any provision of the Kentucky Revised Statutes, any General Fund moneys appropriated for project-related expenses or use allowance payments in fiscal years 2020-2021 and 2021-2022 that are not expended specifically for project-related expenses or use allowance payments in the fiscal year in which appropriated shall be transferred to the Budget Reserve Trust Fund Account (KRS 48.705).

**17. Employee Layoffs, Furloughs, and Reduced Hours:** Notwithstanding any statute to the contrary, the following process and procedure is established for July 1, 2020, through June 30, 2022, in the event that the Chief Justice determines that it is desirable for the Court of Justice to layoff, furlough, or reduce hours of employees:

(1) For the purposes of this section:

(a) "Appointing authority" means the Chief Justice, in his or her capacity as provided in KRS 27A.010, or any agent whom he or she has delegated to act on his or her behalf with respect to employee appointments, position establishments, payroll documents, reemployment requests, waiver requests, requests for certification, or other position actions for the Court of Justice;

(b) "Furlough" or "reduction in hours" means the temporary reduction of hours an employee is scheduled to work by the appointing authority within a pay period;

(c) "Layoff" means discharge of employment subject to the rights contained in this section; and

(d) "Employees" includes all persons employed by the Court of Justice;

(2) Upon an order by the Chief Justice, an appointing authority has the authority to layoff or furlough employees or reduce hours of employment for any of the following reasons:

(a) Lack of funds or budgetary constraints;

(b) A reduction in the agency's spending authorization;

(c) Lack of work;

(d) Abolishment of a position; or

(e) Other material change in duties or organization;

(3) The appointing authority shall determine the job classifications affected and the number of employees laid-off in each classification and each county to which a layoff applies. In the same department or office, county, and job classification, interim and probationary employees shall be laid-off before any full-time or part-time employees with status are laid-off. For purposes of layoff, "probationary employee" does not include an employee with status serving a promotional probation;

(4) The Chief Justice shall approve and implement all actions taken under subsection (2) of this section and no such layoff, furlough, or reduction of hours may begin until such approval has been granted. The Chief Justice has the authority to determine the extent, effective dates, and length of any action taken under subsection (2) of this section;

(5) In determining the employees to be laid-off, the appointing authority shall consider all employees under the same appointing authority, within the job classification affected, and within the county affected. Consideration shall be given to the following relevant factors:

- (a) Job performance evaluations;
- (b) Seniority;
- (c) Education, training, and experience; and
- (d) Disciplinary record;

(6) Any employee whose position is subject to layoff, furlough, or reduction of hours shall be provided written notice containing the reason for the action as set forth in subsection (2) of this section at least 15 days in advance of the effective date of the action;

(7) Any tenured employee who is laid-off shall be eligible to apply as a reemployment applicant for positions with the same job classification in the Court of Justice. For a period of two years, a reemployment applicant shall be hired before any applicant except another reemployment applicant with greater seniority who is on the same reemployment list. When a reemployment applicant is removed from a reemployment list, he or she shall be notified in writing. A reemployment applicant who accepts another Court of Justice position, tenured or non-tenured, or who retires, shall cease to have eligibility rights as a reemployment applicant;

(8) The appointing authority may place employees subject to a reduction in force;

(9) Furloughs or reduction of hours during a pay period shall not result in the loss of eligibility for any benefit otherwise due the employee;

(10) The appointing authority shall have the authority to promulgate comprehensive administrative regulations governing this section; and

(11) A layoff, furlough, or reduction of hours implemented in accordance with this section shall not be considered a penalization of the employee.

**18. Employer Retirement Contributions:** Notwithstanding KRS 61.565 or 61.702 to the contrary, the initial actuarially accrued liability employer contribution rate from July 1, 2021, through June 30, 2022, for nonhazardous employees in the judicial branch departments shall be determined by the Director of the Administrative Office of the Courts by May 1, 2021. The employer contribution rate shall include the normal cost contribution of 10.10 percent and be sufficient to adhere to the prorated amount of the actuarially accrued liability to each individual nonhazardous employer as determined by the Kentucky Employees Retirement System. The rates in this subsection apply to wages and salaries earned for work performed during the described period regardless of when the employee is paid for the time worked.

#### PART IV

#### FUNDS TRANSFER

The Judicial Branch shall transfer \$10,000,000 in fiscal year 2021-2022 to the General Fund.

#### PART V

#### BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The Judicial Branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with KRS Chapter 48, except that obligations essential to the constitutional duties and use allowance of the Judicial Branch shall be exempt from any Budget Reduction Plan. The level of participation in a Budget Reduction Plan shall be at the discretion of the Chief Justice and shall not exceed the actual percentage of revenue shortfall.

**Vetoed overridden in part March 29, 2021.**

## CHAPTER 171

## ( HB 320 )

AN ACT relating to the provision of broadband services, 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 278 IS CREATED TO READ AS FOLLOWS:

(1) *The General Assembly recognizes and declares:*

- (a) *The provision of broadband service to residential, commercial, and industrial customers is critical to securing a sound economy and promoting the general welfare of the Commonwealth; and*
- (b) *Distribution cooperatives are able to access and leverage federal funding to extend and enhance the availability of broadband service to Kentucky residents who are currently unserved or underserved.*

(2) *As used in this section:*

- (a) *"Broadband" means any wireline, fixed wireless, or fixed terrestrial technology having a capacity to transmit data from or to the Internet with a minimum speed of twenty-five (25) megabits per second downstream and three (3) megabits per second upstream as defined by the Federal Communications Commission or the United States Department of Agriculture and any amendments to those definitions. If the agencies use different speed definitions, the faster speed definition shall apply;*
- (b) *"Underserved area" means any project area where broadband service with a minimum twenty-five (25) megabits per second downstream and three (3) megabits per second upstream is not available; and*
- (c) *"Unserved area" means any project area where broadband service with a minimum ten (10) megabits per second downstream and one (1) megabit per second upstream is not available.*

(3) *Notwithstanding any other statute to the contrary:*

- (a) *A distribution cooperative may facilitate the operation of an affiliate engaged exclusively in the provision of broadband service to unserved or underserved households and businesses by:*
  - 1. *Leasing excess capacity on any fiber optic cable used to support the distribution cooperative's distribution system;*
  - 2. *Issuing securities or evidences of indebtedness in an amount not to exceed twenty-five percent (25%) of the net book value of its assets, the proceeds of which shall be used for the exclusive purpose of capitalizing the affiliate; or*
  - 3. *Pledging up to twenty-five percent (25%) of the net book value of its assets as collateral for a loan entered into by the affiliate for the purpose of providing broadband services; and*
- (b) *The commission shall grant approval of the leasing of excess capacity, the issuing of securities or evidences of indebtedness, or the pledging of assets.*

(4) *The commission shall take into consideration the policy of encouraging the provision of broadband service to unserved or underserved households and businesses throughout the Commonwealth when determining whether:*

- (a) *The proposed investment will result in wasteful duplication of investment in the case of any distribution cooperative's application for a certificate of public convenience and necessity under KRS 278.020 that includes the construction of a fiber optic cable system with capacity in excess of that which is necessary to support the distribution cooperative's system under subsection (3)(a)1. of this section; and*
- (b) *The issuance or assumption of securities or evidence of indebtedness satisfies the criteria of KRS 278.300(3) in the case of any distribution cooperative's application for approval of an issuance of securities or evidence of indebtedness or pledge of assets under subsection (3)(a)2. and 3. of this section.*

(5) *A distribution cooperative shall comply with the cost allocation requirements of:*

- (a) *KRS 278.2201, 278.2203, 278.2205, 278.2207, 278.2209, and 278.2211; and*

(b) **Only KRS 278.2213(1) and (3) with regard to any costs associated with its facilitation of an affiliate's provision of broadband services.**

(6) **Prior to December 31, 2021, the commission shall promulgate administrative regulations regarding pole attachments under the commission's jurisdiction, including those necessary for the provision of broadband service.**

➔Section 2. KRS 278.5462 is amended to read as follows:

(1) The provision of broadband services shall be market-based and not subject to state administrative regulation, **except as provided in this section and Section 1 of this Act.** Notwithstanding any other provision of law to the contrary except as provided in subsections (3) and (4) of this section, no agency of the state shall impose or implement any requirement upon a broadband service provider with respect to the following:

- (a) The availability of facilities or equipment used to provide broadband services; or
- (b) The rates, terms or conditions for, or entry into, the provision of broadband service.

(2) Any requirement imposed upon broadband service in existence as of July 15, 2004, is hereby voided upon enactment of KRS 278.546 to 278.5462. The provisions of this section do not limit or modify the duties of a local exchange carrier or an affiliate of a local exchange carrier to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements, including provisions related to remote terminals and central office facilities, to the extent required under 47 U.S.C. secs. 251 and 252, and any regulations issued by the Federal Communications Commission at rates determined in accordance with the standards established by the Federal Communications Commission pursuant to 47 C.F.R. secs. 51.503 to 51.513, inclusive of any successor regulations. Nothing contained in KRS 278.546 to 278.5462 shall be construed to preclude the application of access or other lawful rates and charges to broadband providers. Nothing contained in KRS 278.546 to 278.5462 shall preclude, with respect to broadband services, access for those service providers that use or make use of the publicly switched network.

(3) (a) **A broadband service provider shall ensure that adequate broadband services are provided in a manner to prevent seasonal outages or any outage that is more than intermittent in nature.**

(b) **In addition to all other powers conferred to it under this chapter, the commission shall have jurisdiction to resolve** ~~[may assist in the resolution of consumer service]~~ **complaints relating to service outages.**

(4) No telephone utility shall refuse to provide wholesale digital subscriber line service to competing local exchange carriers on the same terms and conditions, filed in tariff with the Federal Communications Commission, that it provides to Internet service providers.

➔Section 3. (1) There is hereby appropriated federal funds in the amount of \$250,000,000 in fiscal year 2021-2022 to the broadband deployment fund, with no more than \$50,000,000 of which to be awarded before April 1, 2022.

(2) The agency administering the broadband deployment fund shall promulgate administrative regulations to ensure that:

(a) The moneys are awarded based on the following criteria in the order as listed:

1. Projects in underserved areas or unserved areas where local, state, or federal funds are not currently available;

2. Projects within underserved areas or unserved areas where local, state, or federal broadband funds are inadequate; and

3. Projects that reach the customers that are the least economical to serve;

(b) A request for proposal shall be issued for projects;

(c) Projects will require:

1. A private match of moneys of not less than 50 percent of the total project cost; or

2. Matching funds from a city, county, urban county government, or consolidated local government of not less than 50 percent of the total project cost; and

(d) Project scope should be for the smallest feasible geographical area.

(3) The agency may provide incentive for timely completion and disincentive for not meeting agreed upon timeframes.

**Veto overridden March 29, 2021.**

## CHAPTER 172

### ( SB 148 )

AN ACT relating to child care and declaring an emergency.

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

➔Section 1. KRS 199.896 is amended to read as follows:

- (1) No person, association, or organization shall conduct, operate, maintain, or advertise any child-care center without obtaining a license as provided in KRS 199.892 to 199.896.
- (2) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may, *in the administrative regulations*, establish standards of care and service for a child-care center, criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care, and procedures for enforcement of penalties *which are not in contravention of this section*.
- (3) Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee that shall not exceed administrative costs of the program to the cabinet and shall be renewable annually upon expiration and reapplication when accompanied by a renewal fee that shall not exceed administrative costs of the program to the cabinet. Regular licenses and renewals thereof shall expire one (1) year from their effective date.
- (4) No child-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.
- (5) If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations, standards, or requirements of the cabinet, the inspector general shall issue a statement of deficiency to the center containing:
  - (a) A statement of fact;
  - (b) A statement of how an administrative regulation, standard, or requirement of the cabinet was violated; and
  - (c) The timeframe, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an immediate threat to the health, safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.
- (6) The Cabinet for Health and Family Services, in consultation with the Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care provider's license.
- (7) A child-care center shall have the right to appeal to the Cabinet for Health and Family Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.

- (8) In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:
  - (a) The gravity of the threat to the health, safety, or welfare of children posed by the violation;
  - (b) The number and type of previous violations of the child-care center;
  - (c) The reasonable diligence exercised by the child-care center and efforts to correct the violation; and
  - (d) The amount of assessment necessary to assure immediate and continued compliance.
- (9) Upon a child-care center's failure to take action to correct a violation of the administrative regulations, standards, or requirements of the cabinet contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:
  - (a) Institute proceedings to obtain an order compelling compliance with the administrative regulations, standards, and requirements of the cabinet;
  - (b) Institute injunctive proceedings in Circuit Court to terminate the operation of the center;
  - (c) Institute action to discontinue payment of child-care subsidies; or
  - (d) Suspend or revoke the license or impose other penalties provided by law.
- (10) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of child-care center license of the operator. Identifying information regarding children and their families shall remain confidential.
- (11) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the child-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the child-care center upon the parent's, custodian's, guardian's, or other interested person's request.
- (12) All fees collected under the provisions of KRS 199.892 to 199.896 for license and certification applications shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.
- (13) Any advertisement for child-care services shall include the address of where the service is being provided.
- (14) All inspections of licensed and unlicensed child-care centers by the Cabinet for Health and Family Services shall be unannounced.
- (15) All employees and owners of a child-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:
  - (a) Basic health, safety, and sanitation;
  - (b) Recognizing and reporting child abuse; and
  - (c) Developmentally appropriate child-care practice.
- (16) All employees and owners of a child-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development. These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric head trauma approved by the secretary of the Cabinet for Health and Family Services. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

- (17) The Cabinet for Health and Family Services shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (15) of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (15) of this section.
- (18) Child-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact that is intended to protect a child from immediate danger.
- (19) Child-care centers that provide instructional and educational programs for preschool-aged children that operate for a maximum of twenty (20) hours per week and that a child attends for no more than fifteen (15) hours per week shall:
- (a) Notify the cabinet in writing that the center is operating;
  - (b) Meet all child-care center licensure requirements and administrative regulations related to employee background checks;
  - (c) Meet all child-care center licensure requirements and administrative regulations related to tuberculosis screenings; and
  - (d) Be exempt from all other child-care center licensure requirements and administrative regulations.
- (20) Child-care centers that provide instructional and educational programs for preschool-aged children that operate for a maximum of twenty (20) hours per week and that a child attends for no more than ten (10) hours per week shall be exempt from all child-care licensure requirements and administrative regulations.
- (21) Instructional programs for school-age children shall be exempt from all child-care licensure administrative regulations if the following criteria are met:
- (a) The program provides direct instruction in a single skill, talent, ability, expertise, or proficiency;
  - (b) The program does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;
  - (c) The program operates outside the time period when school is in session, including before or after school hours, holidays, school breaks, teaching planning days, or summer vacation;
  - (d) The program does not advertise or otherwise represent that the program is a licensed child-care center or that the program offers child-care services;
  - (e) The program informs the parent or guardian:
    - 1. That the program is not licensed by the cabinet; and
    - 2. About the physical risks a child may face while participating in the program; and
  - (f) The program conducts the following background checks for all program employees and volunteers who work with children:
    - 1. Check of the child abuse and neglect records maintained by the cabinet; and
    - 2. In-state criminal background information check from the Justice and Public Safety Cabinet or Administrative Office of the Courts.
- (22) Directors and employees of child-care centers in a position that involves supervisory or disciplinary power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with KRS 199.8965.
- (23) A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
- (24) *The cabinet shall promulgate administrative regulations to identify emergency care providers who provide essential child-care services during an identified state of emergency.*
- (25) *Notwithstanding any state law, administrative regulation, executive order, or executive directive to the contrary, during the 2020 or 2021 state of emergency declared by the Governor in response to COVID-19,*

*including but not limited to any mutated strain of the COVID-19 virus, the cabinet shall not establish any restrictions on capacity for class or group size or the ability to combine classes and groups for capacity limits in the morning or afternoon that is below the number that was in effect on February 1, 2020.*

➔Section 2. KRS 199.8982 is amended to read as follows:

- (1) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:
  1. Submit two (2) written character references;
  2. Provide a written statement from a physician or advanced practice registered nurse that the applicant is in good health;
  3. Submit to a criminal record check in accordance with KRS 199.8965;
  4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;
  5. Provide a copy of the results of a tuberculosis risk assessment and the results of any appropriate follow-up with skin testing or chest X-ray for applicants who are determined to be at risk for developing tuberculosis in accordance with the recommendations of the Centers for Disease Control and Prevention within thirty (30) days of the date of application for certification; and
  6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:
    - a. Basic health, safety, and sanitation;
    - b. Recognizing and reporting child abuse; and
    - c. Developmentally appropriate child-care practice.
- (b) Initial applications for certification shall be made to the department. The cabinet may promulgate administrative regulations to establish fees that shall not exceed costs of the program to the cabinet, for proper administration of the certification. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee that shall not exceed costs of the program to the cabinet for renewal.
- (c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.
- (d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.
- (e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.
- (f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be



conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:

1. Certification requirements and procedures;
  2. Information about available child-care training; and
  3. Child-care food sponsoring organizations.
- (2) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development. These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services. The one and one-half (1.5) hours of continuing education required under this section shall be included in the current number of required continuing education hours.
- (3) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (1)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (1)(a)6. of this section.
- (4) (a) *As used in this subsection "local government" means a city, county, charter county, urban-county government, consolidated local government, or unified local government.*
- (b) *The provisions of this section shall supersede all local government ordinances or regulations pertaining to the certification, licensure, and training requirements related to the operation of family child-care homes and no local government shall adopt or enforce any additional licensure, certification, or training requirements specifically applicable to family child-care homes in addition to those provided in this section. This subsection shall not be interpreted or construed to exempt family child-care homes from compliance with local government ordinances and regulations that apply generally within the jurisdiction.*
- (c) *Because the availability of adequate child-care as an essential business is vital to the Commonwealth's state and local economies, by January 1, 2022, a local government that has adopted land use regulations pursuant to KRS Chapter 100 shall specifically name family child-care homes in the text of its zoning regulations to authorize the board of adjustments to separately consider the applications of proposed family child-care homes for conditional use permits within the residential zones of the planning unit where they are not a fully permitted use pursuant to KRS 100.237.*

➔Section 3. Whereas the General Assembly realizes that effective child care and a robust child-care industry is essential to sustain critical operations, including emergency and disaster response, and that response to these occurrences is a fundamental responsibility of elected government in the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Veto overridden March 29, 2021.**

## CHAPTER 173

( SB 251 )

AN ACT relating to the Department of Law.

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

➔Section 1. KRS 15.010 is amended to read as follows:

- (1) The Attorney General is the head of the Department of Law.
- (2) The Department of Law shall include the following major organizational units:
  - (a) **Department of Criminal Litigation**~~Division~~;
    1. Department of Criminal Investigations;
      - a. **Public Corruption Division**;
      - b. **Special Victims Division**;
      - c. **Special Investigations Division**; and
      - d. **Protective Intelligence Division**;
    2. Office of Special Prosecutions;
    3. Office of Medicaid Fraud and Abuse Control;
    4. Office of Trafficking and Abuse Prevention and Prosecution;
    5. Office of Prosecutors Advisory Council; and
    6. Office of Victims Advocacy;
  - (b) **Department of Civil Litigation**~~Division~~;
    1. Office of Consumer Protection;
    2. Office of Civil and Environmental Law;
      - a. Open Records and Meetings Division; and
      - b. Administrative Hearings Division;
    3. Office of Rate Intervention; and
    4. Office of Senior Protection;
  - (c) Office of the Solicitor General;
    1. Criminal Appeals Division; and
    2. Civil Appeals Division;
  - (d) **Office of Legal Counsel**;
  - (e) Office of Communications; and
  - ~~(f)(e)~~ Office of Administrative Services.

➔Section 2. KRS 15.020 is amended to read as follows:

- (1) The Attorney General is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and when requested in writing shall furnish to them his **or her** written opinion touching any of their official duties, and shall prepare proper drafts of all instruments of writing required for public use, and shall exercise all common law duties and authority pertaining to the office of the Attorney General under the common law, except when modified by statutory enactment.
- (2) **The Attorney General**~~He~~ shall communicate with the Legislative Research Commission as required by KRS 418.075.
- (3) Except as otherwise provided in KRS 48.005 and 2000 Ky. Acts ch. 483, sec. 8, **the Attorney General**~~he~~ shall appear for the Commonwealth in all cases in the Supreme Court or Court of Appeals wherein the Commonwealth is interested, and shall also commence all actions or enter **an**~~his~~ appearance in all cases, hearings, and proceedings in and before all other courts, tribunals, or commissions in or out of the state, and attend to all litigation and legal business in or out of the state required of **the office**~~him~~ by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer, department, commission, or agency may have in connection with, or growing out of, his, **her**, or its official duties, except where it is made the duty of the Commonwealth's attorney or county attorney to represent the Commonwealth.

When any attorney is employed for any said agency, the same shall have the approval of such agency before such employment.

- (4) ***Notwithstanding any other statute or provision to the contrary, the Attorney General may bring any action challenging the constitutionality of a Kentucky statute, executive order, administrative regulation, or order of any cabinet, program cabinet, or department under KRS Chapter 12. The action may be brought in any county where the alleged constitutional harm has occurred or could be reasonably presumed to occur.***
- (5) If any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any action, including an ex rel. action where the Attorney General has entered an appearance or is a party according to statutory or common law authority, those funds shall be handled under KRS 48.005.

➔Section 3. KRS 15.060 is amended to read as follows:

~~Upon written request of the Department of Revenue,~~ The Attorney General ***may*** ~~shall~~:

- (1) With the assistance of the Auditor of Public Accounts, ~~and~~ the Department of Revenue, ***or any other appropriate agency***, investigate the condition of any unsatisfied claim, demand, account, and judgment in favor of the Commonwealth.
- (2) When he believes that any fraudulent, erroneous or illegal fee bill, account, credit, charge or claim has been erroneously or improperly approved, allowed or paid out of the Treasury to any person, institute the necessary actions to recover the same. To this end he may employ assistants and experts to assist in examining the fee bills, accounts, settlements, credits and claims, and the books, records and papers of any of the officers of the Commonwealth.
- (3) Institute the necessary actions to collect and cause the payment into the Treasury of all unsatisfied claims, demands, accounts and judgments in favor of the Commonwealth, except where specific statutory authority is given the Department of Revenue to do so.
- (4) Comply with KRS 48.005, if any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any legal action, including an ex rel. action in which the Attorney General has entered an appearance or is a party under statutory or common law authority.

➔Section 4. KRS 15.113 is amended to read as follows:

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

➔Section 5. KRS 15.200 is amended to read as follows:

- (1) Whenever requested in writing by:
  - (a) The Governor;~~;~~
  - (b) ***The President of the Senate or Speaker of the House of Representatives of the General Assembly;***~~;~~  
~~by~~
  - (c) Any of the courts or grand juries of the Commonwealth;~~;~~ or
  - (d) ~~Upon receiving a communication from~~ A sheriff, mayor, or majority of a city legislative body;

stating that his ***or her*** participation in a given case is desirable to effect the administration of justice and the proper enforcement of the laws of the Commonwealth, the Attorney General may intervene, participate in, or

direct any investigation or criminal action, or portions thereof, within the Commonwealth of Kentucky necessary to enforce the laws of the Commonwealth.

- (2) *The Attorney General* ~~(He)~~ may subpoena witnesses, secure testimony under oath for use in civil or criminal trials, investigations or hearings affecting the Commonwealth, its departments or political subdivisions.

**Veto overridden March 29, 2021.**

## CHAPTER 174

( HB 91 )

AN ACT proposing an amendment to the Constitution of Kentucky relating to abortion.

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 BE NUMBERED AS 26A AND TO READ AS FOLLOWS:

*To protect human life, nothing in this Constitution shall be construed to secure or protect a right to abortion or require the funding of abortion.*

➔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. The question to be submitted to voters shall read as follows: "Are you in favor of amending the Constitution of Kentucky by creating a new Section of the Constitution to be numbered Section 26A to state as follows: To protect human life, nothing in this Constitution shall be construed to secure or protect a right to abortion or require the funding of abortion?"

**Governor's signature not required. Delivered to Secretary of State March 30, 2021.**

## CHAPTER 175

( HB 310 )

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. 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 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 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 *not included within the definition of "sex crime" in KRS 17.500*. 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, 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 in state penal institutions, halfway houses, reentry centers, and county jails are considered for parole not less than sixty (60) days prior to 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 *or a Class D felony included within the definition of "sex crime" in KRS 17.500* 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 *or a Class D felony included within the definition of "sex crime" in KRS 17.500* 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. ***For prisoners incarcerated prior to the effective date of this Act for a Class D felony included within the definition of "sex crime" in KRS 17.500, notice to the victims or their next of kin 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 the effective date of this Act for a Class D felony included within the definition of "sex crime" in KRS 17.500, 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 *not included within the definition of "sex crime" in KRS 17.500* 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 KRS 439.3408.
- (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 2. KRS 510.037 is amended to read as follows:

The entering of a judgment of conviction for any degree of rape, sodomy, or sexual abuse under this chapter, *or for a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, or sexual abuse*, shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:

- (1) An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
  - (2) The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and
  - (3) The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.
- ➔Section 3. KRS 456.010 is amended to read as follows:

As used in this chapter:

- (1) "Dating relationship" means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:
  - (a) Declarations of romantic interest;
  - (b) The relationship was characterized by the expectation of affection;
  - (c) Attendance at social outings together as a couple;
  - (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
  - (e) The length and recency of the relationship; and
  - (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed;
- (2) "Dating violence and abuse" means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault occurring between persons who are or have been in a dating relationship;
- (3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was not issued on the basis of domestic violence and abuse;
- (4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- (5) "Order of protection" means any interpersonal protective order, including those issued on a temporary basis, and includes a foreign protective order;
- (6) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 *or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, or sexual abuse*, or incest under KRS 530.020;
- (7) "Stalking" refers to conduct prohibited as stalking under KRS 508.140 or 508.150, *or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of stalking*;
- (8) "Strangulation" refers to conduct prohibited by KRS 508.170 and 508.175, *or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of strangulation*; and
- (9) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

➔Section 4. KRS 403.720 is amended to read as follows:

As used in KRS 403.715 to 403.785:

- (1) "Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple;
- (2) "Family member" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;
- (3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;

- (4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- (5) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;
- (6) "Order of protection" means an emergency protective order or a domestic violence order and includes a foreign protective order;
- (7) "Strangulation" refers to conduct prohibited by KRS 508.170 and 508.175, *or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of strangulation*; and
- (8) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

➔Section 5. KRS 504.110 is amended to read as follows:

- (1) If the court finds the defendant incompetent to stand trial but there is a substantial probability *the defendant*~~he~~ will attain competency in the foreseeable future, it shall commit the defendant to a treatment facility or a forensic psychiatric facility and order *the defendant*~~him~~ to submit to treatment for sixty (60) days or until the psychologist or psychiatrist treating him *or her* finds *the defendant*~~him~~ competent *to stand trial*, whichever occurs first, except that if the defendant is charged with a felony, he *or she* shall be committed to a forensic psychiatric facility unless the secretary of the Cabinet for Health and Family Services or the secretary's designee determines that the defendant shall be treated in another Cabinet for Health and Family Services facility. Within ten (10) days of that time, the court shall hold another hearing to determine whether or not the defendant is competent to stand trial.
- (2) If the court finds the defendant incompetent to stand trial ~~and~~~~but~~ there is no substantial probability he *or she* will attain competency in the foreseeable future:
  - (a) *The Commonwealth's attorney's office serving the county of criminal prosecution shall immediately petition the Circuit Court that found the defendant incompetent to stand trial or, if the finding was by a District Court, the Circuit Court in the county of criminal prosecution, to initiate an involuntary commitment proceeding under Sections 6 to 10 of this Act if the defendant is charged with a capital offense, a Class A felony, a Class B felony resulting in death or serious physical injury, or a violation of KRS 510.040 or 510.070; or*
  - (b) *The court*~~, it~~ shall conduct an involuntary hospitalization proceeding under KRS Chapter 202A or 202B *if the defendant is charged with an offense not listed in paragraph (a) of this subsection.*
- (3) *A defendant who is the subject of an involuntary commitment proceeding under Sections 6 to 10 of this Act shall be committed to a forensic psychiatric facility unless the secretary of the Cabinet for Health and Family Services or the secretary's designee determines that the defendant shall be treated in another Cabinet for Health and Family Services facility, during the pendency of the proceeding.*
- (4)~~(3)~~ If the court finds the defendant competent to stand trial, the court shall continue the proceedings against the defendant.

➔SECTION 6. KRS CHAPTER 202C IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Cabinet" means the Kentucky Cabinet for Health and Family Services;*
- (2) *"Commitment hearing" means the hearing under Section 9 of this Act to determine if a respondent meets the criteria for involuntary commitment under this chapter;*
- (3) *"Danger" means substantial physical harm or threat of substantial physical harm upon self or others;*
- (4) *"Evidentiary hearing" means the hearing under Section 8 of this Act to determine if the defendant committed the qualifying offense for which he or she was charged by a preponderance of the evidence;*
- (5) *"Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill persons or individuals with an intellectual disability who have been charged with or convicted of a felony;*



- (6) *"Hospital" means:*
- (a) *A state mental hospital or institution or other licensed public or private hospital, institution, health-care facility, or part thereof, approved by the Kentucky Cabinet for Health and Family Services as equipped to provide full-time residential care and treatment for mentally ill persons or individuals with an intellectual disability; or*
  - (b) *A hospital, institution, or health-care facility of the government of the United States equipped to provide residential care and treatment for mentally ill persons or individuals with an intellectual disability;*
- (7) *"Individual with an intellectual disability" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period;*
- (8) *"Judge" means the judge who found the respondent incompetent to stand trial in the criminal proceeding from which the petition for involuntary commitment arose;*
- (9) *"Less restrictive alternative mode of treatment" means a treatment given outside of a forensic psychiatric facility which would provide a respondent with appropriate treatment or care consistent with accepted professional practice standards and protect the respondent's safety and the safety of others;*
- (10) *"Mentally ill person" means a person with substantially impaired capacity to use self-control, judgment, or discretion in the conduct of the person's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;*
- (11) *"Qualified mental health professional" means:*
- (a) *A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;*
  - (b) *A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;*
  - (c) *A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;*
  - (d) *A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability;*
  - (e) *A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability;*
  - (f) *A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community program for mental health and individuals with an intellectual disability;*
  - (g) *A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric*

*unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community program for mental health and individuals with an intellectual disability; or*

- (h) *A physician assistant licensed under KRS 311.840 to 311.862, who meets one (1) of the following requirements:*
1. *Provides documentation that he or she has completed a psychiatric residency program for physician assistants;*
  2. *Has completed at least one thousand (1,000) hours of clinical experience under a supervising physician, as defined by KRS 311.840, who is a psychiatrist and is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc.;*
  3. *Holds a master's degree from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agencies, is practicing under a supervising physician as defined by KRS 311.840, and:*
    - a. *Has two (2) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or*
    - b. *Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least two (2) years; or*
  4. *Holds a bachelor's degree, possesses a current physician assistant certificate issued by the board prior to July 15, 2002, is practicing under a supervising physician as defined by KRS 311.840, and:*
    - a. *Has three (3) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or*
    - b. *Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least three (3) years;*
- (12) *"Qualifying offense" means a capital offense, a Class A felony, a Class B felony resulting in death or serious physical injury, or a violation of KRS 510.040 or 510.070;*
- (13) *"Respondent" means a person who was a criminal defendant found incompetent to stand trial who is or was the subject of a petition for involuntary commitment filed under KRS Chapter 504;*
- (14) *"Review hearing" means any hearing conducted to determine if a respondent continues to meet the criteria for involuntary commitment after the initial order for involuntary commitment has been issued under this chapter; and*
- (15) *"Secretary" means the secretary of the Cabinet for Health and Family Services.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) *When a defendant who is charged with a qualifying offense has been found, after a hearing under KRS Chapter 504, to be incompetent to stand trial with no substantial probability that the defendant will attain competency within three hundred sixty (360) days, the Commonwealth's attorney's office serving the county of criminal prosecution shall immediately petition the Circuit Court that found the defendant incompetent to stand trial or, if the finding was by a District Court, the Circuit Court in the county of the criminal prosecution, for an involuntary commitment proceeding, to include an evidentiary hearing and a commitment hearing, if applicable, under this chapter.*
- (2) *Upon the filing of the petition, the court shall assign a guardian ad litem to represent the needs and best interest of the respondent. The guardian ad litem shall be a full and active participant in all proceedings other than the evidentiary hearing under Section 8 of this Act and shall independently investigate, assess, and advocate for the defendant's best interest. The guardian ad litem is not a replacement for the defense attorney. If the defendant has retained or been appointed a defense attorney in the criminal case, that attorney may continue to represent the defendant in proceedings under this chapter. If, at any time during*

*the pendency of proceedings under this chapter, the defendant is not represented by an attorney, the court shall appoint counsel for the defendant, without a showing of indigency, to be provided by the Department of Public Advocacy or its designee.*

- (3) *The Circuit Court shall have exclusive jurisdiction over all proceedings under this chapter.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) *An adversarial evidentiary hearing on the record shall be held within twenty (20) days, excluding weekends and holidays, of the filing of a petition pursuant to Section 7 of this Act. Appropriate notice shall be served on all parties. The court shall order the Commonwealth to provide all available discovery to the respondent no later than seven (7) days, excluding weekends and holidays, before the hearing. No evidence may be presented at the hearing that has not been disclosed through discovery.*
- (2) *The respondent may stipulate to potential guilt and waive the hearing. A stipulation of potential guilt cannot be used against the respondent in any future criminal prosecution or civil litigation.*
- (3) *The purpose of the evidentiary hearing shall be to determine whether sufficient evidence exists to support a finding that the respondent is guilty of the charged crime against him or her. The Commonwealth's attorney's office serving the county of criminal prosecution shall have the burden of proving the sufficiency of the evidence by a preponderance of the evidence.*
- (4) *The evidentiary hearing shall be held before a judge without a jury. The rules of evidence shall apply. The respondent shall be permitted to present evidence and cross examine witnesses. The respondent may present evidence of affirmative defenses that could be raised at a criminal trial on the charged crime. The Commonwealth shall not have the burden of disproving an affirmative defense. The respondent must prove an affirmative defense by a preponderance of the evidence.*
- (5) (a) *If the court determines that sufficient evidence has been presented to support a finding that the respondent is guilty of the charged crime against him or her, the court shall immediately schedule a commitment hearing under this chapter within twenty (20) days, excluding weekends and holidays.*
- (b) *The court shall cause the respondent to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The qualified mental health professionals shall, within seven (7) days, excluding weekends and holidays, prior to the hearing, certify to the court their findings as to whether the respondent meets the criteria for involuntarily commitment under Section 10 of this Act.*
- (6) *If the court determines that insufficient evidence has been presented to support a finding that the respondent is guilty of the charged crime against him or her, the court shall order the immediate release of the respondent.*
- (7) *No evidence or statement submitted by the respondent at the evidentiary hearing shall be admissible in any criminal prosecution or civil litigation.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) *A commitment hearing shall be held within twenty (20) days, excluding weekends and holidays, after the court finds that the evidence presented in an evidentiary hearing pursuant to Section 8 of this Act supports a finding that the respondent is guilty of the charged crime against him or her by a preponderance of the evidence.*
- (2) *The commitment hearing may be conducted in an informal manner, consistent with orderly procedures, and in a physical setting not likely to have a harmful effect on the mental or physical health of the respondent. The hearing may be held by the court in chambers, at a forensic psychiatric facility, or other suitable place.*
- (3) *The Commonwealth's attorney's office serving the county of criminal prosecution which led to the finding that the respondent was incompetent to stand trial shall present evidence regarding whether the respondent meets the criteria for involuntary commitment under Section 10 of this Act. The respondent and the respondent's guardian ad litem shall be afforded an opportunity to testify, to present evidence, and to cross-examine any witnesses.*
- (4) *The manner of proceeding and the rules of evidence shall be the same as those in any criminal proceeding. The standard of proof shall be proof beyond a reasonable doubt. Proceedings shall be heard by the judge unless a party or the guardian ad litem requests a jury.*

(5) *The respondent's right to the commitment hearing shall not be waived.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

(1) *No respondent shall be involuntarily committed under this chapter unless there is a determination that:*

- (a) *The respondent presents a danger to self or others as a result of his or her mental condition;*
- (b) *The respondent needs care, training, or treatment in order to mitigate or prevent substantial physical harm to self or others;*
- (c) *The respondent has a demonstrated history of criminal behavior that has endangered or caused injury to others or has a substantial history of involuntary hospitalizations under KRS Chapter 202A or 202B prior to the commission of the charged crime; and*
- (d) *A less restrictive alternative mode of treatment would endanger the safety of the respondent or others.*

(2) *When a respondent is involuntarily committed under this chapter, the cabinet shall place that respondent in a forensic psychiatric facility designated by the secretary.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

(1) (a) *A review hearing to determine if a respondent involuntarily committed under this chapter should remain in a forensic psychiatric facility shall be conducted by the court that issued the initial order according to the provisions of subsection (2) of this section; and*

(b) *If at any point during the respondent's placement at a forensic psychiatric facility it appears that the respondent no longer meets the criteria for involuntary commitment under Section 10 of this Act because there has been a material change in circumstances or there is new evidence to present, the respondent or the respondent's guardian ad litem may request a review hearing pursuant to this section.*

(2) *The schedule for review hearings shall be as follows:*

(a) *From the initial order of commitment, a standard review hearing shall be conducted not sooner than ninety (90) days and not later than one hundred twenty (120) days;*

(b) *For the first two (2) years after the initial order of commitment, standard review hearings shall be conducted not less than one hundred eighty (180) days and not more than two hundred ten (210) days from the most recent review;*

(c) *Beginning two (2) years after the initial order of commitment, a standard review hearing shall be conducted not more than three hundred sixty-five (365) days from the most recent review hearing; and*

(d) *A heightened review hearing shall be conducted not more than five (5) years from the initial order of commitment and, thereafter, not more than five (5) years from the most recent heightened review hearing.*

(3) *Prior to each standard review hearing, the court shall cause the respondent to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The qualified mental health professionals shall, within seven (7) days prior to the hearing, excluding weekends and holidays, certify to the court their findings as to whether the respondent meets the criteria for involuntary commitment under Section 10 of this Act.*

(4) *A standard review hearing may be conducted in an informal manner, consistent with orderly procedures, and in a physical setting not likely to have a harmful effect on the mental or physical health of the respondent. The hearing may be held by the court in chambers, or remotely from a forensic psychiatric facility, or other suitable place. The respondent shall be present in person or remotely for all review hearings, unless presence is waived by the respondent through counsel.*

(5) *The Commonwealth's attorney's office serving the county of criminal prosecution which led to finding that the respondent was incompetent to stand trial shall present evidence regarding whether the respondent remains incompetent to stand trial and continues to meet the criteria for involuntary commitment under Section 10 of this Act. The respondent and the respondent's guardian ad litem shall be afforded an opportunity to present evidence, and to cross-examine any witnesses.*

- (6) *The manner of proceeding and the rules of evidence shall be the same as those in any criminal proceeding. The standard of proof shall be proof beyond a reasonable doubt. Proceedings shall be heard by a judge without a jury, except that a respondent shall be entitled to a jury upon request if the respondent has not had a review hearing with a jury during the preceding twelve (12) months.*
- (7) *The respondent's right to this hearing shall not be waived.*
- (8) *At the conclusion of a standard review hearing, the court shall make written findings of fact concerning whether the criteria for involuntary commitment under Section 10 of this Act continue to be satisfied based upon proof beyond a reasonable doubt. If the court finds that the criteria continue to be satisfied, the court shall enter an order authorizing the continued care and treatment of the respondent at the forensic psychiatric facility. Otherwise, the court shall enter an order requiring the respondent to be discharged.*
- (9) *During a heightened review hearing, the procedures of a standard review hearing shall apply. Additionally, the qualified mental health professionals who evaluated the respondent in preparation for the hearing shall be required to give live testimony and answer questions before the court. The respondent shall be physically present in the courtroom for the hearing. If the respondent is unable to attend for any reason, the hearing shall be rescheduled to a time, place, and manner in which the respondent is able to attend.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*In a hearing under Sections 8, 9, and 11 of this Act, the court may exclude all persons not necessary for the conduct of the hearing.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*A qualified mental health professional retained by the respondent shall be permitted to witness and participate in any examination of the respondent under this chapter.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*In proceedings under this chapter, there shall be no privilege as to any relevant communications between qualified mental health professionals. Qualified mental health professionals may disclose communications relating to diagnosis and treatment of the patient's mental condition.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) *The court records of a respondent made in all proceedings under this chapter are hereby declared to be confidential and shall not be open to the general public for inspection.*
- (2) *Any person seeking information contained in the court files or the court records of proceedings involving respondents under this chapter may file a written motion in the case setting out why the information is needed. A Circuit Judge may issue an order to disclose the information sought if he or she finds that the order is appropriate under the circumstances and if he or she finds it is in the best interest of the respondent or of the public to have such information disclosed.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*At any time, and without notice, a respondent detained at a forensic psychiatric facility, or a relative, friend, guardian, representative, or attorney on behalf of such person, may petition for a writ of habeas corpus to question the cause and legality of the detention and request that the court issue a writ for release.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) *The court which orders any respondent transferred to a forensic psychiatric facility under subsection (3) of Section 5 or Section 10 of this Act, shall at once notify the receiving hospital or psychiatric facility that such order has been made, advising of the sex and condition of the respondent and any other pertinent information.*
- (2) *After the forensic psychiatric facility has been so notified, the court shall order the sheriff of the county or other peace officer to transport the respondent within forty-eight (48) hours, excluding weekends and holidays, from the county in which the respondent is located to the forensic psychiatric facility designated by the cabinet. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the respondent to the forensic psychiatric facility.*
- (3) *Any respondent released from a forensic psychiatric facility under Sections 8 or 11 of this Act shall be transported to the respondent's county of discharge by a sheriff or other peace officer, by an ambulance*

*service designated by the cabinet, or by other appropriate means of transportation which is consistent with the treatment plan of that respondent. The cost of transporting the respondent to the respondent's county of discharge when performed by a peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation issued by the cabinet pursuant to KRS Chapter 13A.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*Forensic psychiatric facilities ordered to receive an involuntarily committed respondent shall have standing to petition the Circuit Court for any necessary clarification or modification of orders or judgments entered in proceedings under this chapter and to appeal from final judgments or orders entered in proceedings which have not complied with the provisions of this chapter. A copy shall be sent to the involuntarily committed respondent, the respondent's guardian ad litem, and the respondent's attorney of record, of whatever pleadings are filed by the hospital.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*A respondent involuntarily committed under this chapter shall have the following rights as a patient:*

- (1) The right to be adequately informed as to his or her individual treatment program;*
- (2) The right to assist in the planning of his or her treatment program;*
- (3) The right to refuse treatment subject to the provisions of Section 20 of this Act;*
- (4) The right to maintain, keep, and use personal possessions and money;*
- (5) The right to receive visitors;*
- (6) The right to receive payment for work performed on behalf of the forensic psychiatric facility;*
- (7) The right to refuse intrusive treatment subject to the provisions of Section 20 of this Act;*
- (8) The right to be free from unreasonable use of seclusion and restraint;*
- (9) The right to seek relief from participating in his or her treatment plan; and*
- (10) The right to the assistance of counsel to uphold these rights and all rights under this chapter.*

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) Every forensic psychiatric facility caring for respondents involuntarily committed under this chapter shall have a review committee of three (3) qualified mental health professionals appointed by the facility director. This review committee shall have the authority to review the appropriateness of a respondent's individual treatment plan.*
- (2) Upon the refusal of a respondent to participate in any or all aspects of his or her treatment plan, the review committee shall examine the appropriateness of the respondent's individual treatment plan. Within three (3) days of the refusal, the review committee shall meet with the respondent and his or her counsel, guardian ad litem, or other representative to discuss its recommendations.*
- (3) If the respondent still refuses to participate in any or all aspects of his or her individual treatment plan, the forensic psychiatric facility may petition the Circuit Court for a de novo determination of the appropriateness of the proposed treatment. Within seven (7) days, excluding weekends and holidays, the court shall conduct a hearing, consistent with the respondent's rights to due process of law, and shall utilize the following factors in reaching its determination:*
  - (a) Whether the treatment is necessary to protect the respondent or others from harm;*
  - (b) Whether the respondent is incapable of giving informed consent to the proposed treatment;*
  - (c) Whether any less restrictive alternative mode of treatment exists; and*
  - (d) Whether the proposed treatment carries any risk of permanent side effects.*
- (4) Upon the completion of the hearing, the court shall enter an appropriate judgment.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*This chapter shall not apply to persons under eighteen (18) years of age unless specifically authorized by the Kentucky Unified Juvenile Code.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

***This cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A in order to carry out the provisions of this chapter.***

➔Section 23. KRS 31.110 is amended to read as follows:

- (1) A needy person who is being detained by a law enforcement officer, on suspicion of having committed, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, or who is accused of having committed a public or status offense or who has been committed to the Department of Juvenile Justice or Cabinet for Health and Family Services for having committed a public or status offense as those are defined by KRS 610.010(1), 610.010(2)(a), (b), (c), or 630.020(2) is entitled:
  - (a) To be represented by an attorney to the same extent as a person having his or her own counsel is so entitled; and
  - (b) Except as provided in subsection (2)(c) of this section, to be provided with the necessary services and facilities of representation, including investigation and other preparation. The courts in which the defendant is tried shall waive all costs.
- (2) A needy person who is entitled to be represented by an attorney under subsection (1) of this section is entitled:
  - (a) To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his or her own counsel would be entitled to be represented by an attorney and including revocation of probation or parole;
  - (b) To be represented in any appeal; and
  - (c) To be represented in any other post-conviction, or, if a minor under the age of eighteen (18), post-disposition proceeding, including any appeal from a post-conviction or post-disposition action. However, if the department and the court of competent jurisdiction determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his or her own expense, there shall be no further right to be represented by counsel under the provisions of this chapter. In cases involving a minor under the age of eighteen (18), prior to making a determination on whether or not a post-disposition action is a proceeding that a reasonable person with adequate means would be willing to bring at his or her own expense, an attorney with the department shall be granted access to the court file of the minor:
    1. Without the requirement of a formal court order in which the attorney has provided a release signed by the minor or the minor's legal guardian authorizing the use of the records; and
    2. Notwithstanding any other statute prohibiting the disclosure of a juvenile court file.
- (3) A needy person's right to a benefit under subsection (1) or (2) of this section is not affected by his or her having provided a similar benefit at his or her own expense, or by he or she having waived it, at an earlier stage.
- (4) A person, whether a needy person or not, who is a minor under the age of eighteen (18) and who is in the custody of the Department of Juvenile Justice and is residing in a residential treatment center or detention center is entitled to be represented on a legal claim related to his or her confinement involving violations of federal or state statutory rights or constitutional rights. Prior to representation, an attorney with the department shall be granted access to the court file of the minor and residential treatment center or detention center records pertaining to the juvenile:
  - (a) Without entering an appearance as an attorney of record; and
  - (b) Notwithstanding any other statute prohibiting the disclosure of a juvenile's record, including KRS 15A.0651, 610.320, 610.340, or 610.345.
- (5) ***A person, whether a needy person or not, who is subject to a proceeding under Sections 6 to 22 of this Act and is unrepresented at any time shall be entitled to the same rights of representation as a needy person under subsection (1) of this section.***

➔Section 24. Whereas protecting the safety of the people of Kentucky is an immediate and compelling need, 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 April 1, 2021.**

**CHAPTER 176****( HB 405 )**

**Provisions of this bill that are to be deleted due to vetoes of the Governor that were not overridden by the General Assembly are displayed as bracketed and struck-through text enclosed in double asterisks, e.g., ~~\*\*\*[text]\*\*~~.**

AN ACT relating to appropriations and declaring an emergency.

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

➔Section 1. There is appropriated out of the general fund, federal funds, and the transportation fund in the State Treasury for the purpose of compensating persons and companies named below for claims which have been duly audited and approved according to law, but have not been paid because of lapsing or insufficiency of former appropriations against which the claims were chargeable, or the lack of an appropriate procurement document in place, the amounts listed below:

Andy Frain Services, Inc.

761 Shoreline Drive  
Aurora, IL 60504-6194 \$28,056.00

Diamond Landscapes, Inc.

PO Box 650755  
Dallas, TX 75265-0755 \$2,530.18

Eastern Kentucky University Student Accounting Services

ATTN: Neil Lindon  
Whitlock CPO 60  
521 Lancaster Avenue  
Richmond, KY 40475-3100 \$11,607.42

Embry Merritt Shaffar Womack, PLLC

62 Public Square  
Leitchfield, KY 42754-1104 \$1,775.00

Gaming Laboratories International, LLC

600 Airport Road  
Lakewood, NJ 08701-5995 \$2,100.00

Improving – Atlanta

Innovative Architects, LLC  
5445 Legacy Drive, Suite 100  
Plano, TX 75024 \$20,100.00

Jarvis Food Equipment

Attn: Chris Jarvis  
2195 Commercial Court  
Evansville, IN 47720-1324 \$19,557.79

Johnson Bearse, LLP



326 West Main Street Frankfort, KY 40601-1851	\$3,498.80
KVC Behavioral Healthcare of Kentucky 2250 Thunderstick Drive, Suite 1104 Lexington, KY 40505-9009	\$10,233.96
Marvin and McCrary Forensic Evaluation Services 323 West Broadway #903 Louisville, KY 40202-4602	\$424.00
Material Transfer 15415 Shelbyville Road Louisville, KY 40245	\$26,000.00
Murray State University Breathitt Veterinary Center PO Box 2000 101 MSU Drive Hopkinsville, KY 42241-2000	\$4,080.17
National Center for Families Learning, Inc. 325 West Main Street, Suite 300 Louisville, KY 40202-4251	\$69,507.41
Sani-Tech JetVac Services PO Box 74028 Cleveland, OH 44194-4028	\$32,316.90
Sedgwick Claims Management Services Inc. 2897 Momentum Place Chicago, IL 60689-5328	\$63,817.87
The Animal Clinic, P.S.C. 201 North Main Street Lawrenceburg, KY 40342-1015	\$294.62
University of Pittsburgh ATTN: 371220 500 Ross Street, 154-0455 Pittsburgh, PA 15262-0001	\$123,975.00
University of Tennessee Institute of Agriculture ATTN: Angela Braden 103 Morgan Hall Knoxville, TN 37996-4506	\$29,813.86
Veterinary Associates Stonefield 203 Moser Road Louisville, KY 40223-3113	\$645.95

Wyatt, Tarrant, and Combs, LLP

400 West Market Street, Suite 2000

Louisville, KY 40202-3227

\$11,082.50

➔Section 2. The claims listed in this section are for the payment of State Treasury checks payable to the persons or their personal representatives, and the firms listed, but not presented for payment within a period of five (5) years from the date of issuance of such checks as required by KRS 41.370 and 413.120:

Check #TA 16722669 dated April 21, 2015

Prerana P. Aghamkar

AKA Prerana P. Williamson

8321 Cherry Creek Drive

Centerville, OH 45458-3210

\$173.00

Check #T1 13959758 dated April 27, 2010

Eram Ahmed

464 Bates Road

Elizabethtown, KY 42701-9558

\$160.00

Check #T1 11711109 dated May 21, 2007

Mediha Ahmed

464 Bates Road

Elizabethtown, KY 42701-9558

\$373.00

Check #T1 13303689 dated April 29, 2009

Mediha Ahmed

464 Bates Road

Elizabethtown, KY 42701-9558

\$77.00

Check #T1 9288245 dated May 15, 2001

Saeed and K Ahmed

464 Bates Road

Elizabethtown, KY 42701-9558

\$540.00

Check #T1 11722592 dated May 25, 2007

Sana Ahmed

464 Bates Road

Elizabethtown, KY 42701-9558

\$100.00

Check #T1 13320260 dated May 4, 2009

Sana Ahmed

464 Bates Road

Elizabethtown, KY 42701-9558

\$8.00

Check #TA 15711981 dated May 8, 2013

Sana Ahmed

464 Bates Road

Elizabethtown, KY 42701-9558

\$207.00

Check #TA 16740517 dated April 22, 2015

Anthony T Austin 1202 Kentucky Street, Apt. 2 Bowling Green, KY 42101	\$175.00
Check #T1 13195584 dated April 15, 2009 Vincent and Rita Baker 126 Blanton Lane London, KY 40741-9294	\$626.00
Check #TA 16064054 dated March 25, 2014 Marsha G Black 2107 Dover Court Winchester, KY 40391-1045	\$202.00
Check #RA 12145760 dated November 27, 2013 Barbara K Braun Attn: Beate Lynn, KTRS 479 Versailles Road Frankfort, KY 40601-3868	\$1,869.84
Check # TA 15200049 dated May 15, 2012 Lois A Bringhurst 8612 Holston Road Louisville, KY 40222-5318	\$399.00
Check #T1 12102806 dated February 22, 2008 Phillip L and S Crawford 2188 Willow Neave Road Brooksville, KY 41004-8778	\$662.00
Check # P1 1332737 dated December 20, 1993 Mary Cull c/o Golf Villas @ Duckers 116 Hogan Drive Frankfort, KY 40601-8107	\$716.19
Check #T1 1776562 dated May 2, 2003 Jerry W Duvall 354 El Conquistador Place Louisville, KY 40220-2023	\$217.00
Check #L1 11080593 dated February 2, 2007 John Fender Labor Redeposit Kentucky State Treasury Frankfort, KY 40601	\$62.50
Check #GA 18400881 dated September 11, 2013	

Tabitha Grimes Attn: Lisa Wise-Hodnett, CHFS DCBS DAFM 455 Park Place, Suite 120A Lexington, KY 40511-1881	\$250.00
Check #GA 18473697 dated October 9, 2013 Vanessa Hunt Attn: Lisa Wise-Hodnett, CHFS DCBS DAFM 455 Park Place, Suite 120A Lexington, KY 40511-1881	\$250.00
Check #E1 2087113 dated September 22, 2004 Traore Issake 429 Lenox Avenue, Apt 22 New York, NY 10037-3534	\$202.00
Check #TA 15729175 dated May 10, 2013 Timothy and D Kopp 1431 Corydon Pike New Albany, IN 47150-6025	\$1,768.00
Check #EA 11721311 dated March 18, 2015 James D Lawson 5321 Haventree Place Louisville, KY 40229-2259	\$336.60
Check #GA 18386545 September 4, 2013 Gaylen Logan Attn: Lisa Wise-Hodnett, CHFS DCBS DAFM 455 Park Place, Suite 120A Lexington, KY 40511-1881	\$250.00
Check #GA 17494706 dated September 10, 2012 Kacie Miller Attn: Lisa Wise-Hodnett, CHFS DCBS DAFM 455 Park Place, Suite 120A Lexington, KY 40511-1881	\$250.00
Check #GA 19601320 dated February 20, 2015 Ronald D Miller Labor Redeposit Kentucky State Treasury Frankfort, KY 40601	\$538.08
Check #TA 15631062 dated April 17, 2013 K and P J Monroe 512 West 15th Street	

Owensboro, KY 42301-3610	\$581.00
Check #TA 16186746 dated April 21, 2014	
K and P J Monroe	
512 West 15th Street	
Owensboro, KY 42301-3610	\$322.00
Check #E1 11206999 dated December 18, 2008	
Stephen R and M Page	
3805 Ashridge Drive	
Louisville, KY 40241-1652	\$79.27
Check #TA 15192155 dated May 14, 2012	
Terry and Claudia Pearson	
5413 State Route 97	
Mayfield, KY 42066-7349	\$145.00
Check #T1 2733024 dated May 3, 2004	
Darrell W and C Reffett	
115 Wolf Creek Crossing Road	
Nancy, KY 42544-6638	\$583.00
Check #BA 11093265 dated May 14, 2012	
Sams East Inc	
Attn: Cheryl Ryan, Unclaimed Property MS-0655	
PO Box 8032	
Bentonville, AR 72712-3332	\$781.33
Check #T1 14623931 dated May 23, 2011	
Ryan V Sanurwin	
1252 Telluride Circle	
Lexington, KY 40509-2394	\$93.00
Check #CA 12618871 dated October 14, 2014	
Addison Scarry	
C/O Martha Metts	
914 Rosemary Drive	
Louisville, KY 40213-1118	\$274.66
Check #TA 16143228 dated April 14, 2014	
Richard G (Dec'd) and Marsha Segal	
6509 Sedgwick Drive	
Prospect, KY 40059-8803	\$827.00
Check #G 4854200 dated December 21, 1977	
Charles B Severs PSC	
117 Chanteclair Circle	
Gulf Breeze, FL 32561-4061	\$670.80

Check #GA 19982406 dated July 24, 2015	
Daniel Smith	
PO Box 158	
Memphis, IN 47143-0158	\$117.33
Check #TA 15891045 dated February 12, 2014	
Seth C Stearns	
591 Middle Fork Indian Creek Road	
Albany, KY 42602-8933	\$135.00
Check #CA 12583829 dated March 4, 2014	
Estate of Russell Stephens	
C/O Brook R Stephens Exe	
Attn: Lisa Hilton, KRS	
Frankfort, KY 40601-6157	\$5,000.00
Check #T1 13273406 dated April 24, 2009	
James A Taylor	
14451 Livingston Lane	
Carmel, IN 46074-5846	\$274.00
Check #G1 16117463 dated May 4, 2011	
Dennis Thomas	
2827 Dodd Road	
Murray, KY 42071-6821	\$65.00
Check #TA 16383434 dated February 12, 2015	
Rodney B and A LW Travis	
100 Providence Road	
Providence, KY 42450-5161	\$192.00
Check #BA 11124675 dated January 6, 2015	
Walmart Stores East LP	
Attn: Cheryl Ryan, Unclaimed Property MS-0655	
PO Box 8032	
Bentonville, AR 72712-3332	\$66.13
Check #BA 11124676 dated January 6, 2015	
Walmart Stores East LP	
Attn: Cheryl Ryan, Unclaimed Property MS-0655	
PO Box 8032	
Bentonville, AR 72712-3332	\$144.05
Check #BA 11124677 dated January 6, 2015	
Walmart Stores East LP	
Attn: Cheryl Ryan, Unclaimed Property MS-0655	
PO Box 8032	

Bentonville, AR 72712-3332	\$938.93
Check #T 6670647 dated April 20, 1999	
Winset and L Webb	
1702 Pleasureville Road	
Pleasureville, KY 40057-6009	\$444.00
Check #GA 19464632 dated December 11, 2014	
Loreta K Westfield Estate	
C/O Wilma Clayborn (Executrix)	
6206 Leisure Lane	
Louisville, KY 40229-1684	\$2,377.40
Check #TA 16729775 dated April 22, 2015	
Joshua Williamson	
515 Willow Stone Way	
Louisville, KY 40223-5570	\$63.00
Check #T1 4599204 dated June 13, 2006	
Cynthia M Witzer	
2200 North Fort Thomas Avenue	
Fort Thomas, KY 41075-1024	\$2,874.00

➔Section 3. The Finance and Administration Cabinet and the State Treasurer are authorized to pay the following listed claims from the following funds:

- (1) The Kentucky Retirement Systems is authorized to make payment from their retirement fund for State Treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five (5) years from the date of issuance of such checks, the sum hereinafter specified:

Check #KA 12361525 dated July 12, 2013

Sanders Swan	
Attn: Rachel Young, KRS	
1260 Louisville Road	
Frankfort, KY 40601-6157	\$880.17

➔Section 4. Whereas the persons and companies named above have furnished in good faith services, supplies, and materials and the Commonwealth has received the same, 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.

➔Section 5. **Office of Attorney General Additional Personnel:** There is hereby appropriated General Fund moneys in the amount of \$1,500,000, Restricted Fund moneys in the amount of \$1,500,000, and Federal Fund moneys in the amount of \$1,000,000 in fiscal year 2021-2022 to the Office of the Attorney General for additional personnel.

➔Section 6. **Forensic Laboratory Personnel:** There is hereby appropriated General Fund moneys in the amount of \$1,754,400 in fiscal year 2021-2022 to the Department of Kentucky State Police to convert forensic laboratory personnel to a 40-hour work week.

➔Section 7. **Prevention Services:** There is hereby appropriated General Fund moneys in the amount of \$20,000,000 in fiscal year 2021-2022 to the Department for Community Based Services to support prevention services for families. The Department shall use these funds to expand prevention services and shall apply for any and all potential federal match dollars made available through the American Rescue Plan Act of 2021 (H.R. 1319) or other federal funding relating to family prevention services. Any matching funds shall be used in conjunction with the expansion of the Department's prevention services programs. Notwithstanding KRS 45.229, any portion of General Fund not expended for this purpose shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705).

~~\*\*[→Section 8. (1) — There is hereby appropriated Federal Funds in the amount of \$37,000,000 in fiscal year 2021-2022 to the Justice Administration budget unit to provide grants to entities to detect, diagnose, trace, and monitor SARS-CoV-2 and COVID-19 infections in congregate and vulnerable population settings. Priority for Federal Funds grant awards shall be given to agencies engaged in cooperative agreements or contracts with Commonwealth's Attorneys in individual Judicial Circuits to specifically address alternative sentencing and diversionary programs for census reduction in congregate settings including, but not limited to prisons, jails, detention centers, and reentry facilities. Grant awards shall focus on providing technical assistance, guidance, and support. The Secretary of the Justice and Public Safety Cabinet shall award grants, contracts, or cooperative agreements to state, local, territorial, and Tribal public health departments for activities to detect, diagnose, trace, monitor, and report on SARS-CoV-2 and COVID-19 infections and related strategies and activities to mitigate the spread of SARS-CoV-2, in congregate or vulnerable population settings.~~

~~(2) — The Secretary shall develop performance outcome measures to which recipients of the funds in subsection (1) of this section shall adhere. The Secretary shall submit a report to the Interim Joint Committee on Appropriations and Revenue by December 31, 2021, and June 30, 2022. The report shall detail which entities received funding, identify the amount of funds awarded to each entity, summarize each entity's use of funds, and summarize each entity's performance.]\*\*~~

**→Section 9. State of Emergency Assistance Fund:** Notwithstanding KRS 157.611 to 157.665 or any other statute to the contrary, there is hereby appropriated General Fund moneys in the amount of \$10,000,000 in fiscal year 2021-2022 to the School Facilities Construction Commission to assist local school districts with costs for construction, repair, or renovation of facilities destroyed or severely damaged by a flood or heavy rainfall.

A local district shall be eligible to receive funds if the district is located in a county that was included in the Governor's state of emergency declared on February 28, 2021. Funds shall only be disbursed if a local district has fully expended all FEMA or insurance proceeds receive, and the proceeds were not sufficient to fully support the costs to construct, repair, or renovate the facilities. If the funds appropriated are not sufficient to fully support the costs to construct, repair, or renovate, the School Facilities Construction Commission is authorized to pro rata reduce the funds disbursed to each district.

The School Facilities Construction Commission shall develop the timeline for districts to request funds. The funds shall be disbursed to local district no later than October 1, 2021.

~~\*\*[→Section 10. **Office of the Attorney General:** There is hereby appropriated Federal Fund moneys in the amount of \$2,000,000 in fiscal year 2021-2022 to the Office of the Attorney General for grants to be awarded to the Office of the Attorney General from the state's allocation of funding from the American Rescue Plan Act of 2021 (H.R. 1319) for the Coronavirus State and Local Fiscal Recovery Funds to be used to investigate, prosecute, or otherwise pursue appropriate remedies in connection with COVID-related schemes, fraud, violations of consumer protection statutes, fraudulent unemployment insurance benefit claims, cybercrimes, online threats, human trafficking, child abuse, and other related activity.]\*\*~~

~~\*\*[→Section 11. **American Rescue Plan Act:** Notwithstanding KRS 45.229, in the event that any Federal Funds received from the American Rescue Plan Act of 2021 (H.R. 1319) are allotted, expended, or appropriated without the express authority of the General Assembly, General Fund moneys in the amount of \$902,200 in fiscal year 2021-2022 under the Office of State Budget Director budget unit shall be forfeited and shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705).]\*\*~~

**→Section 12. Proprietary Education:** There is hereby appropriated Restricted Fund moneys in the amount of \$133,000 in fiscal year 2021-2022 to the Proprietary Education budget unit.

**→Section 13. Substance Abuse, Mental Health, and Reentry Service Centers:** (1) Notwithstanding any statute to the contrary, beginning in fiscal year 2022-2023, the Department of Corrections shall pay each contracted provider of substance abuse, mental health, and reentry centers a minimum of 65 percent of the contracted beds monthly. Any contracted, but unfilled contracted beds as of the date of this Act may, at the discretion of the provider, be terminated.

(2) Each contracted provider, as provided for in subsection (1) of this section, shall report 100 percent of their occupancy to the Department of Corrections. The report shall detail the total number of beds, the number of beds available, the type of individual occupying bed space, and shall be submitted in a method and at a frequency established by the Department's discretion.

(3) Notwithstanding any statute to the contrary, the Department of Corrections shall be permitted to negotiate an inflationary price increase for contracted providers of substance abuse, mental health, and reentry centers during the COVID-19 state of emergency.



➔Section 14. **Reimbursement Rate Increase:** There is hereby appropriated General Fund moneys in the amount of \$12,000,000 in fiscal year 2021-2022 to the Department for Community Based Services to provide a \$2 per child increase in the Child Care Assistance Program provider reimbursement rate.

➔Section 15. By November 1, 2021, the Kentucky Department of Education shall submit a report to the Legislative Research Commission and the School Funding Task Force with options on how to ensure the equitable transfer of education funds so that funds follow a nonresident student to a school district of enrollment from a school district of residence. The report shall include recommendations on how the amount should be calculated and what mechanism should be used to conduct the transfer.

➔Section 16. (1) The Legislative Research Commission is hereby directed to establish the School Funding Task Force to:

(a) Review the entirety of the current of K-12 funding mechanism, including but not limited to the fund for the Support Education Excellence in Kentucky (SEEK) program, other state funds directed for the operation of the state's public school system, local revenues raised by school districts, and federal funds;

(b) Review publications, reports, and analyses of the current funding mechanism, including but not limited to a report from the Office of Education Accountability on the SEEK fund that was approved in the office's 2021 research agenda;

(c) Review the report from the Kentucky Department of Education submitted under Section 15 of this Act;

(d) Review how Kentucky's school funding mechanism compares with mechanisms developed by other states; and

(e) Develop and submit any recommendations and changes the task force may adopt relating to the SEEK fund to ensure the equitable and efficient funding of Kentucky's common schools to the Legislative Research Commission by December 1, 2021.

(2) The School Funding Task Force shall be composed of the following members, with final membership of the task force being subject to the consideration and approval of the Legislative Research Commission:

(a) Two members of the House of Representatives to be appointed by the Speaker of the House, one of whom shall be designated to serve as co-chair;

(b) Two members of the Senate to be appointed by the President of the Senate, one of whom shall be designated to serve as co-chair;

(c) One member of the House of Representatives to be appointed by the Minority Floor Leader of the House;

(d) One member of the Senate to be appointed by the Minority Floor Leader of the Senate;

(e) The commissioner of the Kentucky Department of Education or designee;

(f) Three school superintendents, one of whom shall be superintendent of an independent school district, submitted by the president of the Kentucky Association of School Superintendents; and

(g) Three local school board members, submitted by the executive director of the Kentucky School Boards Association.

(3) 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 17. Section 16 of this Act shall have the same legal status as a House Concurrent Resolution.

➔Section 18. The provisions of the State/Executive Branch Budget, 2021 Regular Session HB 192/EN, are amended to read as follows:

On page 80, delete lines 14 through 18 in their entirety;

Beginning on page 80, line 24, through page 81, line 6, delete language in its entirety; and

On page 81, line 7, delete "(10)" and insert "(9)" in lieu thereof."

**Vetoes not acted on March 30, 2021.**

## CHAPTER 177

( HB 413 )

Provisions of this bill that are to be deleted due to vetoes of the Governor that were not overridden by the General Assembly are displayed as bracketed and struck-through text enclosed in double asterisks, e.g., **\*\*[text]\*\***.

AN ACT relating to unemployment insurance.

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:

- (1) *By December 1, 2021, and annually thereafter until December 1, 2025, the cabinet shall report to the Governor and the Interim Joint Committee on Economic Development and Workforce Investment:*
- (a) *The status of the unemployment trust fund, including any federal advances required for trust fund solvency;*
  - (b) *The average claim duration for individuals receiving unemployment benefits; and*
  - (c) *The average weekly wage for individuals receiving unemployment benefits.*
- (2) *By December 1, 2021, the cabinet shall report to the Governor and the Interim Joint Committee on Economic Development and Workforce Investment a review of the amount of wages subject to tax. The review shall include:*
- (a) *An analysis of the equitable treatment of employers based on the amount of wages subject to tax;*
  - (b) *A comparison of the percentage of wages subject to tax for small, medium, and large businesses; and*
  - (c) *Examples of how changes to the amount of wages subject to tax would impact trust fund balances and employer contributions.*
- (3) *This section expires on January 31, 2026.*

➔Section 2. KRS 341.030 is amended to read as follows:

- (1) As used in this chapter, unless the context clearly requires otherwise, and except as provided in subsections (2) to (7) of this section, "wages" means all remuneration for services, including commissions, bonuses, and, except for services performed in agriculture and domestic employment, the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commission.
- (2) Amounts paid to traveling salesmen or other workers as allowance or reimbursement for traveling or other expenses, incurred on the business of the employing unit, constitute wages only to the extent of the excess of the amounts over the expenses actually incurred and accounted for by the worker to his employer; provided, however, that the cash value of meals and lodging when furnished to the worker for the convenience of the employer shall not constitute wages.
- (3) For purposes of this chapter, the term "wages" includes tips which are:
- (a) Received while performing services which constitute employment;
  - (b) Included in a written statement furnished to the employer pursuant to Section 6053(a) of the Internal Revenue Code; and
  - (c) Shall be treated as having been paid by the employing unit.
- (4) "Wages" does not include the amount of any payment made to, or on behalf of, a worker under a plan or system established by an employing unit that makes provision for its workers generally or for a class of its workers, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:
- (a) Retirement;
  - (b) Sickness or accident disability but, in the case of payments made to an employee or any of his dependents, this subsection shall exclude from the term "wages" only payments which are received under a workers' compensation law;

- (c) Medical and hospitalization expenses in connection with accident or sickness disability; or
- (d) Death, if the worker has not:
  - 1. The option to receive, instead of provision for the death benefit, any part of the payment, or if the death benefit is insured, any part of the premiums or contributions to premiums paid by his employing unit; and
  - 2. The right, under the provisions of the plan or system or policy of insurance providing for the death benefit, to assign the benefit, or to receive a cash consideration in lieu of it either upon his withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of his employment with his employing unit.
- (5) "Wages" does not include any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for the employer.
- (6) "Wages" does not include the amount of any payment made by an employing unit without deduction from the remuneration of the worker of the tax imposed under Section 3101 of the Internal Revenue Code or any payment required from an employer under a state unemployment compensation law with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor.
- (7) (a) "Wages" does not, for the purposes of KRS 341.260 to 341.310, include that part of remuneration which, after wages equal to eight thousand dollars (\$8,000) have been paid in a calendar year to a worker by a subject employer or his predecessor with respect to covered employment during any calendar year, is paid to the worker by the subject employer during the calendar year unless that part of the wages is subject to a tax under a federal law, imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. On January 1, 2012, the amount of eight thousand dollars (\$8,000) in this subsection shall increase to nine thousand dollars (\$9,000), which shall increase by an additional three hundred dollars (\$300) on January 1 of each subsequent year, unless limited by paragraph (b) or (c) of this subsection, not to exceed twelve thousand dollars (\$12,000). For the purpose of this subsection, the term "covered employment" shall include service constituting covered employment under any unemployment compensation law of another state.
  - (b) If the trust fund balance on September 30 of a calendar year equals or exceeds two hundred million dollars (\$200,000,000), the taxable wage base amount in effect at that time shall not increase on January 1 of the next calendar year or on January 1 of subsequent calendar years, except as provided in paragraphs (c) and (e) of this subsection.
  - (c) If the trust fund balance on September 30 of a calendar year equals or exceeds two hundred million dollars (\$200,000,000), but is twenty million dollars (\$20,000,000) or less lower than the trust fund balance amount that would trigger in a lower schedule of contribution rates under KRS 341.270, the taxable wage base shall increase by three hundred dollars (\$300) on January 1 of the next calendar year and that taxable wage base amount shall be the taxable wage base amount in effect for subsequent calendar years, subject to the limitations in paragraph (d) of this subsection.
  - (d) The total number of years that the increase in the taxable wage base shall be prohibited or limited under paragraph (b) or (c) of this subsection shall not exceed the total number of years that contributing employers paid additional federal unemployment taxes because of a reduction in the credit against the federal unemployment tax established in 26 U.S.C. sec. 3302 beginning in 2011.
  - (e) If the taxable wage base on January 1 of the calendar year immediately following the last year the increase in the taxable wage base was prohibited or limited under this subsection is less than twelve thousand dollars (\$12,000), the taxable wage base amount shall be increased by three hundred dollars (\$300), and by an additional three hundred dollars (\$300) on January 1 of each subsequent calendar year until the taxable wage base amount reaches twelve thousand dollars (\$12,000).
  - (f) Notwithstanding paragraphs (b) and (c) of this subsection, if the trust fund balance is less than two hundred million dollars (\$200,000,000) on September 30 of a calendar year, the suspension of the taxable wage base increase shall not occur.

- (g) Notwithstanding any other provision of this subsection, any increase in the maximum weekly benefit rate which otherwise would have occurred except for the suspension of the taxable wage base increase shall be implemented in accordance with the provisions of this chapter.
- (h) The provisions of this subsection shall apply unless the United States Department of Labor notifies the secretary that implementation of this subsection would result in decertification of Kentucky's unemployment insurance program, impact any cap application, affect the receipt of emergency unemployment compensation funds, create an ineligibility for receipt of federal funds, or result in other penalties or sanctions under the Social Security Act or Federal Unemployment Tax Act, 26 U.S.C. secs. 3301 et seq.
- (i) ***Notwithstanding any other provisions of this chapter, for the calendar years 2021 ~~and 2022~~ the taxable wage base increase shall be suspended and the taxable wage base in effect for the calendar year 2020 shall be utilized.***

➔Section 3. KRS 341.270 is amended to read as follows:

- (1) Except as otherwise provided in this section, each employer's contribution rate shall be three percent (3%). Effective for employers who become subject to this chapter on or after January 1, 1999, except as otherwise provided in this section, each employer's contribution rate shall be two and seven-tenths percent (2.7%).
- (2) Except as otherwise provided in this section, no subject employer's contribution rate shall be less than two and seven-tenths percent (2.7%), unless he has been an employer subject to the provisions of this chapter for twelve (12) consecutive calendar quarters ended as of the computation date. In any calendar year in which the rate schedule prescribed in paragraph (3)(a) of this section is in effect, no subject employer who was assigned an entry rate of three percent (3.0%) under the provisions of subsection (1) of this section prior to January 1, 1999, shall have a contribution rate less than two and eight hundred fifty-seven thousandths percent (2.857%), unless subject to this chapter for the minimum time period specified above.
- (3) For the calendar year 2001 and each calendar year thereafter, employer contribution rates shall be determined in accordance with "Table A" set out in subsection (4) of this section. For each calendar year, the secretary shall determine the rate schedule to be in effect based upon the "trust fund balance" as of September 30 of the preceding year. If the "trust fund balance":
  - (a) Equals or exceeds one and eighteen hundredths percent (1.18%) of the total wages paid in covered employment in the state during the state fiscal year ended as of June 30 of that year, the rates listed in the "Trust Fund Adequacy Rates" schedule of "Table A" shall be in effect;
  - (b) Equals or exceeds five hundred million dollars (\$500,000,000) but is less than the amount required to effectuate the "Trust Fund Adequacy Rates" schedule as provided in paragraph (a) of this subsection, the rates listed in "Schedule A" of "Table A" shall be in effect;
  - (c) Equals or exceeds three hundred fifty million dollars (\$350,000,000) but is less than five hundred million dollars (\$500,000,000), the rates listed in "Schedule B" of "Table A" shall be in effect;
  - (d) Equals or exceeds two hundred fifty million dollars (\$250,000,000) but is less than three hundred fifty million dollars (\$350,000,000), the rates listed in "Schedule C" of "Table A" shall be in effect;
  - (e) Equals or exceeds one hundred fifty million dollars (\$150,000,000) but is less than two hundred fifty million dollars (\$250,000,000), the rates listed in "Schedule D" of "Table A" shall be in effect; and
  - (f) Is less than one hundred fifty million dollars (\$150,000,000), the rates listed in "Schedule E" of "Table A" shall be in effect.
- (4) For the calendar year 1982 and each calendar year thereafter, contribution rates shall be determined upon the basis of an individual employer's reserve ratio as of the computation date and the schedule of rates established under subsection (3) of this section. Except as otherwise provided in this section, the contribution rate for each subject employer for the calendar year immediately following the computation date shall be the rate in that "Schedule" of "Table A," as set out below, effective with respect to the calendar year, which appears on the same line as his reserve ratio as shown in the "Employer Reserve Ratio" column of the same table.

TABLE A

Rate Schedule

Employer	Trust	A	B	C	D	E
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Reserve Ratio	Fund Adequacy Rates					
8.0% and over	0.000%	0.30%	0.40%	0.50%	0.60%	1.00%
7.0% but under 8.0%	0.000%	0.40%	0.50%	0.60%	0.80%	1.05%
6.0% but under 7.0%	0.008%	0.50%	0.60%	0.70%	0.90%	1.10%
5.0% but under 6.0%	0.208%	0.70%	0.80%	1.00%	1.20%	1.40%
4.6% but under 5.0%	0.508%	1.00%	1.20%	1.40%	1.60%	1.80%
4.2% but under 4.6%	0.808%	1.30%	1.50%	1.80%	2.10%	2.30%
3.9% but under 4.2%	1.008%	1.50%	1.70%	2.20%	2.40%	2.70%
3.6% but under 3.9%	1.308%	1.80%	1.80%	2.40%	2.60%	3.00%
3.2% but under 3.6%	1.508%	2.00%	2.10%	2.50%	2.70%	3.10%
2.7% but under 3.2%	1.608%	2.10%	2.30%	2.60%	2.80%	3.20%
2.0% but under 2.7%	1.708%	2.20%	2.50%	2.70%	2.90%	3.30%
1.3% but under 2.0%	1.808%	2.30%	2.60%	2.80%	3.00%	3.40%
0.0% but under 1.3%	1.908%	2.40%	2.70%	2.90%	3.10%	3.50%
-0.5% but under -0.0%	6.500%	6.50%	6.75%	7.00%	7.25%	7.50%
-1.0% but under -0.5%	6.750%	6.75%	7.00%	7.25%	7.50%	7.75%
-1.5% but under -1.0%	7.000%	7.00%	7.25%	7.50%	7.75%	8.00%
-2.0% but under -1.5%	7.250%	7.25%	7.50%	7.75%	8.00%	8.25%
-3.0% but under -2.0%	7.500%	7.50%	7.75%	8.00%	8.25%	8.50%

-4.0% but under -3.0%	7.750%	7.75%	8.00%	8.25%	8.50%	8.75%
-6.0% but under -4.0%	8.250%	8.25%	8.50%	8.75%	9.00%	9.25%
-8.0% but under -6.0%	8.500%	8.50%	8.75%	9.00%	9.25%	9.50%
Less than -8.0%	9.000%	9.00%	9.25%	9.50%	9.75%	10.00%

(5) As used in this section and elsewhere in this chapter, unless the context clearly requires otherwise:

- (a) "Trust fund balance" means the amount of money in the unemployment insurance fund, less any unpaid advances made to the state under Section 1201 of the Social Security Act. In determining the amount in the fund as of a given date all money received by the Office of Unemployment Insurance, Department of Workforce Investment, on that date shall be considered as being in the fund on that date;
- (b) "Total wages" means all remuneration for services, as defined in KRS 341.030(1) to (7), paid by subject employers;
- (c) An employer's "reserve ratio" means the percentage ratio of his reserve account balance as of the computation date to his taxable payrolls for the twelve (12) consecutive calendar quarters ended as of June 30 immediately preceding the computation date;
- (d) For the purposes of this section, an employer's "reserve account balance" means the amount of contributions credited to his reserve account as of the computation date, less the benefit charges through June 30 immediately preceding the computation date. If benefits charged to an account exceed contributions credited to the account, the account shall be considered as having a debit balance and a reserve ratio of "less than zero"; and
- (e) "Computation date" is July 31 of each calendar year prior to the effective date of new rates of contributions.

(6) ***Notwithstanding any other provisions of this chapter, for the calendar years 2021 ~~and 2022~~, the employer contribution rates shall be determined using the rates listed in Schedule A of Table A.***

➔Section 4. KRS 341.530 is amended to read as follows:

- (1) The Office of Unemployment Insurance, Department of Workforce Investment, shall maintain a reserve account for each subject employer making contributions to the fund and a reimbursing employer account for each subject employer making payment in lieu of contributions, and shall, except as provided in KRS 341.590, credit to such account the total amount of all contributions or benefit reimbursement paid by the employer on his own behalf. Nothing in this section or elsewhere in this chapter shall be construed to grant any employer or individual who is or was in his employ prior claims or rights to the amounts paid by him into the fund.
- (2) Except as provided in subsection (3) of this section, all regular benefits paid to an eligible worker in accordance with KRS 341.380 plus the extended benefits paid in accordance with KRS 341.700 to 341.740, subject to the provisions of paragraphs (a) and (b) of this subsection, shall be charged against the reserve account or reimbursing employer account of his most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for such employer in each of ten (10) weeks whether or not consecutive back to the beginning of the worker's base period.
  - (a) Subject employers, which are not governmental entities as defined in KRS 341.069, shall be charged one-half (1/2) of the extended benefits paid in accordance with KRS 341.700 to 341.740; and
  - (b) Subject employers which are governmental entities, as defined in KRS 341.069, shall be charged for all extended benefits paid in accordance with KRS 341.700 to 341.740 for compensable weeks occurring on or after January 1, 1979, and for one-half (1/2) of the extended benefits paid for compensable weeks occurring prior to such date.
- (3) Notwithstanding the provisions of subsection (2) of this section, benefits paid to an eligible worker and chargeable to a contributing employer's reserve account under such subsection shall be charged against the

pooled account if such worker was discharged by such employer for misconduct connected with his most recent work for such employer, voluntarily left his most recent work with such employer without good cause attributable to the employment, or the employer has continued to provide part-time employment and wages, without interruption, to the same extent that was provided from the date of hire, and the employer within a reasonable time, as prescribed by regulation of the secretary, notifies the office, in writing, of the alleged voluntary quitting, discharge for misconduct or continuing part-time employment; provided, however, that no employer making payments to the fund in lieu of contributions shall be relieved of charges by reason of this subsection.

- (4) Notwithstanding the provisions of subsection (3) of this section, no contributing employer's reserve account shall be relieved of any charges for benefits relating to an improper benefit payment to a worker established after October 21, 2013, if:
  - (a) The improper benefit payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the secretary for information relating to a claim for benefits; and
  - (b) The employer, or an agent of the employer, has a pattern of failing to respond timely or adequately to requests under paragraph (a) of this subsection. For purposes of this paragraph, a "pattern of failing" means at least six (6) failures occur in a calendar year or the failure to respond to two percent (2%) of such requests in a calendar year, whichever is greater.
- (5) Any determination under subsection (4) of this section shall be transmitted to the last known physical or electronic address provided by the employer and may be appealed in accordance with the provisions of KRS 341.420(2).
- (6) Each subject employer's reserve account or reimbursing account shall, unless terminated as of the computation date (as defined in subsection (5) of KRS 341.270), be charged with all benefits paid to eligible workers which are chargeable to such reserve account or reimbursing account under subsection (2) of this section. A subject employer's reserve account or reimbursing account shall be deemed to be terminated if he has ceased to be subject to this chapter, and his account has been closed and any balance remaining therein has been transferred to the fund's pooled account or to a successor's account as provided in KRS 341.540 or has been refunded if the employer is a reimbursing employer.
- (7) Notwithstanding subsection (1) of this section, two (2) or more nonprofit Internal Revenue Code sec. 501(c)(3) organizations may jointly request the secretary to establish a group reserve account or reimbursing account for such nonprofit organizations. Two (2) or more governmental entities may jointly request the secretary to establish a group reserve account or reimbursing account, and once established, such account shall remain in effect at least two (2) calendar years and thereafter until either dissolved at the discretion of the secretary or upon filing application for dissolution by the group members. Each member of a group shall be jointly and severally liable for all payments due under this chapter from each or all of such group members. The secretary shall prescribe such procedures as he deems necessary for the establishment, maintenance, and dissolution of a group reserve account or reimbursing account.
- (8) Any subject contributing employer may at any time on or before December 31, 2011, make voluntary payments to the fund, additional to the contributions required under KRS 341.260 and 341.270. Effective January 1, 2012, any subject contributing employer with a negative reserve account balance may make voluntary payments to the fund every other calendar year, in addition to the contributions required under KRS 341.260 and 341.270. Notwithstanding any other provision of this chapter, contributions paid on or before the computation date and voluntary payments made within twenty (20) days following the mailing of notices of new rates shall be credited to an employer's reserve account as of the computation date, provided no voluntary payments shall be used in computing an employer's rate unless the payment is made prior to the expiration of one hundred and twenty (120) days after the beginning of the year for which the rate is effective. Voluntary payments by any employer shall not exceed any negative balance they may have in their reserve account as of the computation date. Any employer who is delinquent in the payment of contributions, penalties, or interest as of the computation date shall be entitled to make voluntary payments only after the amount of the delinquency is paid in full.
- (9) ***Notwithstanding any other provisions of this chapter, any benefits paid to an eligible worker for reasons related to a state or federal state of emergency or disaster declaration shall be paid from the pooled account provided in KRS 341.550 and not from the reserve account of the employer of that individual. The reserve account shall not be charged for benefits related to a state of emergency or disaster declaration. Payments shall be accounted for separately to allow the secretary to seek reimbursement from the federal government.***

➔Section 5. KRS 341.614 is amended to read as follows:

- (1) Effective January 1, 2014, there shall be a surcharge upon all subject contributing employers for any year there are insufficient funds in the unemployment compensation administration fund for the payment of interest on advances under Title XII of the Social Security Act or for the repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances.
- (2)
  - (a) The surcharge shall be twenty-two hundredths of one percent (0.22%) of the first nine thousand six hundred dollars (\$9,600) in wages paid to each worker by a subject contributing employer or his predecessor with respect to covered employment during any calendar year.
  - (b) Effective January 1, 2015, and each calendar year thereafter, the secretary shall adjust the surcharge percentage rate based on any increase to the taxable wage base for that calendar year as provided in KRS 341.030(7). The purpose of the adjustment shall be to maintain costs per worker comparable to the original surcharge. Any reduction in the surcharge percentage rate shall correspond to the increase to the taxable wage base for that calendar year and shall be rounded up to the nearest one-hundredth of one percent (0.01%).
  - (c) Notwithstanding paragraph (b) of this subsection, the secretary may reduce the surcharge percentage rate or suspend the surcharge for any calendar year based on the balance of the unemployment insurance interest payment fund and the projected amount due for interest on advances under Title XII of the Social Security Act and for repayment of money, including any interest thereon, received from any source related to the payment of interest on such advances.
- (3) The surcharge established in this section shall be due and payable at the same time and in the same manner as employer contributions. Any surcharge collected shall be deposited in the unemployment insurance interest payment fund.
- (4) Any surcharge unpaid on the date on which it is due and payable, pursuant to subsection (3) of this section, shall be subject to interest at the rate of one and one-half percent (1.5%) per month or fraction thereof, not to exceed ninety percent (90%) of the amount of such surcharge, from and after such date until payment is received by the cabinet, regardless of whether such delinquency has been reduced to a judgment or not as provided in subsection (6) of this section or is the subject of an administrative appeal or court action. The interest collected shall be deposited in the unemployment insurance interest payment fund.
- (5) A lien of the same nature and having the same force, effect, and priority as provided in KRS 341.310 shall commence on all property of a subject contributing employer delinquent in the payment of any surcharge or interest thereon.
- (6) If, after due notice, any subject contributing employer defaults in payment of any surcharge or interest thereon, the amount due may be collected by a civil action instituted in the Franklin Circuit Court or the Franklin District Court depending on the jurisdictional amount in controversy, including interest and penalties, in the name of the state, and the subject contributing employer adjudged in default shall pay the costs of the action. Civil actions brought under this section shall be heard by the court, without the intervention of a jury, at the earliest possible date and shall be entitled to preference on the calendar of the court over all other civil actions, except petitions for judicial review under this chapter and cases arising under the Kentucky workers' compensation law.
- (7) At or after the commencement of an action under subsection (6) of this section, attachment may be had against the property of the liable subject contributing employer for such surcharge and interest without execution of a bond, or, after judgment has been entered, an execution may be issued against the property of such employer without the execution of a bond.
- (8) An action for the recovery of a surcharge or interest thereon under this section shall be barred, and any lien therefor shall be canceled and extinguished, unless collected or suit for collection has been filed within ten (10) years from the due date of such surcharge.
- (9) Notwithstanding subsection (6) of this section, any delinquent surcharge or interest thereon may be collected in accordance with the levy and distraint provisions of this chapter.
- (10) Any delinquent surcharge or interest collected after July 31, 2017, shall not be subject to the credit provisions contained in KRS 341.612 and shall be deposited into the penalty and interest account.
- (11) ***Notwithstanding any other provisions of this chapter, for the calendar years 2021 ~~and 2022~~ there shall be no surcharge assessment.***



➔Section 6. (1) The Legislative Research Commission shall establish the Unemployment Insurance Reform Task Force that shall:

- (a) Review the current unemployment insurance system;
  - (b) Evaluate and discuss possible long term changes to the unemployment insurance system that would address the fiscal well-being and stability of the unemployment insurance system;
  - (c) Solicit recommendations from stakeholders and interested parties; and
  - (d) Develop a list of recommendations for the General Assembly to consider related to reform of the unemployment insurance system.
- (2) The task force shall be composed of members with final membership of the task force being subject to consideration and approval of the Legislative Research Commission:
- (a) Four members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom shall be a member of the minority party, and one of whom shall be designated by the Speaker of the House of Representatives as a co-chair of the task force; and
  - (b) Four members of the Senate appointed by the President of the Senate, one of whom shall be a member of the minority party, and one of whom shall be designated by the President of the Senate as a co-chair of the task force.
- (3) The Unemployment Insurance Reform Task Force shall meet monthly during the 2021 Interim of the General Assembly. The task force shall submit findings and recommendations to the Legislative Research Commission for referral to the appropriate committee or committees by December 1, 2021.
- (4) Provisions of this section to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign issues identified herein to an interim joint committee or subcommittee thereof and to designate a study completion date.
- (5) This section of this Act shall have the same legal status as a House Concurrent Resolution.

➔Section 7. Sections 2 to 5 of this Act are retroactive to March 6, 2020.

➔Section 8. Whereas the economic impact of the state of emergency declared in response to COVID-19 on Kentucky's citizens and businesses is of the utmost importance, 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.

**Vetoes not acted on March 30, 2021.**

## CHAPTER 178

### ( HB 178 )

AN ACT relating to the Kentucky Board of Education.

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

➔Section 1. KRS 156.029 is amended to read as follows:

- (1) There is hereby established a Kentucky Board of Education, which shall consist of eleven (11) **voting** members appointed by the Governor and confirmed by the Senate ~~and the House of Representatives~~ of the General Assembly, with the president of the Council on Postsecondary Education **and the secretary of the Education and Workforce Development Cabinet** serving as ~~an~~ **ex officio nonvoting members, and an active public elementary or secondary school teacher and a public high school student appointed by the board as described in subsection (3) of this section serving as nonvoting members** ~~member~~. Seven (7) **voting** members shall represent each of the Supreme Court districts as established by KRS 21A.010, and four (4) **voting** members shall represent the state at large. Each of the **voting** ~~appointed~~ members shall serve for a four (4) year term, except the initial appointments shall be as follows: the seven (7) members representing Supreme Court districts shall serve a term which shall expire on April 14, 1994; and the four (4) at-large members shall serve a term which shall expire on April 14, 1992. Subsequent appointments shall be submitted to the Senate ~~and to the House of Representatives~~ for confirmation in accordance with KRS 11.160. ~~Each appointment by~~

~~the Governor shall be agreed upon by both chambers in order for the person to be confirmed. Each confirmed appointee shall take office on April 15.]~~

- (2) Appointments *of the voting members* shall be made without reference to occupation ~~[, political affiliation, or similar consideration]~~. No *voting* member at the time of his appointment or during the term of his service shall be engaged as a professional educator. ***Beginning with voting members appointed on or after the effective date of this Act, appointments to the group of members representing Supreme Court districts and to the group of at-large members, respectively, shall reflect equal representation of the two (2) sexes, inasmuch as possible; reflect no less than proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration and the political affiliation of each appointee as of December 31 of the year preceding the date of his or her appointment; and reflect the minority racial composition of the Commonwealth based on the total minority racial population using the most recent census or estimate data from the United States Census Bureau. If the determination of proportional minority representation does not result in a whole number of minority members, it shall be rounded up to the next whole number. A particular political affiliation shall not be a prerequisite to appointment to the board generally; however, if any person is appointed to the board that does not represent either of the two (2) leading political parties of the Commonwealth, the proportional representation by political affiliation requirement shall be determined and satisfied based on the total number of members on the board less any members not affiliated with either of the two (2) leading political parties.*** Pursuant to KRS 63.080, a member shall not be removed except for cause *or, beginning with voting members appointed on or after the effective date of this Act, in accordance with subsection (3) of Section 3 of this Act. Notwithstanding KRS 12.028, the board shall not be subject to reorganization by the Governor.*
- (3) ***The nonvoting teacher and student members shall be selected by the board from the state's six (6) congressional districts on a rotating basis from different districts. The public high school student shall be classified as a junior at the time of appointment. The teacher and student members shall serve for a one (1) year term, except the initial appointments shall serve a term which shall expire on April 14, 2022. The board shall promulgate an administrative regulation establishing the process for selecting the nonvoting teacher and student members.***
- (4) A vacancy in the *voting* membership of the board shall be filled by the Governor for the unexpired term with the consent of the Senate ~~[and the House of Representatives]~~. In the event that the General Assembly is not in session at the time of the appointment, the consent of the Senate ~~[and the House of Representatives]~~ shall be obtained during the time the General Assembly next convenes.
- ~~(5)(4)~~ At the first regular meeting of the board in each fiscal year, a chairperson shall be elected from its voting membership.
- ~~(6)(5)~~ The members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.
- ~~(7)(6)~~ The commissioner of education shall serve as the executive secretary to the board.
- ~~(8)(7)~~ The primary function of the board shall be to develop and adopt policies and administrative regulations, with the advice of the Local Superintendents Advisory Council, by which the Department of Education shall be governed in planning, coordinating, administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education which are within the jurisdiction of the board.

➔Section 2. KRS 156.040 is amended to read as follows:

- (1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.
- (2) A member of the Kentucky Board of Education shall:
- Be at least thirty (30) years of age;
  - Have at least an associate degree or its equivalent;
  - Have been a resident of Kentucky for at least three (3) years preceding the member's appointment;
  - Not hold a state office requiring the constitutional oath;
  - Not be a member of the General Assembly;

- (f) Not hold or discharge the duties of any civil or political office, deputyship, or agency under the city or county of his or her residence;
- (g) Not be directly or indirectly interested in the sale to the Kentucky Board of Education or the Department of Education of books, stationery, or any other property, materials, supplies, equipment, or services for which board or department funds are expended;
- (h) Not have a relative as defined in subsection (1) of this section who is employed by the Department of Education;
- (i) Not have been removed from the board for cause; and
- (j) Not be engaged as an elementary or secondary education professional educator.

~~[(3) Appointments to the board shall be made without reference to occupation, political affiliation, or similar considerations.]~~

➔Section 3. KRS 63.080 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section and otherwise provided by law, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.
- (2)
  - (a) Except as provided in subsections (3) and (4) of this section, members of ***the Kentucky Board of Education***; the board of trustees of the University of Kentucky;~~;~~ the board of trustees of the University of Louisville; ***and***~~;~~ ~~members of~~ the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System shall not be removed except for cause.
  - (b) Members of the ~~Kentucky Board of Education and the~~ Council on Postsecondary Education shall not be removed except for cause.
  - (c) A member of a board of trustees or board of regents specified in paragraph (a) of this subsection may be removed for cause as follows:
    - 1. The Governor or the board of trustees or board of regents, as applicable, shall notify, in writing, the member and the Council on Postsecondary Education that the member should be removed for cause and shall specify the conduct warranting removal;
    - 2. The member shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the member's conduct does not warrant removal;
    - 3. Within thirty (30) days after receipt of notice from the Governor or the board, the Council on Postsecondary Education shall review the written notice, investigate the member and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the member should be removed, a copy of which shall also be provided to the Legislative Research Commission;
    - 4. The Governor shall then make a determination, in writing, whether the member should be removed and shall notify the member, the applicable board, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and
    - 5. If the Governor's determination is to remove the member, the Governor shall remove the member by executive order, and shall replace the member with a new appointment according to the applicable statutes for the board of trustees or board of regents.
  - (d) For the purposes of this subsection, a member may be removed for cause for conduct including but not limited to malfeasance, misfeasance, incompetence, or gross neglect of duty.
- (3) For a board specified in subsection (2)(a) of this section that is required by law to have proportional representation in its membership based on residence, political affiliation, gender, minority racial composition, or professional qualifications, the Governor or other appointing authority may remove any member of the board and replace him or her with another individual in order to bring the membership into compliance with the statutory proportional representation requirement for the board, provided that the Governor or other appointing authority shall:

- (a) Only exercise the removal authority granted in this subsection if appointment at the end of the next expiring term of a member, or at the end of the next expiring term of members if two (2) or more members' terms expire at the same time, cannot cure the deficiency in the proportional representation requirement;
  - (b) Remove the fewest number of members necessary to bring the membership into compliance with the proportional representation requirement for the board;
  - (c) Identify the order in which the members were appointed to their current terms on the board and, beginning with the most recently appointed member who may be removed and replaced to bring the membership into compliance with the proportional representation requirement, remove the member or members according to the length of their tenure on the board, without taking into account any prior term of service on the board by the member;
  - (d) Provide any member proposed to be removed with the following:
    - 1. Written notice, at least seven (7) days prior to the member's removal from the board, stating the statutory proportional representation requirement that the member does not satisfy; and
    - 2. An opportunity during the seven (7) day notice period for the member to voluntarily resign or to provide evidence to the Governor or other appointing authority that the member does satisfy the proportional representation requirement or that another member on the board who also does not satisfy the requirement has a shorter tenure than the member proposed to be removed;
  - (e) Replace any removed member with only those individuals who will bring the board into compliance with the proportional representation requirement; and
  - (f) Appoint any new member in the same manner as provided by law for the member being removed and to fill the remainder of the removed member's unexpired term.
- (4) For a board of trustees or board of regents specified in subsection (2)(a) of this section, the Governor may remove for cause all appointed members of the board and replace the entire appointed membership as follows:
- (a) The Governor shall notify, in writing, the board and the Council on Postsecondary Education that the entire appointed membership of the board should be removed for cause and shall specify the conduct warranting removal;
  - (b) The board or its members shall have seven (7) days to voluntarily resign or to provide evidence to the Council on Postsecondary Education that the conduct of the board or of individual members does not warrant removal;
  - (c) Within thirty (30) days after receipt of notice from the Governor, the Council on Postsecondary Education shall review the written notice, investigate the board and the conduct alleged to support removal, and make a nonbinding recommendation, in writing, to the Governor as to whether the appointed board membership should be removed, a copy of which shall also be provided to the Legislative Research Commission;
  - (d) The Governor shall then make a determination, in writing, whether the entire appointed board membership should be removed and shall notify the members, the Council on Postsecondary Education, and the Legislative Research Commission of the determination; and
  - (e) If the Governor's determination is to remove the entire appointed membership of the board, the Governor shall remove the members by executive order, and shall replace the members with new appointments according to the applicable statutes for the board of trustees or board or regents.

For the purposes of this subsection, the entire appointed membership of a board of trustees or board of regents may be removed for cause if the board is no longer functioning according to its statutory mandate as specified in the enabling statutes applicable to the board, or if the board membership's conduct as a whole constitutes malfeasance, misfeasance, incompetence, or gross neglect of duty, such that the conduct cannot be attributed to any single member or members.

➔Section 4. The General Assembly confirms Executive Order 2020-610, dated July 21, 2020, relating to the reorganization of the Kentucky Board of Education, to the extent not otherwise confirmed or superseded by this Act.

**Signed by Governor April 5, 2021.**

**CHAPTER 179****( HB 389 )**

AN ACT relating to dependency, neglect, and abuse.

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

➔Section 1. KRS 620.140 is amended to read as follows:

- (1) In determining the disposition of all cases brought on behalf of dependent, neglected, or abused children, the juvenile session of the District Court, in the best interest of the child, shall have but shall not be limited to the following dispositional alternatives:
  - (a) Informal adjustment of the case *by agreement, which may be entered into at any time. Informal adjustment may include an agreed plan by which:*
    1. *The parent or other person exercising custodial control or supervision agrees that grounds exist for a finding of dependency, neglect, or abuse, and agrees to the conditions of protective orders under paragraph (b) of this subsection for a duration of up to one (1) year;*
    2. *The action will be dismissed by the court, without hearing, at the end of the period agreed upon if no motion is brought alleging a violation of a protective order; and*
    3. *If a motion is brought alleging a violation of a protective order, a hearing will be held at which the parent or other person exercising custodial control or supervision may contest the alleged violation, but may not contest the original grounds for a finding of dependency, neglect, or abuse. If a violation is found to have occurred, the court may consider other dispositional alternatives pursuant to this section;*
  - (b) Protective orders, such as the following:
    1. Requiring the parent or any other person to abstain from any conduct abusing, neglecting, or making the child dependent;
    2. Placing the child in his or her own home under supervision of the cabinet or its designee with services as determined to be appropriate by the cabinet; and
    3. Orders authorized by KRS 403.715 to 403.785 and by KRS Chapter 456;
  - (c) Removal of the child to the custody of an adult relative, fictive kin, other person, or child-caring facility or child-placing agency, taking into consideration the wishes of the parent or other person exercising custodial control or supervision. Before any child is committed to the cabinet or placed out of his or her home under the supervision of the cabinet, the court shall determine that reasonable efforts have been made by the court or the cabinet to prevent or eliminate the need for removal and that continuation in the home would be contrary to the welfare of the child. If a child is to be placed with an adult relative or fictive kin the parent or other person exercising custodial control or supervision shall provide a list to the cabinet of possible persons to be considered;
  - (d) Commitment of the child to the custody of the cabinet for placement for an indeterminate period of time not to exceed his or her attainment of the age eighteen (18), unless the youth elects to extend his or her commitment beyond the age of eighteen (18) under paragraph (e) of this subsection. Beginning at least six (6) months prior to an eligible youth attaining the age of eighteen (18), the cabinet shall provide the eligible youth with education, encouragement, assistance, and support regarding the development of a transition plan, and inform the eligible youth of his or her right to extend commitment beyond the age of eighteen (18); or
  - (e) Extend or reinstate an eligible youth's commitment up to the age of twenty-one (21) to receive transitional living support. The request shall be made by the youth prior to attaining nineteen (19) years of age. Upon receipt of the request and with the concurrence of the cabinet, the court may authorize commitment up to the age of twenty-one (21).
- (2) An order of temporary custody to the cabinet shall not be considered as a permissible dispositional alternative.

**Signed by Governor April 5, 2021.**

**CHAPTER 180****( HB 492 )**

AN ACT relating to child welfare.

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

➔Section 1. KRS 620.100 is amended to read as follows:

- (1) If the court determines, as a result of a temporary removal hearing, that further proceedings are required, the court shall advise the child and his parent or other person exercising custodial control or supervision of their right to appointment of separate counsel:
  - (a) The court shall appoint counsel for the child to be paid for by the Finance and Administration Cabinet. Counsel shall document participation in training on the role of counsel that includes training in early childhood, child, and adolescent development. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250);
  - (b) The court shall appoint separate counsel for the parent who exercises custodial control or supervision if the parent is unable to afford counsel pursuant to KRS Chapter 31. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. The parent's counsel shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250);
  - (c) The court shall appoint separate counsel for a person claiming to be a de facto custodian, as defined in KRS 403.270, if the person is unable to afford counsel pursuant to KRS Chapter 31. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. The person's counsel shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250);
  - (d) The court may, in the interest of justice, appoint separate counsel for a nonparent who exercises custodial control or supervision of the child, if the person is unable to afford counsel, pursuant to KRS Chapter 31. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. Counsel for the person shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250); and
  - (e) The court may, in the interest of justice, appoint a court-appointed special advocate volunteer to represent the best interests of the child pursuant to KRS 620.500 to 620.550. The clerk of the court shall arrange for service on all parties, including the local representative of the cabinet, of the order appointing the court-appointed special advocate volunteer.
- (2) If the court determines that further proceedings are required, the court also shall advise the child and his parent or other person exercising custodial control or supervision that they have a right to not incriminate themselves, and a right to a full adjudicatory hearing at which they may confront and cross-examine all adverse witnesses, present evidence on their own behalf and to an appeal.
- (3) The adjudication shall determine the truth or falsity of the allegations in the complaint. The burden of proof shall be upon the complainant, and a determination of dependency, neglect, and abuse shall be made by a preponderance of the evidence. The Kentucky Rules of Civil Procedure shall apply.

- (4) The disposition shall determine the action to be taken by the court on behalf of the child and his parent or other person exercising custodial control or supervision.
- (5) Foster parents, preadoptive parents, or relatives providing care for the child shall receive notice of, and shall have a right to be heard in, any proceeding held with respect to the child. This subsection shall not be construed to require that a foster parent, preadoptive parent, or relative caring for the child be made a party to a proceeding solely on the basis of the notice and right to be heard.
- (6) ***If the court determines that further proceedings are required, the court shall, in the interest of justice, have the ability to request that separate counsel is available to advise a cabinet employee in court anytime that the cabinet employee is required to be in court.***

➔Section 2. KRS 620.142 is amended to read as follows:

- (1) The cabinet shall develop custodial, permanency, and service options, including but not limited to monetary supports, that shall be available to a relative or fictive kin caregiver in the instance that a child, who would otherwise be placed in another out-of-home placement, is placed with him or her due to a cabinet finding that the child is abused, neglected, or dependent, as determined by an assessment or investigation conducted in accordance with this chapter. ***The custodial, permanency, and service options available to a relative or fictive kin caregiver shall include but not be limited to:***
  - (a) ***A notification form that explains and describes the process by which a relative or fictive kin caregiver can be certified as a child-specific foster home and the financial and support benefits that come with that type of placement;***
  - (b) ***A program for a one (1) time monetary benefit as established by an administrative regulation promulgated in accordance with KRS Chapter 13A per child given to the relative or fictive kin caregiver at the time a child is placed with the relative or fictive kin caregiver; and***
  - (c) ***A detailed placement packet that lists all types of supports, financial and otherwise, that are available to a relative or fictive kin caregiver given to the relative or fictive kin caregiver at the time a child is placed with the relative or fictive kin caregiver.***
- (2) The cabinet shall disclose to a prospective relative or fictive kin caregiver each of the options established in subsection (1) of this section prior to the child's placement. The prospective relative or fictive kin caregiver shall select the option that best represents the level of care and support needed for the child while the child is receiving treatment and care in the placement with the relative or fictive kin caregiver.
- (3) The custodial, permanency, and service options required by subsection (1) of this section shall reflect nationally recognized best practices.
- (4) The cabinet shall maximize services available under federal and state law, including but not limited to Titles IV and XIX of the Social Security Act, to fulfill the requirements of this section.
- (5) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

➔Section 3. KRS 620.360 is amended to read as follows:

- (1) Persons who provide foster care services to children who have been committed to the custody of the state shall be considered a primary partner and member of a professional team caring for foster children. Foster parents shall have the following rights:
  - (a) To be treated with respect, consideration, and dignity;
  - (b) To fully understand the role of the cabinet and the role of other members of the child's professional team;
  - (c) To receive information and training about foster parents' rights, responsibilities, and access to local and statewide support groups, including but not limited to the Kentucky Foster/Adoptive Care Association, the Kentucky Foster and Adoptive Parent Network, and Adoption Support of Kentucky;
  - (d) To receive information and training to improve skills in the daily care and in meeting the special needs of foster children;
  - (e) To receive timely and adequate financial reimbursement for knowledgeable and quality care of a child in foster care within budgetary limitations;

- (f) To maintain the foster family's own routines and values while respecting the rights and confidentiality of each foster child placed in their home;
  - (g) To receive a period of respite from providing foster care, pursuant to cabinet policies;
  - (h) To receive, upon an open records request, a copy of all information contained in the cabinet's records about the family's foster home and the foster care services provided by the family consistent with KRS 605.160;
  - (i) To access cabinet support and assistance as necessary twenty-four (24) hours per day, seven (7) days per week;
  - (j) To receive, prior to a child being placed in the foster home pursuant to KRS 605.090, information relating to the child's behavior, family background, or health history that may jeopardize the health or safety of any member of the foster family's household, including other foster children, and similar information that may affect the manner in which foster care services are provided, consistent with KRS 605.160. In an emergency situation, the cabinet shall provide information as soon as it is available;
  - (k) To refuse placement of a child within the foster home and to request, with reasonable notice to the cabinet, the removal of a child from the foster home without fear of reprisal;
  - (l) To communicate, with an appropriate release of information consistent with KRS 605.160, with other professionals who work directly with the foster child, including but not limited to teachers, therapists, and health care practitioners and to notify the cabinet within twenty-four (24) hours of the communication;
  - (m) To assist the cabinet in the development of the child's plan of care;
  - (n) To receive an explanatory notice from the cabinet, consistent with KRS 620.130 and when it is in the best interest of the child, when a foster child's case plan has changed and, except in an immediate response to a child protective services investigation involving the foster home, an explanatory notice of termination or change in placement affecting the foster home within fourteen (14) days of the change or termination in placement;
  - (o) To have priority consideration for placement if a child who has previously been placed in the foster home reenters foster care, consistent with KRS 605.130 and 620.130 and to the extent it is in the best interest of the child;
  - (p) To have priority consideration for adoption if a foster child who has been placed in the foster home for a period of at least twelve (12) consecutive months becomes eligible for adoption consistent with KRS 605.130 and 620.130 and to the extent it is in the best interest of the child;
  - (q) To maintain contact with the foster child after the child leaves the foster home, unless the child, a biological parent, the cabinet when the cabinet retains custody of the child, or other foster or adoptive parent refuses such contact; and
  - (r) To receive notice of, have a right to attend, and have a right to be heard in, either verbally or in writing, any cabinet or court proceeding held with respect to the child ***currently placed in their care, provided the cabinet has no concerns related to maltreatment of the child while in the foster parent's care.*** This paragraph shall not be construed to require that a foster parent caring for the child be made a party to a proceeding solely on the basis of the notice and rights to attend and be heard.
- (2) The responsibilities of foster parents shall include but not be limited to the following:
- (a) To maintain an orderly and clean home;
  - (b) To ensure that the child has adequate resources for personal hygiene and clothing;
  - (c) To provide recreational and spiritual opportunities for the child, in accordance with cabinet policies;
  - (d) To attend all school and case planning meetings involving a foster child placed in their home whenever possible, subject to KRS 620.130 and the confidentiality requirements of 42 U.S.C. sec. 671;
  - (e) To abide by cabinet policies relating to discipline of a foster child; and
  - (f) To support the involvement of a foster child's biological family whenever possible and in accordance with cabinet policies.



- (3) The cabinet shall provide specific training on investigations of alleged child abuse or neglect in a foster home to a person appointed by the Kentucky Foster/Adoptive Care Association. The training shall include the rights of a foster parent during an investigation. Training shall be consistent with 42 U.S.C. sec. 5106(a).
- (4) The cabinet shall promulgate administrative regulations to establish that foster parent approval shall be effective for a minimum of three (3) years before reevaluation is required.
- (5) Nothing in this section shall be construed to establish monetary liability of or cause of action against the cabinet.

➔Section 4. KRS 625.060 is amended to read as follows:

- (1) In addition to the child, the following shall be the parties in an action for involuntary termination of parental rights:
  - (a) The petitioner;
  - (b) The cabinet, if not the petitioner; and
  - (c) The biological parents, if known and if their rights have not been previously terminated. It shall not be necessary to make the putative father a party if he is exempted by KRS 625.065.
- (2) Any party other than the child who is not the petitioner shall be a respondent.
- (3) A foster parent of a child who is currently placed with the foster parent *for a minimum of six (6) months* may intervene as a matter of right in any action for the involuntary termination of parental rights involving a child who is placed with the foster parent, *provided the cabinet has no concerns related to maltreatment of the child while in the foster parent's care*. Such intervention may be made anonymously or in the true name of the foster parent. If proceeding anonymously, the foster parent shall be identified by initials and shall receive a service through his or her counsel or, if not represented by counsel, by providing a preferred mailing address to receive notices from the court and other parties.

➔Section 5. KRS 194A.030 is amended to read as follows:

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

- (1) Office of the Secretary. Within the Office of the Secretary, there shall be an Office of the Ombudsman and Administrative Review, an Office of Legal Services, an Office of Inspector General, an Office of Public Affairs, an Office of Human Resource Management, an Office of Finance and Budget, an Office of Legislative and Regulatory Affairs, an Office of Administrative Services, and an Office of Application Technology Services, as follows:
  - (a) The Office of the Ombudsman and Administrative Review shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and shall:
    1. Investigate, upon complaint or on its own initiative, any administrative act of an organizational unit, employee, or contractor of the cabinet, without regard to the finality of the administrative act. Organizational units, employees, or contractors of the cabinet shall not willfully obstruct an investigation, restrict access to records or personnel, or retaliate against a complainant or cabinet employee;
    2. Make recommendations that resolve citizen complaints and improve governmental performance and may require corrective action when policy violations are identified;
    3. Provide evaluation and information analysis of cabinet performance and compliance with state and federal law;
    4. Place an emphasis on research and best practices, program accountability, quality service delivery, and improved governmental performance;
    5. Provide information on how to contact the office for public posting at all offices where Department for Community Based Services employees or contractors work, at any facility where a child in the custody of the cabinet resides, and to all cabinet or contracted foster parents;
    6. Report to the Office of Inspector General *for review and investigation* any charge or case against an employee of the Cabinet for Health and Family Services where it has cause to believe the employee has engaged in dishonest, unethical, or illegal conduct or practices related to his or her

- job duties; or any violation of state law or administrative regulation by any organization or individual regulated by, or contracted with the cabinet;
7. Compile a report of all citizen complaints about programs or services of the cabinet and a summary of resolution of the complaints and submit the report upon request to the Child Welfare Oversight and Advisory Committee established in KRS 6.943, and the Interim Joint Committee on Health and Welfare and Family Services;~~and~~
  8. Include oversight of administrative hearings; *and*
  9. ***Provide information to the Office of the Attorney General, when requested, related to substantiated violations of state law against an employee, a contractor of the cabinet, or a foster or adoptive parent;***
- (b) The Office of Legal Services shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of Legal Services shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney, giving legal advice and opinions concerning the operation of all programs in the cabinet. The Office of Legal Services shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105;
- (c) The Office of Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary. The Office of Inspector General shall be responsible for:
1. The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;
  2. Licensing and regulatory functions as the secretary may delegate;
  3. Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.1911 to 311.1959, 311.1961, and 311.1963;
  4. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeals functions, pursuant to KRS Chapter 216B; and
  5. The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority;
- (d) The Office of Public Affairs shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The office shall provide information to the public and news media about the programs, services, and initiatives of the cabinet;
- (e) The Office of Human Resource Management shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The office shall coordinate, oversee, and execute all personnel, training, and management functions of the cabinet. The office shall focus on the oversight, development, and implementation of quality improvement services; curriculum development and delivery of instruction to staff; the administration, management, and oversight of training operations; health, safety, and compliance training; and equal employment opportunity compliance functions;
- (f) The Office of Finance and Budget shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The office shall provide central review and oversight of budget, contract, and cabinet finances. The office shall provide coordination, assistance, and support to program departments and independent review and analysis on behalf of the secretary;
- (g) The Office of Legislative and Regulatory Affairs shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The office shall provide central review and oversight of legislation, policy, and administrative regulations. The office

- shall provide coordination, assistance, and support to program departments and independent review and analysis on behalf of the secretary;
- (h) The Office of Administrative Services shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The office shall provide central review and oversight of procurement, general accounting including grant monitoring, and facility management. The office shall provide coordination, assistance, and support to program departments and independent review and analysis on behalf of the secretary; and
  - (i) The Office of Application Technology Services shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050. The office shall provide application technology services including central review and oversight. The office shall provide coordination, assistance, and support to program departments and independent review and analysis on behalf of the secretary;
- (2) Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
  - (3) Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. This shall include but not be limited to oversight of the Division of Women's Health. The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
  - (4) Department for Behavioral Health, Developmental and Intellectual Disabilities. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall develop and administer programs for the prevention of mental illness, intellectual disabilities, brain injury, developmental disabilities, and substance abuse disorders and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, or who have an intellectual disability, brain injury, developmental disability, or a substance abuse disorder. The Department for Behavioral Health, Developmental and Intellectual Disabilities shall be headed by a commissioner for behavioral health, developmental and intellectual disabilities who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for behavioral health, developmental and intellectual disabilities shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for behavioral health, developmental and intellectual disabilities shall exercise authority over the department under the direction of the secretary, and shall only fulfill those responsibilities as delegated by the secretary;
  - (5) Office for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the office. The office shall advocate the rights of children with disabilities and, to the extent that funds are available, shall ensure the administration of services for children with disabilities as are deemed appropriate by this office pursuant to Title V of the Social Security Act. The office may promulgate administrative regulations under KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Office for Children with Special Health Care Needs shall be performed through the office of the executive director. The executive director shall be appointed by the secretary with the approval of the Governor under KRS 12.050;
  - (6) Department for Family Resource Centers and Volunteer Services. The Department for Family Resource Centers and Volunteer Services shall streamline the various responsibilities associated with the human services

programs for which the cabinet is responsible. This shall include, but not be limited to, oversight of the Division of Family Resource and Youth Services Centers and Serve Kentucky. The Department for Family Resource Centers and Volunteer Services shall be headed by a commissioner who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for family resource centers and volunteer services shall be by training and experience in administration and management qualified to perform the duties of the office, shall exercise authority over the department under the direction of the secretary, and shall only fulfill those responsibilities as delegated by the secretary;

- (7) The Office of Health Data and Analytics shall identify and innovate strategic initiatives to inform public policy initiatives and provide opportunities for improved health outcomes for all Kentuckians through data analytics. The office shall provide leadership in the redesign of the health care delivery system using electronic information technology as a means to improve patient care and reduce medical errors and duplicative services. The office shall facilitate the purchase of individual and small business health insurance coverage for Kentuckians. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor under KRS 12.050;
- (8) Department for Community Based Services. The Department for Community Based Services shall administer and be responsible for child and adult protection, violence prevention resources, foster care and adoption, permanency, and services to enhance family self-sufficiency, including child care, social services, public assistance, and family support. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (9) Department for Income Support. The Department for Income Support shall be responsible for child support enforcement and disability determination. The department shall serve as the state unit as required by Title II and Title XVI of the Social Security Act, and shall have responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050; and
- (10) Department for Aging and Independent Living. The Department for Aging and Independent Living shall serve as the state unit as designated by the Administration on Aging Services under the Older Americans Act and shall have responsibility for administration of the federal community support services, in-home services, meals, family and caregiver support services, elder rights and legal assistance, senior community services employment program, the state health insurance assistance program, state home and community based services including home care, Alzheimer's respite services and the personal care attendant program, certifications of assisted living facilities, the state Council on Alzheimer's Disease and other related disorders, and guardianship services. The department shall also administer the Long-Term Care Ombudsman Program and the Medicaid Home and Community Based Waivers Participant Directed Services Option (PDS) Program. The department shall serve as the information and assistance center for aging and disability services and administer multiple federal grants and other state initiatives. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.

**Signed by Governor April 5, 2021.**

## CHAPTER 181

### ( HCR 81 )

A CONCURRENT RESOLUTION to fully support Future Vertical Lift, a vital modernization initiative of the Department of Defense and the United States Army.

WHEREAS, the United States of America is undertaking critical modernization efforts across all branches of the U.S. military as it faces a growing multi-faceted national security threat from challengers around the world; and

WHEREAS, our warfighters require vertical lift aircraft with greater reach, speed, agility, lethality, and survivability to compete in critical anti-access, anti-denial environments; and

WHEREAS, the Future Vertical Lift initiative involves a futuristic family of aircraft developed for the U. S. Department of Defense to meet emerging threats, and the U. S. Army modernization plan involves six mutually

supporting priorities, which include Future Vertical Lift to enable the joint force to counter rapidly developing threats; and

WHEREAS, two U. S. Army Future Vertical Lift programs – Future Long-Range Assault Aircraft and Future Attack Reconnaissance Aircraft – seek to modernize the vertical lift fleet by developing the most modern, versatile, and lethal weapons systems to win on the modern battlefield; and

WHEREAS, Kentucky's Fort Knox and Fort Campbell stand among the nation's most elite military installations and mission-critical bases with approximately 32,000 military personnel and over 7,000 civilian personnel assigned; and

WHEREAS, Fort Knox, with an overall Kentucky economic impact of \$2.6 billion in 2020, hosts the newly established V Corps, headquarters for oversight of the U.S. Army operational planning and mission command of rotational forces in Europe, as well as the national headquarters for Army Human Resources Command, Army Recruiting Command, First Army Division East, Army First Theater Sustainment Command, Army Reserve 84th Training Command, Army Reserve 100th Training Division (Leader Development), and the Adjutant General Corps; and

WHEREAS, Fort Campbell, which had an overall Kentucky economic impact of \$4.5 billion in 2020, hosts the acclaimed 101st Airborne Division and the 160th Special Operations Aviation Regiment, which is our nation's foremost expeditionary fighting command; and

WHEREAS, by 2030, Fort Campbell will become the first home of the Army's new Future Vertical Lift aircraft; and

WHEREAS, the Kentucky National Guard fields approximately 8,000 personnel in state, national, and world-wide missions, and also operates Bluegrass Station, where the facility's largest employer, Lockheed Martin, supports contracts with the United States Special Operations Command which have an economic impact of over \$204 million annually and over 2,200 personnel are employed; and

WHEREAS, the Future Vertical Lift program presents opportunities for innovation and economic growth in Kentucky's aerospace and defense sectors for decades to come;

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 reaffirms the critical importance of the U. S. Army's Future Vertical Lift programs and the impact of these critical aviation platforms on the Commonwealth of Kentucky and the readiness of the United States Military.

➔Section 2. The Kentucky General Assembly requests the full support of the Kentucky Congressional delegation to ensure full funding for the Future Vertical Lift Program in the President's federal budget and subsequent authorization and appropriations legislation.

➔Section 3. The Clerk of the House of Representatives is directed to transmit a copy of this Resolution to Kentucky's Congressional delegation and to the office of Representative Walker Thomas.

**Signed by Governor April 5, 2021.**

## CHAPTER 182

( HB 497 )

AN ACT relating to persons convicted of crimes.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

(1) *When a prisoner is released, the department shall issue to that prisoner, with the prisoner's consent, documents regarding all of the following:*

- (a) *The prisoner's criminal history in Kentucky;*
  - (b) *The prisoner's institutional history, including all of the following:*
    - 1. *Any record of major disciplinary violations;*
    - 2. *Whether the prisoner successfully completed programming approved by the department;*
    - 3. *Whether the prisoner obtained a high school equivalency diploma or other educational degree prior to incarceration, to the extent known or verifiable by the department;*
    - 4. *Whether the prisoner obtained a high school equivalency diploma or other educational degree while incarcerated;*
    - 5. *The prisoner's work record prior to incarceration, including past employment and skills, to the extent known or verifiable by the department, and to the extent the department is technologically capable of providing this information; and*
    - 6. *The prisoner's institutional work record, including skills obtained through any job training or programming provided by the department; and*
  - (c) *Other information considered relevant by the department.*
- (2) *When a prisoner is released, the department may, in conjunction with the Transportation Cabinet, issue to that prisoner an operator's license or personal identification card that is a voluntary travel ID document pursuant to KRS 186.417.*
- (3) *In addition to the documents provided under subsections (1) and (2) of this section, the department shall issue a certificate of employability to a prisoner if all of the following apply:*
- (a) *The prisoner achieved one (1) or both of the following:*
    - 1. *While incarcerated, successfully earned one (1) or more of the following:*
      - a. *An educational credit pursuant to KRS 197.045(1)(a)2.;*
      - b. *A program completion credit pursuant to KRS 197.045(1)(a)3.; or*
      - c. *A work-for-time credit pursuant to KRS 197.047; or*
    - 2. *Prior to incarceration, earned a High School Equivalency Diploma, a high school diploma, a college degree, certification from a vocational or technical education program that the program was completed, or a diploma or degree from a correspondence postsecondary education program approved by the department;*
  - (b) *The prisoner received no major disciplinary violations during the year immediately preceding his or her release; and*
  - (c) *The prisoner received a score or level of competence as determined by the department on a job skills assessment test administered by the department or jail.*
- (4) *A certificate of employability issued pursuant to subsection (3) of this section shall:*
- (a) *Be issued to the prisoner when he or she is released from a correctional facility;*
  - (b) *Be on a form provided by the department;*
  - (c) *Be valid unless revoked by the department; and*
  - (d) *Not create relief from:*
    - 1. *A requirement to register as a sex offender under KRS 17.510;*
    - 2. *A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation;*
    - 3. *A restriction on employment as a prosecutor or law enforcement officer; or*
    - 4. *The denial, ineligibility, or automatic suspension of a health care professional's license due to a substance use disorder.*
- (5) (a) *The department shall revoke the certificate of employability provided under this section of any individual who is convicted of a felony after receiving a certificate of employability.*

- (b) *The department shall provide an individual whose certificate of employability has been revoked under this subsection an opportunity to file a grievance through the department's prisoner grievance system. The revocation of a certificate of employability is effective when the individual is notified of the revocation.*
- (c) *The revocation of a certificate of employability does not affect the right of an employer to rely on the validity of the certificate of employability unless the employer knew before the individual was employed that the certificate of employability was fraudulent.*
- (6) *An individual shall not intentionally state or otherwise represent that he or she has a valid certificate of employability issued by the department knowing that the statement or representation is false. An individual who violates this subsection shall be guilty of a Class B misdemeanor.*
- (7) *Upon request, the department shall confirm whether a certificate of employability has been issued to a named individual and whether the certificate is valid at the time of the inquiry and at the time of the department's response to that inquiry.*
- (8) *The department is not civilly liable for damages based upon its decision to issue or deny issuance of a certificate of employability to any prisoner or for revoking or failing to revoke a certificate of employability issued to any prisoner.*
- (9) (a) *In a judicial or administrative proceeding alleging negligence or other fault, a certificate of employability issued to an individual under this section may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate of employability was issued if the person knew of the certificate at the time of the alleged negligence or other fault.*
- (b) *In any proceeding on a claim against an employer for negligent hiring, a certificate of employability issued to an individual under this section may be a defense for the employer as to the claim if the employer knew of the certificate at the time of the alleged negligence, except in cases where the employer knew or should have known the employee should not be hired for the position due to the nature of his or her history, including criminal history.*
- (10) *The department shall notify incoming prisoners of the possibility to earn a certificate of employability.*
- (11) *The department shall submit an annual report no later than September 1 of each year to the Governor and the General Assembly, which shall include the number of certificates of employability issued in the preceding twelve (12) months, the rate of recidivism among released prisoners previously issued certificates of employability, and any other information the department deems appropriate to include.*

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

*As part of a life skills program that includes curriculum on employment provided to prisoners, the department shall assist prisoners in preparing and writing resumes summarizing their past employment and skills. The department shall assist prisoners in obtaining records or other documents necessary for this purpose.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

*In the event that the cabinet seeks and receives approval of a Medicaid Section 1115 waiver under 42 U.S.C. sec. 1315 for the purpose of providing Medicaid coverage to prisoners thirty (30) days prior to their release, the cabinet shall prioritize provision of such coverage.*

➔Section 4. KRS 205.2005 is amended to read as follows:

*Pursuant to 21 U.S.C. sec. 862a(d)(1), all individuals residing in Kentucky shall be exempt from the application of 21 U.S.C. sec. 862a(a) [Any public assistance recipient under Title IV of the Federal Social Security Act and any federal food stamp program recipient who has been convicted of a drug felony after August 22, 1996, may remain eligible for the program benefits if the recipient has been assessed as chemically dependent and is participating in or has successfully completed a chemical dependency treatment program or is pregnant, and the recipient is otherwise eligible].*

Signed by Governor April 5, 2021.

## CHAPTER 183

## ( SB 99 )

AN ACT relating to construction projects.

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

➔Section 1. KRS 323.033 is amended to read as follows:

- (1) Except as otherwise provided in this section, the following buildings, or additions to existing buildings, classified by use group shall require the services of an architect licensed in the Commonwealth of Kentucky;
  - (a) Assembly use group having a capacity of one hundred (100) persons or more, except church buildings having a capacity of four hundred (400) persons or less or six thousand (6,000) square feet or less;
  - (b) Business use group having a capacity of one hundred (100) persons or more;
  - (c) Institutional use group, regardless of capacity;
  - (d) Mercantile use group having a capacity of one hundred (100) persons or more;
  - (e) Residential use group of more than twelve (12) dwelling units or having a capacity of fifty (50) persons or more;
  - (f) Educational use groups regardless of capacity; and
  - (g) Mixed use group containing one (1) or more of the use group classifications and capacities listed under paragraphs (a) ~~to (f)~~ through (f) of this subsection.
- (2) Alterations or new construction requiring compliance with the Kentucky Building Code for any building containing one (1) or more of the use group classifications and capacities listed under subsection (1) of this section shall require the services of an architect licensed in the Commonwealth of Kentucky; except that, when such alterations or new construction predominantly involve primarily structural components or mechanical or electrical systems, services may be performed by one (1) or more licensed professional engineers.
- (3) Buildings, or additions to existing buildings, containing one (1) or more of the use group classifications and capacities listed under subsection (1) of this section shall require, in addition to the services of an architect, the services of one (1) or more licensed engineers.
- (4) The following buildings and additions to existing buildings, classified by use group, shall require the services of either an architect or a professional engineer registered in the Commonwealth of Kentucky:
  - (a) Factory and industrial use group having a capacity of one hundred (100) persons or more;
  - (b) High hazard use group, regardless of capacity;
  - (c) Storage use group having a capacity of one hundred (100) persons or more; and
  - (d) Utility and miscellaneous use groups having a capacity of one hundred (100) persons or more.
- (5) Neither the state nor any of its political subdivisions shall engage in the construction of any public work involving the practice of architecture or engineering unless the plans, specifications, and estimates have been prepared and the administration of construction contracts executed under the direct supervision of a licensed architect or a professional engineer. This subsection shall not apply to:
  - (a) Any public work, including a building or capital project under KRS 56.491, that involves only maintenance or repair of the facility. Maintenance or repair shall not include any work which alters, modifies, or changes the original characteristics of the design; ~~or~~
  - (b) Any residential dwelling that falls under the Kentucky Residential Code; *or*
  - (c) *Facilities used in the furtherance of security or defense contracts, grants, or agreements with the United States of America located on property owned by the Commonwealth that are industrial or storage areas measuring twenty thousand (20,000) square feet or less or a business area measuring ten thousand (10,000) square feet or less, provided work is in compliance with the United States Department of Defense Building Code.*
- (6) The services required in subsections (1) to (5) of this section shall include the administration of construction contracts.



Signed by Governor April 5, 2021.

**CHAPTER 184**

**( SB 146 )**

AN ACT relating to employment.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO READ AS FOLLOWS:

- (1) *The Labor Cabinet shall require a national and state criminal background check for every prospective and current employee of the cabinet or its agencies, including contract staff, who has access to or use of federal tax information. The criminal background investigation shall be by means of a fingerprint check by the Department of Kentucky State Police and Federal Bureau of Investigation, pursuant to the following requirements:*
- (a) *The cabinet shall require each employee who has access to or use of federal tax information to submit a complete and legible set of fingerprints to the Department of Kentucky State Police on a fingerprint card issued by the Federal Bureau of Investigation;*
  - (b) *The Department of Kentucky State Police shall submit the fingerprint card to the Federal Bureau of Investigation for a national criminal background check after a state criminal background check is conducted;*
  - (c) *The results of a national and state criminal background check shall not be distributed or otherwise released by the cabinet, except that:*
    - 1. *The cabinet shall provide an employee the results of his or her national and state criminal background check upon request; and*
    - 2. *The cabinet may introduce the results, under seal, as evidence in a legal proceeding that involves a challenge to any personnel action taken by the cabinet which is based in whole or in part on information contained in the results; and*
  - (d) *Any fee charged by the Department of Kentucky State Police or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the background check.*
- (2) *The Labor Cabinet or its offices, departments, and agencies shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.*

➔Section 2. KRS 151B.285 is repealed, reenacted as a new section of KRS Chapter 336, and amended to read as follows:

- (1) The ~~Labor~~ ~~Education and Workforce Development~~ Cabinet shall administer and supervise state employment offices and perform any other duties within the Act of Congress entitled "An Act to provide for the establishment of a National Employment Service and for Cooperation with the State in the Promotion of Such System and for Other Purposes," approved June 6, 1933 (48 Stat. 113, U.S.C., Title 29, sec. 49(c)), as amended, and known as the Wagner-Peyser Act. All duties and powers relating to the establishment, maintenance, and operation of free public employment offices are vested in the ~~Labor~~ ~~Education and Workforce Development~~ Cabinet, *except that on or before April 15, 2021, there shall be twelve (12) regional full-time free public employment offices open, fully operational, and staffed by properly trained unemployment insurance specialists in each of the regions where the secretary has determined there is an average unemployment rate above five percent (5%) for the preceding six (6) month period ending either on June 30 or December 31. The Labor Cabinet may, at its discretion, open and operate additional free public employment satellite offices on a full or partial schedule.*
- (2) The provisions of the Wagner-Peyser Act, as amended, are accepted by this state in conformity with Section 4 of that Act, and this state will observe and comply with the requirements of that Act. The ~~Labor~~ ~~Education and~~

~~Workforce Development~~ Cabinet is designated and constituted the agency of this state for the purposes of the Wagner-Peyser Act.

➔Section 3. Whereas it is of utmost importance to provide free, in-person employment services to all areas of Kentucky, 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.

➔Section 4. Notwithstanding KRS 446.250, the amendments to Section 2 of this Act shall prevail over amendments to KRS 151B.285 in any other bill enacted during the 2021 Regular Session.

**Signed by Governor April 5, 2021.**

## CHAPTER 185

### ( SB 162 )

AN ACT relating to state government.

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

➔Section 1. KRS 14.025 is amended to read as follows:

- (1) The Department of State shall be divided into **three (3) offices**~~two (2) divisions~~, each headed by **an executive**~~a~~ director appointed by the Secretary of State pursuant to KRS 12.050.
- (2) The **Office**~~Division~~ of Administration shall be responsible for fiscal and personnel matters,~~elections,~~ public documents, legal affairs, and special projects and commissions.
- (3) The **Office**~~Division~~ of Business **Services**~~Filings~~:
  - (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, **business records, trademarks and service mark registration, notary appointments, and apostilles**; and
  - (b) May promulgate administrative regulations in accordance with KRS Chapter 13A in furtherance of its responsibilities.
- (4) **The Office of Elections shall be responsible for assisting the Secretary of State in his or her duties as the chief election official of Kentucky and shall be responsible for candidate filings and collection of filing fees.**

➔Section 2. KRS 355.9-513A is amended to read as follows:

- (1) No person shall communicate a financing statement to a filing office for filing which is:
  - (a) Not authorized or permitted under KRS 355.9-509 or 355.9-708;
  - (b) Not related to a valid existing or potential commercial or financial transaction; and
  - (c) Filed with the intent to harass, hinder, or defraud a qualified person identified as an individual debtor in the financing statement.
- (2) A qualified person may file in the office of the Secretary of State's **Office**~~Division~~ of Business **Services**~~Filings~~ a notarized affidavit, signed under penalty of perjury, stating that:
  - (a) The affiant is a qualified person;
  - (b) None of the secured parties of record are financial institutions as defined in subsection (15) of this section;
  - (c) All secured parties of record are individuals; and
  - (d) The financing statement was filed by an individual not authorized or permitted to do so under KRS 355.9-509 or 355.9-708.
- (3) (a) The Secretary of State shall adopt and make available a form of affidavit for use under this section.

- (b) The filing office shall not charge a fee for the filing of an affidavit or a termination statement under this section. The filing office shall not return any fee paid for filing the financing statement identified in the affidavit, whether or not the financing statement is subsequently reinstated.
  - (c) In a case in which KRS 355.9-501 provides that the proper office to file a financing statement is the office designated for the filing or recording of a record of a mortgage on real property, the Secretary of State shall promptly transmit to that office copies of all communications regarding an affidavit filed under this section, including the affidavit itself, any termination statement filed under subsection (4) of this section, and any amendment filed or preliminary or final court order received pursuant to subsection (7) or (8) of this section, and upon receipt the receiving office shall execute the actions described herein.
- (4) If an affidavit is filed under subsection (2) of this section, the filing office shall promptly file a termination statement with respect to the financing statement identified in the affidavit. The termination statement shall indicate that it was filed pursuant to this section. Except as provided in subsections (7) and (8) of this section, a termination statement filed under this subsection shall take effect thirty (30) days after it is filed.
  - (5) On the same day that a filing office files a termination statement under subsection (4) of this section, it shall send to each secured party of record for the financing statement a notice advising the secured party of record that the termination statement has been filed. The notice shall be sent by certified mail, return receipt requested, to the address provided for the secured party in the financing statement.
  - (6) An individual indicated as a secured party of record on a financing statement for which a termination statement has been filed under subsection (4) of this section may, before or after the termination statement takes effect:
    - (a) Request from the Secretary of State an expedited administrative review of the decision to terminate the filing; or
    - (b) Bring an action against the individual who filed the affidavit under subsection (2) of this section seeking a determination that the financing statement was filed by a person entitled to do so under KRS 355.9-509(1). An action under this subsection shall have priority on the court's calendar and shall proceed by expedited hearing. If the individual who filed the affidavit resides in this state, the exclusive venue in this state for the action shall be in the Circuit Court for the county where the individual principally resides in this state. If the individual who filed the affidavit does not reside in this state, the exclusive venue in this state shall be in the Circuit Court for the county where the filing office in which the financing statement was filed is located.
  - (7) In an action brought pursuant to subsection (6) of this section, a court may, in appropriate circumstances, order preliminary relief, including but not limited to an order precluding the termination statement from taking effect or directing a party to take action to prevent the termination statement from taking effect. If the court issues such an order and the filing office receives a certified copy of the order before the termination statement takes effect as provided in subsection (4) of this section, the termination statement shall not take effect and the filing office shall promptly file an amendment to the financing statement that indicates that an order has prevented the termination statement from taking effect. If such an order ceases to be effective by reason of a subsequent order or a final judgment of that court or by an order issued by another court, and the filing office receives a certified copy of the subsequent judgment or order, the termination statement shall become immediately effective upon receipt of the certified copy and the filing office shall promptly file an amendment to the financing statement indicating that the termination statement is effective.
  - (8) If the Secretary of State determines in an expedited administrative review initiated under subsection (6)(a) of this section, or if a court determines in an action brought pursuant to subsection (6)(b) of this section, that the financing statement was filed by a person entitled to do so under KRS 355.9-509(1) and the filing office receives a certified copy of the administrative determination or court's final judgment or order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall remove the termination statement and any amendments filed under subsection (7) of this section from the files. If the filing office receives the certified copy after the termination statement takes effect and within thirty (30) days after the final judgment or order was entered, the filing office shall promptly file an amendment to the financing statement that indicates that the financing statement has been reinstated.
  - (9) Except as provided in subsection (10) of this section, upon the filing of an amendment reinstating a financing statement under subsection (8) of this section, the effectiveness of the financing statement is retroactively

reinstated and the financing statement shall be considered never to have been ineffective against all persons and for all purposes.

- (10) A financing statement whose effectiveness was terminated under subsection (4) of this section and has been reinstated under subsection (8) of this section shall not be effective as against a person that purchased the collateral in good faith between the time the termination statement was filed and the time of the filing of the amendment reinstating the financing statement, to the extent that the person gave new value in reliance on the termination statement.
- (11) (a) A person who violates subsection (1) of this section shall be civilly liable to an injured qualified person for:
1. Actual damages caused by the violation;
  2. Reasonable attorney fees; and
  3. Exemplary damages in an amount determined by the court.
- (b) Civil damages under paragraph (a) of this subsection are in addition to any recovery to which the qualified person is entitled under KRS 355.9-625, or under law other than this article.
- (12) Neither the filing office nor any of its employees shall be subject to liability for the termination or amendment of a financing statement in the lawful performance of the duties of the office under this section.
- (13) A person may not file an affidavit under this section with respect to a financing statement filed by a financial institution, as defined in subsection (15) of this section or a representative of a financial institution.
- (14) In this section, the term "qualified person" means an individual who, at the time the financing statement referred to in subsection (2) of this section was filed or within five (5) years prior to the time of filing, was:
- (a) An elected or appointed official of this state or a governmental unit of this state as defined in KRS 355.9-102(1);
  - (b) An officer or employee of a federal, state, or local judicial or prosecutorial office;
  - (c) An officer or employee of a federal, state, or local law enforcement office, including a correctional officer or employee; or
  - (d) An officer or employee of an office designated in KRS 355.9-501 as a place to file a financing statement.
- (15) In this section, the term "financial institution" means a person that:
- (a) Is in the business of extending credit and servicing loans, including acquiring, purchasing, selling, and brokering, or other extensions of credit; and
  - (b) Where applicable, holds whatever license, charter, or registration that is required to engage in such business.

The term includes banks, savings banks, savings associations, building and loan associations, credit unions, consumer and commercial finance companies, industrial banks, industrial loan companies, insurance companies, investment companies, installment sellers, mortgage servicers, sales finance companies, and leasing companies.

➔Section 3. Notwithstanding KRS 12.028(5), the General Assembly confirms Secretary of State Executive Order 2020-02, dated June 1, 2020, to the extent that it is not otherwise confirmed or superseded by this Act.

➔Section 4. KRS 11A.010 (Effective April 1, 2021) is amended to read as follows:

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

- (1) "Business" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted, whether or not for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or herself or another;

- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, the waiver of a registration fee for a presenter at a conference or training described in KRS 45A.097(5), or door prizes available to the public;
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means:
- (a) All major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, executive directors, executive assistants, policy advisors, special assistants, administrative coordinators, executive advisors, staff assistants, and division directors;
  - (b) Members and full-time chief administrative officers of:
    1. The Parole Board;
    2. *Office of Claims and Appeals* [~~Kentucky Claims Commission~~];
    3. *Board of Tax Appeals*;
    4. *Board of Claims*;
    5. *Crime Victims Compensation Board*;
    - ~~6~~<sup>3</sup>. Kentucky Retirement Systems board of trustees;
    - ~~7~~<sup>4</sup>. Kentucky Teachers' Retirement System board of trustees;
    - ~~8~~<sup>5</sup>. The Kentucky Public Employees Deferred Compensation Authority board of trustees;
    - ~~9~~<sup>6</sup>. Public Service Commission;
    - ~~10~~<sup>7</sup>. Worker's Compensation Board and its administrative law judges;
    - ~~11~~<sup>8</sup>. The Kentucky Occupational Safety and Health Review Commission;
    - ~~12~~<sup>9</sup>. The Kentucky Board of Education;
    - ~~13~~<sup>10</sup>. The Council on Postsecondary Education;
    - ~~14~~<sup>11</sup>. County Employees Retirement System board of trustees; and
    - ~~15~~<sup>12</sup>. Kentucky Public Pensions Authority;
  - (c) Salaried members of executive branch boards and commissions; and
  - (d) Any person who, through a personal service contract or any other contractual employment arrangement with an agency, performs on a full-time, nonseasonal basis a function of any major management position listed in this subsection;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his or her position in the state service;
- (9) "Public servant" means:
- (a) The Governor;
  - (b) The Lieutenant Governor;
  - (c) The Secretary of State;
  - (d) The Attorney General;

- (e) The Treasurer;
  - (f) The Commissioner of Agriculture;
  - (g) The Auditor of Public Accounts;
  - (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees; and
  - (i) Any person who, through any contractual arrangement with an agency, is employed to perform a function of a position within an executive branch agency on a full-time, nonseasonal basis;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his or her appointing authority is employed, unless his or her agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;
  - (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(23) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(9);
  - (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
  - (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of this section;
  - (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
  - (15) "Public agency" means any governmental entity;
  - (16) "Appointing authority" means the agency head or any person whom he or she has authorized by law to act on behalf of the agency with respect to employee appointments;
  - (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else;
  - (18) "Directly involved" means to work on personally or to supervise someone who works on personally;
  - (19) "Sporting event" means any professional or amateur sport, athletic game, contest, event, or race involving machines, persons, or animals, for which admission tickets are offered for sale and that is viewed by the public;
  - (20) "Person" means an individual, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business or statutory trust, donative trust, estate, company, corporation, limited liability company, association, club, committee, organization, or group of persons acting in concert; and
  - (21) "Salaried" means receiving a fixed compensation or benefit reserved for full-time employees, which is paid on a regular basis without regard to the actual number of hours worked.

➔Section 5. KRS 12.020 is amended to read as follows:

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

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

- (1) The Governor.

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

II. Program cabinets headed by appointed officers:

- (1) Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Department of Public Advocacy.
- (2) Education and Workforce Development Cabinet:
  - (a) Office of the Secretary.
    - 1. Governor's Scholars Program.
    - 2. Governor's School for Entrepreneurs Program.
    - 3. Office of the Kentucky Workforce Innovation Board.
    - 4. Foundation for Adult Education.
    - 5. Early Childhood Advisory Council.
  - (b) Office of Legal and Legislative Services.
    - 1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Administrative Services.

1. Division of Human Resources.
2. Division of Operations and Support Services.
3. Division of Fiscal Management.
- (e) Office of Technology Services.
- (f) Office of Educational Programs.
- (g) Office of the Kentucky Center for Statistics.
- (h) Board of the Kentucky Center for Statistics.
- (i) Board of Directors for the Center for School Safety.
- (j) Department of Education.
  1. Kentucky Board of Education.
  2. Kentucky Technical Education Personnel Board.
- (k) Department for Libraries and Archives.
- (l) Department of Workforce Investment.
  1. Office of Vocational Rehabilitation.
    - a. Division of Kentucky Business Enterprise.
    - b. Division of the Carl D. Perkins Vocational Training Center.
    - c. Division of Blind Services.
    - d. Division of Field Services.
    - e. Statewide Council for Vocational Rehabilitation.
  2. Office of Unemployment Insurance.
  3. Office of Employer and Apprenticeship Services.
    - a. Division of Apprenticeship.
  4. Office of Career Development.
  5. Office of Adult Education.
  6. Unemployment Insurance Commission.
  7. Kentucky Apprenticeship Council.
- (m) Foundation for Workforce Development.
- (n) Kentucky Workforce Investment Board.
- (o) Education Professional Standards Board.
  1. Division of Educator Preparation.
  2. Division of Certification.
  3. Division of Professional Learning and Assessment.
  4. Division of Legal Services.
- (p) Kentucky Commission on the Deaf and Hard of Hearing.
- (q) Kentucky Educational Television.
- (r) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
  - (a) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.



2. Office of Legal Services.
    - a. Legal Division I.
    - b. Legal Division II.
  3. Office of Administrative Hearings.
  4. Office of Communication.
  5. Mine Safety Review Commission.
  6. Office of Kentucky Nature Preserves.
  7. Kentucky Public Service Commission.
- (b) Department for Environmental Protection.
1. Office of the Commissioner.
  2. Division for Air Quality.
  3. Division of Water.
  4. Division of Environmental Program Support.
  5. Division of Waste Management.
  6. Division of Enforcement.
  7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
1. Office of the Commissioner.
  2. Division of Mine Permits.
  3. Division of Mine Reclamation and Enforcement.
  4. Division of Abandoned Mine Lands.
  5. Division of Oil and Gas.
  6. Division of Mine Safety.
  7. Division of Forestry.
  8. Division of Conservation.
  9. Office of the Reclamation Guaranty Fund.
- (d) Office of Energy Policy.
1. Division of Energy Assistance.
- (e) Office of Administrative Services.
1. Division of Human Resources Management.
  2. Division of Financial Management.
  3. Division of Information Services.
- (4) Public Protection Cabinet.
- (a) Office of the Secretary.
1. Office of Communications and Public Outreach.
  2. Office of Legal Services.
    - a. Insurance Legal Division.
    - b. Charitable Gaming Legal Division.
    - c. Alcoholic Beverage Control Legal Division.

## ACTS OF THE GENERAL ASSEMBLY

- d. Housing, Buildings and Construction Legal Division.
- e. Financial Institutions Legal Division.
- f. Professional Licensing Legal Division.
- 3. Office of Administrative Hearings.
- 4. Office of Administrative Services.
  - a. Division of Human Resources.
  - b. Division of Fiscal Responsibility.
- (b) *Office of Claims and Appeals* [~~Kentucky Claims Commission~~].
  - 1. ***Board of Tax Appeals.***
  - 2. ***Board of Claims.***
  - 3. ***Crime Victims Compensation Board.***
- (c) Kentucky Boxing and Wrestling Commission.
- (d) Kentucky Horse Racing Commission.
  - 1. Office of Executive Director.
    - a. Division of Pari-mutuel Wagering and Compliance.
    - b. Division of Stewards.
    - c. Division of Licensing.
    - d. Division of Enforcement.
    - e. Division of Incentives and Development.
    - f. Division of Veterinary Services.
- (e) Department of Alcoholic Beverage Control.
  - 1. Division of Distilled Spirits.
  - 2. Division of Malt Beverages.
  - 3. Division of Enforcement.
- (f) Department of Charitable Gaming.
  - 1. Division of Licensing and Compliance.
  - 2. Division of Enforcement.
- (g) Department of Financial Institutions.
  - 1. Division of Depository Institutions.
  - 2. Division of Non-Depository Institutions.
  - 3. Division of Securities.
- (h) Department of Housing, Buildings and Construction.
  - 1. Division of Fire Prevention.
  - 2. Division of Plumbing.
  - 3. Division of Heating, Ventilation, and Air Conditioning.
  - 4. Division of Building Code Enforcement.
- (i) Department of Insurance.
  - 1. Division of Insurance Product Regulation.
  - 2. Division of Administrative Services.

3. Division of Financial Standards and Examination.
  4. Division of Agent Licensing.
  5. Division of Insurance Fraud Investigation.
  6. Division of Consumer Protection.
- (j) Department of Professional Licensing.
1. Real Estate Authority.
- (5) Labor Cabinet.
- (a) Office of the Secretary.
1. Office of General Counsel.
    - a. Workplace Standards Legal Division.
    - b. Workers' Claims Legal Division.
  2. Office of Administrative Services.
    - a. Division of Human Resources Management.
    - b. Division of Fiscal Management.
    - c. Division of Professional Development and Organizational Management.
    - d. Division of Information Technology and Support Services.
  3. Office of Inspector General.
- (b) Department of Workplace Standards.
1. Division of Occupational Safety and Health Compliance.
  2. Division of Occupational Safety and Health Education and Training.
  3. Division of Wages and Hours.
- (c) Department of Workers' Claims.
1. Division of Workers' Compensation Funds.
  2. Office of Administrative Law Judges.
  3. Division of Claims Processing.
  4. Division of Security and Compliance.
  5. Division of Information Services.
  6. Division of Specialist and Medical Services.
  7. Workers' Compensation Board.
- (d) Workers' Compensation Funding Commission.
- (e) Occupational Safety and Health Standards Board.
- (f) State Labor Relations Board.
- (g) Employers' Mutual Insurance Authority.
- (h) Kentucky Occupational Safety and Health Review Commission.
- (i) Workers' Compensation Nominating Committee.
- (6) Transportation Cabinet:
- (a) Department of Highways.
1. Office of Project Development.
  2. Office of Project Delivery and Preservation.

- 3. Office of Highway Safety.
- 4. Highway District Offices One through Twelve.
- (b) Department of Vehicle Regulation.
- (c) Department of Aviation.
- (d) Department of Rural and Municipal Aid.
  - 1. Office of Local Programs.
  - 2. Office of Rural and Secondary Roads.
- (e) Office of the Secretary.
  - 1. Office of Public Affairs.
  - 2. Office for Civil Rights and Small Business Development.
  - 3. Office of Budget and Fiscal Management.
  - 4. Office of Inspector General.
- (f) Office of Support Services.
- (g) Office of Transportation Delivery.
- (h) Office of Audits.
- (i) Office of Human Resource Management.
- (j) Office of Information Technology.
- (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
  - (a) Office of the Secretary.
    - 1. Office of Legal Services.
    - 2. Department for Business Development.
    - 3. Department for Financial Services.
      - a. Kentucky Economic Development Finance Authority.
      - b. Finance and Personnel Division.
      - c. IT and Resource Management Division.
      - d. Compliance Division.
      - e. Incentive Administration Division.
      - f. Bluegrass State Skills Corporation.
    - 4. Office of Marketing and Public Affairs.
      - a. Communications Division.
      - b. Graphics Design Division.
    - 5. Office of Workforce, Community Development, and Research.
    - 6. Office of Entrepreneurship *and Small Business Innovation*.
      - a. Commission on Small Business *Innovation and* Advocacy.
- (8) Cabinet for Health and Family Services:
  - (a) Office of the Secretary.
    - 1. Office of the Ombudsman and Administrative Review.
    - 2. Office of Public Affairs.

3. Office of Legal Services.
  4. Office of Inspector General.
  5. Office of Human Resource Management.
  6. Office of Finance and Budget.
  7. Office of Legislative and Regulatory Affairs.
  8. Office of Administrative Services.
  9. Office of Application Technology Services.
- (b) Department for Public Health.
  - (c) Department for Medicaid Services.
  - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (e) Department for Aging and Independent Living.
  - (f) Department for Community Based Services.
  - (g) Department for Income Support.
  - (h) Department for Family Resource Centers and Volunteer Services.
  - (i) Office for Children with Special Health Care Needs.
  - (j) Office of Health Data and Analytics.
- (9) Finance and Administration Cabinet:
- (a) Office of the Secretary.
  - (b) Office of the Inspector General.
  - (c) Office of Legislative and Intergovernmental Affairs.
  - (d) Office of General Counsel.
  - (e) Office of the Controller.
  - (f) Office of Administrative Services.
  - (g) Office of Policy and Audit.
  - (h) Department for Facilities and Support Services.
  - (i) Department of Revenue.
  - (j) Commonwealth Office of Technology.
  - (k) State Property and Buildings Commission.
  - (l) Office of Equal Employment Opportunity and Contract Compliance.
  - (m) Kentucky Employees Retirement Systems.
  - (n) Commonwealth Credit Union.
  - (o) State Investment Commission.
  - (p) Kentucky Housing Corporation.
  - (q) Kentucky Local Correctional Facilities Construction Authority.
  - (r) Kentucky Turnpike Authority.
  - (s) Historic Properties Advisory Commission.
  - (t) Kentucky Tobacco Settlement Trust Corporation.
  - (u) Kentucky Higher Education Assistance Authority.
  - (v) Kentucky River Authority.

- (w) Kentucky Teachers' Retirement System Board of Trustees.
- (x) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
  - (a) Kentucky Department of Tourism.
    - 1. Division of Tourism Services.
    - 2. Division of Marketing and Administration.
    - 3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - 1. Division of Information Technology.
    - 2. Division of Human Resources.
    - 3. Division of Financial Operations.
    - 4. Division of Facilities Management.
    - 5. Division of Facilities Maintenance.
    - 6. Division of Customer Services.
    - 7. Division of Recreation.
    - 8. Division of Golf Courses.
    - 9. Division of Food Services.
    - 10. Division of Rangers.
    - 11. Division of Resort Parks.
    - 12. Division of Recreational Parks and Historic Sites.
  - (c) Department of Fish and Wildlife Resources.
    - 1. Division of Law Enforcement.
    - 2. Division of Administrative Services.
    - 3. Division of Engineering, Infrastructure, and Technology.
    - 4. Division of Fisheries.
    - 5. Division of Information and Education.
    - 6. Division of Wildlife.
    - 7. Division of Marketing.
  - (d) Kentucky Horse Park.
    - 1. Division of Support Services.
    - 2. Division of Buildings and Grounds.
    - 3. Division of Operational Services.
  - (e) Kentucky State Fair Board.
    - 1. Office of Administrative and Information Technology Services.
    - 2. Office of Human Resources and Access Control.
    - 3. Division of Expositions.
    - 4. Division of Kentucky Exposition Center Operations.
    - 5. Division of Kentucky International Convention Center.
    - 6. Division of Public Relations and Media.

7. Division of Venue Services.
8. Division of Personnel Management and Staff Development.
9. Division of Sales.
10. Division of Security and Traffic Control.
11. Division of Information Technology.
12. Division of the Louisville Arena.
13. Division of Fiscal and Contract Management.
14. Division of Access Control.
- (f) Office of the Secretary.
  1. Office of Finance.
  2. Office of Government Relations and Administration.
  3. Office of Film and Tourism Development.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Arts and Cultural Heritage.
- (k) Kentucky African-American Heritage Commission.
- (l) Kentucky Foundation for the Arts.
- (m) Kentucky Humanities Council.
- (n) Kentucky Heritage Council.
- (o) Kentucky Arts Council.
- (p) Kentucky Historical Society.
  1. Division of Museums.
  2. Division of Oral History and Educational Outreach.
  3. Division of Research and Publications.
  4. Division of Administration.
- (q) Kentucky Center for the Arts.
  1. Division of Governor's School for the Arts.
- (r) Kentucky Artisans Center at Berea.
- (s) Northern Kentucky Convention Center.
- (t) Eastern Kentucky Exposition Center.
- (11) Personnel Cabinet:
  - (a) Office of the Secretary.
  - (b) Department of Human Resources Administration.
  - (c) Office of Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Office of Administrative Services.
  - (f) Office of Legal Services.
  - (g) Governmental Services Center.

- (h) Department of Employee Insurance.
- (i) Office of Diversity, Equality, and Training.
- (j) Office of Public Affairs.

III. Other departments headed by appointed officers:

- (1) Council on Postsecondary Education.
- (2) Department of Military Affairs.
- (3) Department for Local Government.
- (4) Kentucky Commission on Human Rights.
- (5) Kentucky Commission on Women.
- (6) Department of Veterans' Affairs.
- (7) Kentucky Commission on Military Affairs.
- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.
- (10) Kentucky Communications Network Authority.

➔Section 6. KRS 12.252 is amended to read as follows:

- (1) There is established within the Public Protection Cabinet a Department of Financial Institutions, a Department of Insurance, a Department of Housing, Buildings and Construction, a Department of Charitable Gaming, a Department of Professional Licensing, and a Department of Alcoholic Beverage Control. Each department shall be headed by a commissioner appointed by the Governor as required by KRS 12.040 and, where appropriate, by KRS 238.510, 241.015, and 304.2-020. Commissioners shall be directly responsible to the secretary and shall perform the functions, powers, and duties provided by law and prescribed by the secretary.
- (2) The secretary of the Public Protection Cabinet shall be appointed by the Governor in accordance with KRS 12.255. The Office of the Secretary shall contain the following entities:
  - (a) The Office of Communications and Public Outreach, which shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
  - (b) The Office of Legal Services, which shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210;
  - (c) The Office of Administrative Hearings, which shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210; and
  - (d) The Office of Administrative Services, which shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050.
- (3) There is established within the Public Protection Cabinet the *Office of Claims and Appeals* ~~Kentucky Claims Commission~~ pursuant to KRS 49.010.
- (4) The Kentucky Horse Racing Commission is attached to the Public Protection Cabinet for administrative purposes only, except as provided in KRS 131.330.
- (5) There is established within the Public Protection Cabinet the Kentucky Boxing and Wrestling Commission, which shall be headed by an executive director appointed by the secretary with the approval of the Governor as required by KRS 12.050. The executive director shall be directly responsible to the secretary and shall perform the functions, powers, and duties provided by law and prescribed by the secretary.

➔Section 7. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:



- (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
  - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
  - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
  - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
  - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
  - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
  - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
  - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
  - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
  - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
  - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
- (a) Finance and Administration Cabinet
    - 1. Higher Education Assistance Authority
      - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
      - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
    - 2. Department of Revenue
      - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440
      - b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
  - (b) Cabinet for Health and Family Services
    - 1. Office of the Inspector General
      - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
      - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
    - 2. Department for Community Based Services
      - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
    - 3. Department for Income Support
      - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
    - 4. Department for Medicaid Services
      - a. Administrative appeal hearings following an external independent third-party review of a Medicaid managed care organization's final decision that denies, in whole or in part, a health care service to an enrollee or a claim for reimbursement to the provider for a health

care service rendered by the provider to an enrollee of the Medicaid managed care organization, conducted under authority of KRS 205.646

- (c) Justice and Public Safety Cabinet
  - 1. Department of Kentucky State Police
    - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
  - 2. Department of Corrections
    - a. Parole Board hearings conducted under authority of KRS Chapter 439
    - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
    - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
  - 3. Department of Juvenile Justice
    - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- (d) Energy and Environment Cabinet
  - 1. Department for Natural Resources
    - a. Surface mining hearings conducted under authority of KRS Chapter 350
    - b. Oil and gas hearings conducted under the authority of KRS Chapter 353, except for those conducted by the Kentucky Oil and Gas Conservation Commission pursuant to KRS 353.500 to 353.720
    - c. Explosives and blasting hearings conducted under the authority of KRS 351.315 to 351.375
  - 2. Department for Environmental Protection
    - a. Wild River hearings conducted under authority of KRS Chapter 146
    - b. Water resources hearings conducted under authority of KRS Chapter 151
    - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
    - d. Environmental protection hearings conducted under authority of KRS Chapter 224
    - e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
  - 3. Public Service Commission
    - a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
- (e) Labor Cabinet
  - 1. Department of Workers' Claims
    - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
  - 2. Kentucky Occupational Safety and Health Review Commission
    - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
- (f) Public Protection Cabinet
  - 1. ***Board of Claims*** [~~Kentucky Claims Commission~~]
    - a. Liability hearings conducted under authority of ***subsection (5) of Section 13 of this Act*** [~~KRS 49.020(1)~~] and 49.040 to 49.180
- (g) Education and Workforce Development Cabinet
  - 1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341

- (h) Secretary of State
    - 1. Registry of Election Finance
      - a. Campaign finance hearings conducted under authority of KRS Chapter 121
  - (i) State universities and colleges
    - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
    - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
    - 3. Campus residency hearings conducted under authority of KRS Chapter 164
    - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
    - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.
- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
- (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
  - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
  - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.
- (7) The provisions of KRS 13B.030(2)(b) shall not apply to administrative hearings held under KRS 11A.100 or 18A.095.

➔Section 8. KRS 39A.120 is amended to read as follows:

If the owner of any property seized, taken, or condemned pursuant to KRS 39A.110 refuses to accept as adequate the compensation fixed by the Governor, the owner may present a claim to the **Board of Claims**~~[Kentucky Claims Commission]~~, which shall hear and determine it according to the provisions of KRS 49.040 to 49.180 and the administrative regulations of the **board**~~[commission]~~.

➔Section 9. KRS 39A.130 is amended to read as follows:

- (1) The owner of property seized, taken, or condemned may appeal from the award of the **Board of Claims**~~[Kentucky Claims Commission]~~ to the Circuit Court of the county of the owner's residence. The Rules of Civil Procedure shall, so far as applicable, govern the procedure on appeal. A trial de novo shall not be allowed unless the record on appeal is not sufficient to determine the matter from the record, but if the action is tried, it shall be tried according to the practice prescribed for the trial of jury cases.
- (2) An appeal from the judgment of Circuit Court may be taken to the Court of Appeals.

➔Section 10. KRS 39A.140 is amended to read as follows:

- (1) If the owner of property seized, taken, or condemned accepts as adequate the compensation fixed by the Governor, the owner shall file a statement of the amount of compensation from the Governor with the Finance and Administration Cabinet, which shall draw a warrant on the State Treasurer for the amount of the compensation in favor of the person entitled to payment.
- (2) If the compensation is determined by award of the **Kentucky Board of Claims**~~[Kentucky Claims Commission]~~ or judgment of a court, as provided in KRS 39A.110, 39A.120, and 39A.130, a certified copy of the award or judgment shall be filed with the Finance and Administration Cabinet which shall draw a warrant on the State Treasurer for the amount of the award or judgment.
- (3) The State Treasurer shall pay the warrants out of any money in the Treasury not otherwise appropriated.

➔Section 11. KRS 39E.180 is amended to read as follows:

Any claims against the commission or committees or their members shall be filed with the **Kentucky Board of Claims**~~[Kentucky Claims Commission]~~ in accordance with KRS 49.040 to 49.180.

➔Section 12. KRS 49.010 is amended to read as follows:

- (1) ***The Office of Claims and Appeals is created within the Public Protection Cabinet and shall constitute a statutory administrative office of the state government within the meaning of KRS Chapter 12.***
- (2) ***The Office of Claims and Appeals shall consist of three (3) separate and distinct administrative boards attached to the office within the meaning of KRS 12.020:***
  - (a) ***The Board of Tax Appeals;***
  - (b) ***The Board of Claims; and***
  - (c) ***The Crime Victims Compensation Board.***
- (3) ***The executive director of the Office of Claims and Appeals shall be appointed by the secretary of the Public Protection Cabinet with the approval of the Governor in accordance with KRS 12.050. The secretary of the Public Protection Cabinet is the appointing authority for the Office of Claims and Appeals, and the executive director shall be directly responsible to the secretary of the Public Protection Cabinet and shall perform the functions, powers, and duties provided by law and prescribed by the secretary of the Public Protection Cabinet. The executive director shall:***
  - (a) ***Carry out the policy and program directives of the boards;***
  - (b) ***Be responsible for the day-to-day operations of the office;***
  - (c) ***Establish appropriate organizational structures and personnel policies;***
  - (d) ***Prepare annual reports on the office's and boards' activities;***
  - (e) ***Prepare budgets; and***
  - (f) ***Perform all other duties as directed by the secretary and the boards and necessary for the operations of the office.***
- (4) ***The Office of Claims and Appeals shall be authorized to:***
  - (a) ***Employ necessary staff, secure adequate office space, and execute other administrative and logistical matters as may be necessary to ensure proper functioning of the office;***
  - (b) ***Promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the office's statutory authority;***
  - (c) ***Publicize widely the functions and purposes of the Office of Claims and Appeals and its attached boards; and***
  - (d) ***Enter into agreements with any state agency, political subdivision of the state, postsecondary education institution, or other person or entity to enlist assistance to implement the duties and responsibilities of the office.***
- (5) ***The principal office of the Office of Claims and Appeals shall be at Frankfort, Kentucky, and shall be open during regular working hours for the conduct of its business.***~~[The Kentucky Claims Commission is created~~

~~and established within the Public Protection Cabinet. As used in this chapter, "commission" means the Kentucky Claims Commission.~~

- ~~(2) The commission shall consist of three (3) members appointed by the Governor with the consent of the Senate. At least one (1) member shall be an attorney licensed to practice in the Commonwealth, at least one (1) member shall have a taxation background, and at least one (1) member shall be:~~
- ~~(a) A victim as defined in KRS 421.500(1);~~
- ~~(b) The parent, spouse, sibling, or child of a victim as defined in KRS 421.500(1), whether or not the victim is deceased; or~~
- ~~(c) A victim advocate as defined in KRS 421.570(1).~~
- ~~(3) Except for the appointment of the commission's first members, all appointments shall be for a three (3) year term. Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but an appointee for a vacancy shall hold office only to the end of the unexpired term of that vacated member.~~
- ~~(4) The Governor shall designate one (1) member of the commission to serve as chairperson, and the commission shall annually elect one (1) of its members to serve as vice chairperson with the authority to act in the absence of the chairperson.~~
- ~~(5) The Governor shall set a salary for members of the commission. In addition, members shall be reimbursed for all expenses paid or incurred in the discharge of official business at existing state rates.~~
- ~~(6) The commission shall meet as often as necessary to perform its statutory responsibilities as outlined in this chapter. A majority of the members of the commission shall constitute a quorum for the transaction of business.~~
- ~~(7) The chairperson shall conduct an annual training session for all members of the commission on new legislation, relevant court decisions, and commission policies and procedures.~~
- ~~(8) The commission shall be headed by an executive director appointed by the commission. The executive director shall:~~
- ~~(a) Carry out the policy and program directives of the commission;~~
- ~~(b) Be responsible for the day-to-day operations of the commission;~~
- ~~(c) Establish appropriate organizational structures and personnel policies;~~
- ~~(d) Serve as the appointing authority for all personnel;~~
- ~~(e) Prepare annual reports on the commission's activities;~~
- ~~(f) Prepare budgets; and~~
- ~~(g) Perform all other duties as directed by the commission or assigned by law.~~
- ~~(9) The Governor shall appoint the necessary number of hearing officers to serve at the direction of the commission. A commission member or employee may serve as a hearing officer for the commission. Any commission member or employee who serves as a hearing officer shall not receive additional compensation but shall be reimbursed at state rates for expenses paid or incurred as a result of serving as a hearing officer. A commission member or employee who is an attorney licensed to practice in the Commonwealth shall be exempt from KRS 13B.030(4).~~
- ~~(10) With the approval of the commission, the executive director and commission employees may enter into agreements with any state agency, political subdivision of the state, postsecondary education institution, or other person or entity to enlist assistance to implement the duties and responsibilities of the commission.]~~

➔Section 13. KRS 49.020 is amended to read as follows:

- (1) (a) *As used in this section and Section 32 of this Act, "revenue and taxation agency" means and includes any agency of state, county, and local government, including special taxing districts, that issues final rulings, orders, or determinations affecting revenue and taxation.*
- (b) *The Board of Tax Appeals created by Section 12 of this Act shall have the power and authority to hear and determine appeals from final rulings, orders, and determinations of any revenue and taxation agency.*

- (2)
  - (a) *The Board of Tax Appeals shall consist of three (3) members appointed by the Governor, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. One (1) member shall be appointed initially for a two (2) year term. One (1) member shall be appointed initially for a three (3) year term. One (1) member shall be appointed initially for a four (4) year term. Thereafter, all appointments to the board shall be for a four (4) year term. There shall be no limit to the amount of reappointments a member shall receive.*
  - (b) *Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but the appointees shall hold office only to the end of the unexpired term of the member replaced.*
  - (c) *The Governor shall appoint a chairperson for the board, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. The chairperson shall be appointed for a four (4) year term and shall be an attorney with the qualifications required of candidates for Circuit Judge. The chairperson shall be the presiding officer over appeals heard by the board.*
  - (d) *The Governor shall establish the compensation, not to include benefits, of the members of the board pursuant to KRS 64.640.*
  - (e) *Two (2) of the members shall be attorneys with the qualifications required of candidates for Circuit Judge. One (1) of the members shall have a background in taxation. No member shall engage in any occupation or business inconsistent with his or her duties as such a member.*
- (3) *The Crime Victims Compensation Board created by Section 12 of this Act shall have the power and authority to hear and determine all matters relating to a claim by a crime victim or a person authorized by law to act on behalf of a crime victim for compensation.*
- (4)
  - (a) *The Crime Victims Compensation Board shall consist of three (3) members appointed by the Governor, not all of whom shall be engaged in the same occupation or profession. Appointed board members shall be subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. Members shall be appointed for a four (4) year term. There shall be no limit to the amount of reappointments a member may receive. One (1) member shall be appointed initially for a two (2) year term. One (1) member shall be appointed initially for a three (3) year term. One (1) member shall be appointed initially for a four (4) year term. Thereafter, all appointments to the board shall be for a four (4) year term. Two (2) of the appointees shall be a victim as defined in KRS 421.500(1), the parent, spouse, sibling, or child of a victim as defined in KRS 421.500(1), whether or not the victim is deceased, or a victim advocate as defined in KRS 421.570(1); and the other appointee shall be an attorney licensed to practice law in this state with two (2) years of experience.*
  - (b) *Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but the appointees shall hold office only to the end of the unexpired term of the member replaced.*
  - (c) *The Governor shall appoint a chairperson for the board, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. The chairperson shall be appointed for a four (4) year term.*
  - (d) *The Governor shall establish the compensation, not to include benefits, of the members of the board pursuant to the provisions of KRS 64.640.*
- (5) *The Board of Claims created by Section 12 of this Act shall have the following powers and authority to investigate, hear proof, and compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies; except, however, regardless of any provision of law to the contrary, the Commonwealth, its cabinets, departments, bureaus, and agencies, and its officers, agents, and employees, while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies, shall not be liable for collateral or dependent claims which are dependent on loss to another and not the claimant or damages for mental distress or pain or suffering, and compensation shall not be allowed, awarded, or paid for such claims for damages.*
- (6)
  - (a) *The Board of Claims shall consist of three (3) members appointed by the Governor, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. One (1)*

*member shall be appointed initially for a two (2) year term. One (1) member shall be appointed initially for a three (3) year term. One (1) member shall be appointed initially for a four (4) year term. Thereafter, all appointments to the board shall be for a four (4) year term. There shall be no limit to the amount of reappointments a member shall receive.*

- (b) *Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but the appointees shall hold office only to the end of the unexpired term of the member replaced.*
  - (c) *The Governor shall appoint a chairperson for the board, subject to Senate confirmation in accordance with KRS 11.160 for each appointment or reappointment. The chairperson shall be appointed for a four (4) year term, and shall be an attorney with the qualifications required of a candidate for Circuit Judge. The chairperson shall be the presiding officer over appeals heard by the board.*
  - (d) *The Governor shall establish the compensation, not to include benefits, of the members of the board pursuant to the provision of KRS 64.640.*
  - (e) *Two (2) of the members shall be attorneys with the qualifications required of candidates for Circuit Judge and have a background and working knowledge in Kentucky tort law. One (1) member shall have a background in business. No member shall engage in any occupation or business inconsistent with his or her duties as such a member.*
- (7) *The Board of Tax Appeals, the Board of Claims, and the Crime Victims Compensation Board shall each be separately authorized to:*
- (a) *Promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the board's statutory authority;*
  - (b) *Issue subpoenas and discovery orders, and to petition a court of competent jurisdiction for any order necessary to carry out the board's powers and duties;*
  - (c) *Take or cause to be taken affidavits or depositions within or without the state;*
  - (d) *Administer or cause to be administered oaths;*
  - (e) *Except for the power to issue final decisions on the merits of a claim or appeal, to delegate any of its power or authority to the Office of Claims and Appeals; and*
  - (f) *Publicize widely the functions and purposes of the board.*
- (8) *If any appointed board member has a conflict of interest, as contemplated by KRS 11A.030, involving any matter pending before the board, the secretary of the cabinet shall appoint a member of one (1) of the other boards administered by the Office of Claims and Appeals as a substitute member. Following appointment, the substitute board member shall serve in place of the member who has a conflict for all actions and votes relevant to that matter.*
- (9) *Members of the Board of Tax Appeals, Board of Claims, and Crime Victims Compensation Board shall receive new member orientation and annual training to discuss new legislation, pertinent court decisions, and board policies and procedures.*
- (10) *The boards shall meet as often as necessary to perform their statutory responsibilities as outlined in this chapter. A majority of the members of the commission shall constitute a quorum for the transaction of business.*
- (11) *Immediately following the effective date of this Act, the Governor shall review the current board, determine any members that are no longer qualified, and appoint new members to the board if necessary. ~~The Kentucky Claims Commission created by KRS 49.010 shall have the following powers and authority:~~*
- ~~(1) To investigate, hear proof, and compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies; except, however, regardless of any provision of law to the contrary, the Commonwealth, its cabinets, departments, bureaus, and agencies, and its officers, agents, and employees, while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies, shall not be liable for collateral or dependent claims which are dependent on loss to another and not the claimant or damages for mental distress or pain or suffering, and compensation shall not be allowed, awarded, or paid for such claims for damages. Furthermore,~~

~~any damage claim awarded shall be reduced by the amount of payments received or the right to receive payment from workers' compensation insurance; Social Security programs; unemployment insurance programs; medical, disability, or life insurance programs; or other federal or state or private program designed to supplement income or pay claimant's expenses or damages incurred. Any claim against the Commonwealth or its departments, agencies, officers, agents, or employees, or a school district board of education or its members, officers, agents, or employees, for damages sustained as the result of exposure to asbestos before, during, or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the commission;~~

- ~~(2) To hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation;~~
- ~~(3) To hear and determine all matters relating to a claim by a crime victim or a person authorized by law to act on behalf of a crime victim for compensation;~~
- ~~(4) To establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;~~
- ~~(5) To promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority;~~
- ~~(6) To issue subpoenas and discovery orders and to petition a court of competent jurisdiction for any order necessary to carry out the commission's powers and duties;~~
- ~~(7) To take or cause to be taken affidavits or depositions within or without the state;~~
- ~~(8) To administer or cause to be administered oaths;~~
- ~~(9) Except for the power to issue final decisions on the merits of a claim or appeal, to delegate any of its power or authority to commission employees; and~~
- ~~(10) To publicize widely the functions and purposes of the commission.]~~

➔Section 14. KRS 49.030 is amended to read as follows:

KRS 49.040 to 49.180 shall apply to the *power and authority of the Board of Claims* ~~[Kentucky Claims Commission's power and authority]~~ outlined in *subsection (5) of Section 13 of this Act* ~~[KRS 49.020(1)]~~.

➔Section 15. KRS 49.040 is amended to read as follows:

- (1) Regardless of any provision of law to the contrary, the jurisdiction of the *Board of Claims* ~~[commission]~~ is exclusive, and a single claim for the recovery of money or a single award of money shall not exceed two hundred fifty thousand dollars (\$250,000), exclusive of interest and costs. However, if a single act of negligence results in multiple claims, the total award may not exceed four hundred thousand dollars (\$400,000), to be equitably divided among the claimants, but in no case may any claimant individually receive more than two hundred fifty thousand dollars (\$250,000).
- (2) Hearing officers, upon the direction of the *board, the board chair, or the executive director of the Office of Claims and Appeals* ~~[chairperson, the commission, or the commission's executive director]~~ shall conduct hearings and otherwise supervise the presentation of evidence and perform any other duties assigned to them by the *board, the board chair, or the executive director of the Office of Claims and Appeals* ~~[chairperson, the commission, or the commission's executive director]~~, except that such hearing officers shall not render final decisions, orders, or awards. However, such hearing officers may, in receiving evidence on behalf of the *board* ~~[commission]~~, make such rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.
- (3) *The board shall maintain the official record of the claim, including evidence entered into the record at a hearing on the claim, and the final action taken on each claim. All records of proceedings shall be public records.*
- (4) Upon recommendation to the *board* ~~[commission]~~ by the attorney for the Commonwealth, its cabinet, department, bureau, agency, or employee thereof, that a settlement has been reached between the parties to the claim, and upon approval by the *board* ~~[commission]~~ that the settlement is reasonable for all parties concerned, an agreed judgment or dismissal may be entered accordingly, even without a party's admission to liability.

➔Section 16. KRS 49.050 is amended to read as follows:



- (1) The **Board of Claims**~~commission~~ created by KRS 49.010 is hereby vested with full power, authority, and jurisdiction to investigate, hear proof, and compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of any municipality, or any of its officers, agents, or employees while acting within the scope of their employment by the municipality, or any agency thereof, relating to the maintenance by the municipality of state-owned traffic control devices pursuant to a contract with the Commonwealth.
- (2) Claims for personal injury or property damage against any municipality, or any of its officers, agents, or employees while acting within the scope of their employment of the municipality, arising out of negligence in the maintenance of state-owned traffic control devices pursuant to a contract with the Commonwealth, shall be limited and reduced in the same manner as described in KRS 49.040 with respect to claims against the Commonwealth.
- (3) It is the intention of subsections (1) and (2) of this section to provide every municipality and agency thereof, and their respective officers, agents, or employees with the same liability protection, restrictions, and reductions when such municipalities and agencies are performing maintenance on state-owned traffic control devices pursuant to a contract with the Commonwealth as the Commonwealth and its agencies, officers, and employees would enjoy if performing the work itself.

➔Section 17. KRS 49.060 is amended to read as follows:

It is the intention of the General Assembly to provide the means to enable a person negligently injured by the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies to be able to assert their just claims as herein provided. The Commonwealth thereby waives the sovereign immunity defense only in the limited situations as herein set forth. It is further the intention of the General Assembly to otherwise expressly preserve the sovereign immunity of the Commonwealth, its cabinets, departments, bureaus, and agencies and its officers, agents, and employees while acting in the scope of their employment in all other situations except where sovereign immunity is specifically and expressly waived as set forth by statute. The **Board of Claims**~~commission~~ shall have exclusive jurisdiction to hear claims for damages, except as otherwise specifically set forth by statute, against the Commonwealth, its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment.

➔Section 18. KRS 49.070 is amended to read as follows:

- (1) For purposes of KRS 49.060, state institutions of higher education under KRS Chapter 164 are agencies of the state.
- (2) The **Board of Claims**~~commission~~ shall have primary and exclusive jurisdiction over all negligence claims for the negligent performance of ministerial acts against the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any officers, agents, or employees thereof while acting within the scope of their employment.
- (3) The **board**~~commission~~ shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof.
- (4) The **board**~~commission~~ shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (5) No action for negligence against the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any officers, agents, or employees thereof may be brought in any other court or forum in the Commonwealth except the **board**~~commission~~ unless the **board**~~commission~~ makes a final determination that it does not have primary and exclusive jurisdiction over the claim.
- (6) The determination by the **board**~~commission~~ becomes final only after all appellate rights have been finalized or waived.
- (7) Any applicable statute of limitations for bringing negligence actions in any court or forum other than the **board**~~commission~~ shall be tolled pending the final determination that the **board**~~commission~~ does not have primary and exclusive jurisdiction of the negligence claim.

- (8) No action for negligence may be brought in any court or forum other than the ~~board~~~~[commission]~~ against the Commonwealth, any of its cabinets, departments, bureaus, or agencies or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (9) Negligence as used herein includes negligence, gross negligence, or wanton negligence.
- (10) The defense of contributory negligence is not a complete bar to recovery of a plaintiff's claim in the ~~board~~~~[commission]~~, and the doctrine of comparative negligence shall be utilized by the ~~board~~~~[commission]~~.
- (11) Except as otherwise provided by KRS 49.040 to 49.180, nothing contained herein shall be construed to be a waiver of sovereign immunity or any other immunity or privilege maintained by the Commonwealth, its cabinets, departments, bureaus, and agencies and its officers, agents, and employees.
- (12) Except as otherwise specifically set forth by statute and in reference to subsection (11) of this section, no action for damages may be maintained in any court or forum against the Commonwealth, any of its cabinets, departments, bureaus, or agencies or any of its officers, agents, or employees while acting within their official capacity and scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (13) The preservation of sovereign immunity referred to in subsections (11) and (12) of this section includes but is not limited to the following:
  - (a) Discretionary acts or decisions;
  - (b) Executive decisions;
  - (c) Ministerial acts;
  - (d) Actions in the performance of obligations running to the public as a whole;
  - (e) Governmental performance of a self-imposed protective function to the public or citizens; and
  - (f) Administrative acts.
- (14) The filing of an action in court or any other forum or the purchase of liability insurance or the establishment of a fund for self-insurance by the Commonwealth, its cabinets, departments, bureaus, or agencies or its agents, officers, or employees thereof for a government-related purpose or duty shall not be construed as a waiver of sovereign immunity or any other immunity or privilege thereby held. Except as specifically set forth by statute, no counterclaim, set-off, recoupment, cross-claim, or other form of avoidance of the claim for damages may be asserted by any person when suit is brought against said person by the Commonwealth or any of its cabinets, departments, bureaus, or agencies thereof.
- (15) Neither the Commonwealth nor any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof shall be liable under a respondeat superior theory or any other similar theory for the acts of independent contractors, contractors, or subcontractors thereof or anyone else doing work or providing services for the state on a volunteer basis or pursuant to a contract therewith.
- (16) ***Any claim against the Commonwealth or its departments, agencies, officers, agents, or employees, or a school district board of education or its members, officers, agents, or employees, for damages sustained as a result of exposure to asbestos before, during, or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the Board of Claims.***

➔Section 19. KRS 49.080 is amended to read as follows:

- (1) Hearings involving claimants who are residents of the Commonwealth shall be conducted in the county wherein the claim accrues, provided, however, that the parties may, with the approval of the **Board of Claims**~~[commission]~~, agree upon a place not within such county for the conduct of hearings. Hearings involving claimants who are nonresidents shall be conducted in the county wherein the claim accrues, provided, however, that a hearing, with the approval of the ~~board~~~~[commission]~~, may be conducted in Franklin County.
- (2) ***When any member of the board is attending hearings at any place other than Frankfort, Kentucky, expenses necessarily incurred in the performance of such duty shall be paid by the state upon certification by the executive director of the Office of Claims and Appeals of an itemized statement of such expenses in accordance with Finance and Administration Cabinet administrative regulations.***

➔Section 20. KRS 49.090 is amended to read as follows:

- (1) The **Board of Claims**~~[commission]~~ may require affected state agencies to investigate claims and the incidents on which they are based and to furnish to the **board**~~[commission]~~ and the claimant in writing the facts learned by investigation. Such response shall be sufficiently specific to support a decision by the **board**~~[commission]~~ to pay or deny the claim. If the agency believes the state should refute a claim, the agency shall cite the facts about the incident that support its belief.
- (2) If the claim is under two thousand five hundred dollars (\$2,500), it may be investigated by the **board**~~[commission]~~ in-house and if the **board**~~[commission]~~ believes it needs additional facts before deciding the claim, the parties may provide the needed information by letter or as directed by the **board**~~[commission]~~.
- (3) The **board**~~[commission]~~ shall hold hearings on contested claims whose value is two thousand five hundred dollars (\$2,500) or greater but may decide claims under two thousand five hundred dollars (\$2,500) without a hearing.
- (4) At its hearings, the **board**~~[commission]~~, or any of its members, or any of its hearing officers *appointed by the board* shall hear the parties at issue and their representatives and witnesses.
- (5) The award or order shall be made~~[by the commission or by a member assigned by the chairperson]~~ within thirty (30) days after final submission, except in cases involving large or complicated records or unusual questions of law, and shall be made within ninety (90) days after final submission in any event. The order or award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the question at issue shall be filed with the record of the claim and a copy of the order or award shall immediately be sent to the parties in dispute.
- (6) *In cases over two thousand five hundred dollars (\$2,500) that have been assigned to a hearing officer or a member, the hearing officer or member shall tender a recommended order to the full board. The final order in any claim heard by a single member or hearing officer shall be made and entered by a majority of the board.*
- (7) *In cases of two thousand five hundred dollars (\$2,500) or less decided by a member, a claimant may make~~[if]~~ an application for review ~~[is made]~~ to the full board~~[commission]~~ within fourteen (14) days from the date of the order or award.~~[.]~~ **If an application is made**, the full **board**~~[commission]~~, ~~if the first decision was not made by the full commission,~~ shall, as soon as practicable, review the evidence, or, if deemed advisable, hear the parties at issue, their representatives and witnesses, and shall make an order or award and file it as specified in subsection (5) above.*
- (8) *The Office of Claims and Appeals may promulgate an administrative regulation authorizing a filing fee of no more than two hundred dollars (\$200) for all appeals that are brought before the Board of Tax Appeals and the Board of Claims.*

➔Section 21. KRS 49.100 is amended to read as follows:

The attorneys appointed by the Governor to represent the Commonwealth's cabinets, departments, bureaus, agencies, or officers, agents, or employees thereof may present any opposition the Commonwealth or any of its cabinets, departments, bureaus, agencies, or officers, agents, or employees thereof may have to the allowance of any claim filed with the **Board of Claims**~~[commission]~~. If such attorney is unavailable to represent his respective cabinet, department, bureau, agency, or employee thereof, then the Attorney General, either by regular or special assignment, shall designate one (1) of his assistants to present any opposition the Commonwealth or any of its cabinets, departments, bureaus, agencies, or officers, agents, or employees thereof may have to the allowance of any claim filed with the **board**~~[commission]~~.

➔Section 22. KRS 49.110 is amended to read as follows:

- (1) The assistant Attorneys General or attorneys appointed by the Governor to represent the Commonwealth's cabinets, departments, agencies or employees, agents, or officers thereof, assigned to defend claims filed with the **Board of Claims**~~[commission]~~ shall receive no additional compensation for the performance of their duties before the **board**~~[commission]~~; provided, however, members of the **board**~~[commission]~~, assistant Attorneys General, and all employees acting for the **board**~~[commission]~~ shall be recompensed for all necessary and actual expenses they may incur incident to their duties for or before the commission.
- (2) All awards and cost of operation assessed by the commission against the Department of Highways shall be paid out of the state road fund upon warrants drawn by the secretary of the Finance and Administration Cabinet upon the State Treasurer.

- (3) All awards and costs of operation assessed by the **board**~~[commission]~~ against other cabinets or agencies of the state, which are not maintained by appropriations out of the general fund, shall be paid out of the funds created or collected for the maintenance and operation of such cabinets or agencies respectively, upon warrants drawn by the secretary of the Finance and Administration Cabinet upon the State Treasurer.
- (4) All amounts necessary to pay awards and costs of operation assessed by the **board**~~[commission]~~ against all other cabinets or agencies of the Commonwealth shall be paid out of the general fund of the Commonwealth, upon warrants drawn by the secretary of the Finance and Administration Cabinet upon the State Treasurer.
- (5) The executive **director**~~[secretary]~~ of the **board**~~[commission]~~ shall maintain accurate records reflecting the costs incident to the operation of the **board**~~[commission]~~. At the close of each quarter-year period, he shall summarize the cost and shall bill each cabinet, commission, board, or agency which has had cases before the **board**~~[commission]~~ for a pro-rata share of the cost of operation for the appropriate calendar quarter computed in a manner deemed just and equitable by the **board**~~[commission]~~. Each cabinet, commission, board, or agency shall remit quarterly their share of the cost of operation to the **board**~~[commission]~~ in the manner provided by law.
- (6) The **board**~~[commission]~~ shall have the power and authority to determine the right of any successful party to an action before it to recover from the opposing party the costs incurred by him or it in such action; and such decision shall not be subject to appeal. Costs shall not include attorneys' fees.

➔Section 23. KRS 49.120 is amended to read as follows:

- (1) All claims must be filed with the **board**~~[commission]~~ within one (1) year from the time the claim for relief accrued.
- (2) The claim for relief shall be deemed to accrue at the time of the negligent act with regard to property damage.
- (3) The claim for relief for personal injury shall be deemed to accrue at the time the personal injury is first discovered by the claimant or in the exercise of reasonable care should have been discovered; however, no action for personal injury shall be commenced beyond two (2) years from the date on which the alleged negligent act or omission actually occurred.
- (4) Notwithstanding subsection (3) of this section, the claim for relief for medical malpractice shall be deemed to accrue at the time the personal injury is first discovered by the claimant or in the exercise of reasonable care should have been discovered; however, no action for personal injury as a result of medical malpractice shall be commenced beyond three (3) years from the date on which the alleged negligent act or omission of malpractice actually occurred.
- (5) If at the time the alleged negligent act or omission occurred or if at the time the claim for relief accrued or thereafter, the claimant is an infant or of unsound mind or under any other legal disability to file suit, a guardian or next friend or committee or other qualified representative shall bring such action in the **board**~~[commission]~~ on behalf of such person within the same time limitation set forth herein or the claim is barred, notwithstanding KRS 413.170 and 413.280. If there is no guardian or committee or he is unwilling or unable to act or is himself a claimant, the **board**~~[commission]~~ shall appoint a guardian ad litem to represent the interests of the claimant under legal disability. The **board**~~[commission]~~ shall allow the guardian ad litem a reasonable fee for his services, to be taxed as costs.

➔Section 24. KRS 49.130 is amended to read as follows:

- (1) An award shall be made only after consideration of the facts surrounding the matter in controversy, and no award shall be made unless the **Board of Claims**~~[commission]~~ is of the opinion that the damage claimed was caused by such negligence on the part of the Commonwealth or its agents as would entitle claimant to a judgment in an action at law if the state were amenable to such action.
- (2) **Furthermore, any damage claim awarded shall be reduced by the amount of payments received or the right to receive payment from workers' compensation insurance, Social Security programs, or other federal, state, or private programs designed to supplement income or pay claimant's expenses or damages incurred.**

➔Section 25. KRS 49.140 is amended to read as follows:

Orders, awards, and judgments of the **Board of Claims**~~[commission]~~ may be enforced by filing in the office of the clerk of the Franklin Circuit Court an authenticated copy of the order, award, or judgment, which, when ordered entered by the judge of the court, shall be entered on the order book and become to all effects and purposes an order, award, or judgment of the court, and be enforceable in a like manner.

➔Section 26. KRS 49.150 is amended to read as follows:

- (1) Appeals may be taken by a state agency from all awards of the **Board of Claims**~~[commission]~~ where the amount in controversy, exclusive of interest and costs, is more than two thousand five hundred dollars (\$2,500). Appeals shall be taken to the Circuit Court of the county wherein the hearing was conducted, provided, however, that an appeal involving a nonresident claimant may be taken by a state agency to the Franklin Circuit Court. Appeals shall be taken within thirty (30) days from the rendition of the award, and the method of appeals shall follow as nearly as may be the rules of civil procedure, except the Commonwealth shall not be required to execute bond.
- (2) Any claimant whose claim is two thousand five hundred dollars (\$2,500) or greater may within thirty (30) days after receipt of the copy of the report containing the final decision of the **board**~~[commission]~~, file a proceeding in the Circuit Court of the county wherein the hearing was conducted to review the decision of the **board**~~[commission]~~. A copy of the filing and complaint shall be served on the Attorney General in the manner provided by the rules of civil procedure.
- (3) The **board**~~[commission]~~, the state agency, and the claimant shall be necessary parties to such appeals. It shall not be necessary for the **board**~~[commission]~~ to file responsive pleadings unless it so desires.
- (4) The executive director of the **Office of Claims and Appeals**~~[commission]~~ shall within thirty (30) days after service of the summons file the entire original record ~~[properly bound]~~, with the clerk of the Circuit Court, after certifying that such record is the ~~[commission's]~~ entire original record **of the Board of Claims** and such record shall be considered by the Circuit Court in its review. If either party requests a transcript of the evidence in writing, the requesting party shall bear the cost of the original copy of the transcript and it shall be furnished within ninety (90) days from the date of the written request.
- (5) On appeal no new evidence may be introduced, except as to fraud or misconduct of some person engaged in the hearing before the **board**~~[commission]~~. The court sitting without a jury shall hear the cause upon the record before it, and dispose of the appeal in a summary manner, being limited to determining: Whether or not the **board**~~[commission]~~ acted without or in excess of its powers; the award was procured by fraud; the award is not in conformity to the provisions of KRS 49.040 to 49.180; and whether the findings of fact support the award. The court shall enter its findings on the order book as a judgment of the court, and such judgment shall have the same effect and be enforceable as any other judgment of the court in civil causes.

➔Section 27. KRS 49.170 is amended to read as follows:

- (1) Any action prosecuted to award, judgment, or final decision, including dismissal, under the provisions of KRS 49.040 to 49.180 shall preclude the right of a claimant to sue the Commonwealth, its cabinets, departments, bureaus, and agencies, and its officers, agents, or employees in the **Board of Claims**~~[commission]~~ or any other forum, except as provided in KRS 49.070(5) when the **board**~~[commission]~~ determines that it has no jurisdiction over the claim.
- (2) The final determination of the **board**~~[commission]~~ shall be given the same res judicata and collateral estoppel effect as any other judicial determination; and, if entered as provided in KRS 49.140, it shall be granted the full faith and credit given to judgments from the Commonwealth's courts in this state and the courts of the United States.

➔Section 28. KRS 49.180 is amended to read as follows:

No claim shall be brought before the **Board of Claims**~~[commission]~~ unless the value of the total amount of damages claimed therein is two hundred fifty dollars (\$250) or greater.

➔Section 29. KRS 49.190 is amended to read as follows:

KRS 49.200 to 49.250 shall apply to the **power and authority of the Board of Tax Appeals**~~[Kentucky Claims Commission's power and authority]~~ outlined in **subsection (1) of Section 13 of this Act**~~[KRS 49.020(2)]~~.

➔Section 30. KRS 49.200 is amended to read as follows:

The **Board of Tax Appeals**~~[commission]~~ shall maintain the following records:

- (1) A register wherein the **board**~~[commission]~~ shall enter by its title any proceedings appealed to it according to the date of its commencement. Thereafter, until after entry of the **board's**~~[commission's]~~ opinion and final order, there shall be noted therein according to the date, the filing or return of any paper or process or the making of any order, ruling, or other directive in or concerning such proceeding, and any other steps therein; and

- (2) The files of the ~~board~~~~commission~~ consisting of all papers or other process filed with or by the ~~board~~~~commission~~.

➔Section 31. KRS 49.210 is amended to read as follows:

- (1) The **Board of Tax Appeals**~~commission~~ may hold hearings at any location within the Commonwealth, with a view to securing opportunity to taxpayers to appear before it with as little inconvenience and expense as practicable. **When any member of the board is attending hearings at any place other than Frankfort, Kentucky, expenses necessarily incurred in the performance of such duty shall be paid by the state upon certification by the executive director of the Office of Claims and Appeals of an itemized statement of such expenses in accordance with the Finance and Administration Cabinet administrative regulations.**
- (2) When any member or employee of the ~~board~~~~commission~~ is attending hearings at any place other than Frankfort, Kentucky, expenses necessarily incurred in the performance of such duty shall be paid by the state upon certification by the executive director of the ~~commission~~ of an itemized statement of such expenses in accordance with Finance and Administration Cabinet regulations.

➔Section 32. KRS 49.220 is amended to read as follows:

- (1) The **Board of Tax Appeals**~~commission, pursuant to KRS 49.020,~~ is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders, and determinations of any **revenue and taxation** agency~~of state or county government~~ affecting revenue and taxation. Administrative hearings before the ~~board~~~~commission~~ shall be de novo and conducted in accordance with KRS Chapter 13B and administrative regulations promulgated by the ~~board~~~~commission~~.
- (2) Any **revenue and taxation**~~state or county~~ agency charged with the administration of any taxing or licensing measure which is under the jurisdiction of the ~~board~~~~commission~~ shall mail by certified mail notice of its ruling, order, or determination within three (3) working days from the date of the decision.
- (3) Any party aggrieved by any ruling, order, or determination of any **revenue and taxation**~~state or county~~ agency charged with the administration of any taxing or licensing measure may prosecute an appeal to the ~~board~~~~commission~~ by filing a complaint or petition of appeal before the ~~board~~~~commission~~ within thirty (30) days from the date of the mailing of the agency's ruling, order, or determination.
- (4) If the Department of Revenue is aggrieved by the decision of any county board of assessment appeals on an assessment recommended by the department and prosecutes an appeal to the ~~board~~~~commission~~ as authorized in subsection (3) of this section, the commissioner of revenue shall, within twenty (20) days, certify in writing to the ~~board~~~~commission~~ the assessment recommended.
- (5) The ~~board~~~~commission~~ shall immediately forward copies of the certification to the parties to the appeal. The assessed value shall be prima facie evidence of the value at which the property should be assessed.

➔Section 33. KRS 49.230 is amended to read as follows:

- (1) **The Board of Tax Appeals shall maintain the official record of the appeal, including evidence entered into the record at a hearing on the appeal, and the final action taken on each appeal.** All ~~proceedings before the commission shall be officially reported and all~~ records of proceedings shall be public records, except in cases of appeals of unmined mineral assessments where the records before the ~~board~~~~commission~~ include information provided to the Department of Revenue by the taxpayer or its lessees, and were generated at the taxpayer's expense. Furthermore, no recorded or transcribed testimony concerning these records shall be considered a public record. Examples of these records would include, but are not limited to, mineral exploration records; photographs; core data information; maps whether acquired for ownership information, for coal seam thickness, for depletion by mining or otherwise; and/or records calculating production or reserves, leased and/or unleased. Neither records containing confidential information nor testimony concerning same shall be disclosed to parties outside the appeals proceedings. A protective order shall be entered and shall remain in effect during the entire appeals process, including appeals to the courts, and thereafter, preventing the parties, their agents and representatives, except the taxpayer, from disclosing the information.
- (2) The full ~~board~~~~commission~~ may hear an appeal or assign one (1) of its members or a hearing officer to hear an appeal. The final order in any appeal heard by a single member or a hearing officer shall be made and entered by a majority of the ~~board~~~~commission~~. **In any appeal referred to a hearing officer or one (1) member, the hearing officer or member shall tender a recommended order to the full board. The final order in any appeal heard by a single member or hearing officer shall be made and entered by a majority of the board.**

- (3) *In cases heard by the full board, the board may request that a hearing officer assist the board with the following:*
- (a) *Hear discovery issues and disputes prior to a scheduled hearing;*
  - (b) *Receive evidence on behalf of the board during the prehearing phase in a particular case;*
  - (c) *Make interlocutory rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case;*
  - (d) *Draft the final order as directed by the board; and*
  - (e) *Perform any other duties assigned.*

➔Section 34. KRS 49.240 is amended to read as follows:

- (1) The final orders of the **Board of Tax Appeals**~~[commission]~~ shall be binding upon all parties until changed or modified by the courts of this state. If no appeal to the courts is prosecuted, the final order of the **board**~~[commission]~~ shall constitute a final determination.
- (2) If the **board**~~[commission]~~ finds that other issues are necessary to a full determination of the controversy, it may remand the whole proceeding to the agency from which the appeal was prosecuted for further determination. The parties may stipulate to the determination of the other issues without remand.
- (3) Any changes in ad valorem property tax assessment rolls, tax bills, or the application by any agency of the tax laws of the state shall be in conformity with the **board's**~~[commission's]~~ final order.
- (4) In the case of any appeal, any taxes, interest, or penalty paid but found by the **board**~~[commission]~~ to be in excess of that legally due shall be ordered refunded to the taxpayer.

➔Section 35. KRS 49.250 is amended to read as follows:

- (1) Any party aggrieved by any final order of the **Board of Tax Appeals**~~[commission]~~, except on appeals from a county board of assessment appeals, may appeal to the Franklin Circuit Court or to the Circuit Court of the county in which the party aggrieved resides or conducts his place of business in accordance with KRS Chapter 13B. Any final orders entered on the rulings of a county board of assessment appeals may be appealed in like manner to the Circuit Court of the county in which the appeal originated.
- (2) If the appeal is from an order sustaining a tax assessment, collection of the tax shall be stayed by the filing of a petition or an appeal to any court. Full payment of the tax or a supersedeas bond is not required to appeal an order sustaining a tax assessment.

➔Section 36. KRS 49.260 is amended to read as follows:

KRS 49.270 to 49.490 shall apply to the **power and authority of the Crime Victims Compensation Board**~~[Kentucky Claims Commission's power and authority]~~ outlined in **Section 13 of this Act**~~[KRS 49.020(3)]~~.

➔Section 37. KRS 49.290 is amended to read as follows:

- (1) "Victim" shall also include nonresidents of this state who suffer losses as a direct result of criminal acts occurring within this state.
- (2) This section shall be operative only during those time periods during which the **Crime Victims Compensation Board**~~[commission]~~ determines that federal funds are available to the state for the compensation of victims of crime.

➔Section 38. KRS 49.300 is amended to read as follows:

In addition to the powers and authority outlined in KRS 49.020, the **Crime Victims Compensation Board**~~[commission]~~ shall have the following powers and duties:

- (1) To promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of KRS 49.270 to 49.490, including administrative regulations for the approval of attorney's fees for representation before the **board**~~[commission]~~ or upon judicial review;
- (2) To hear and determine all matters relating to claims for compensation, and the power to reinvestigate or reopen claims without regard to statutes of limitations;

- (3) To request from prosecuting attorneys and law enforcement officers investigations and data to enable the **board**~~[commission]~~ to determine whether, and the extent to which, a claimant qualifies for compensation. The statute providing confidentiality for juvenile session of District Court records does not apply to proceedings under KRS 49.270 to 49.490;
- (4) To hold hearings in accordance with the provisions of KRS Chapter 13B. The powers provided in this subsection may be delegated by the **board**~~[commission]~~ to any member or employee thereof. If necessary to carry out any of its powers and duties, the **board**~~[commission]~~ may petition any Circuit Court for an order;
- (5) Upon the filing of an application by a claimant, to negotiate binding fee settlements with the providers of services to claimants that may be eligible for an award under KRS 49.370(3);
- (6) To make available for public inspection all **board**~~[commission]~~ decisions and opinions, administrative regulations, written statements of policy, and interpretations formulated, promulgated, or used by it in discharging its functions;
- (7) To publicize widely the availability of reparations and information regarding the claims therefor; and
- (8) To make an annual report, by January 1 of each year, of its activities for the preceding fiscal year to the Office of the State Budget Director and to the Interim Joint Committee on Appropriations and Revenue. Each such report shall set forth a complete operating and financial statement covering its operations during the year.

➔Section 39. KRS 49.310 is amended to read as follows:

- (1) Except as provided in subsections (2) and (3) of this section, the following persons shall be eligible for awards pursuant to KRS 49.270 to 49.490:
  - (a) A victim of criminally injurious conduct;
  - (b) A surviving spouse, parent, or child of a victim of criminally injurious conduct who died as a direct result of such conduct;
  - (c) Any other person dependent for his principal support upon a victim of criminally injurious conduct who died as a direct result of such crime; and
  - (d) Any person who is legally responsible for the medical expenses or funeral expenses of a victim.
- (2) No victim or dependent shall be denied compensation solely because he is a relative of the offender or was living with the offender as a family or household member at the time of the injury or death. However, the **Crime Victims Compensation Board**~~[commission]~~ may award compensation to a victim or dependent who is a relative, family, or household member of the offender only if the **board**~~[commission]~~ can reasonably determine the offender will not receive significant economic benefit or unjust enrichment from the compensation.
- (3) No compensation of any kind shall be awarded when injury occurred while the victim was confined in any state, county, urban-county, or city jail, prison, or other correctional facility, or any state institution maintained and operated by the Cabinet for Health and Family Services.

➔Section 40. KRS 49.330 is amended to read as follows:

- (1) A claim form may be filed by a person eligible to receive an award, as provided in KRS 49.310 or, if such person is a minor, by his parent or guardian.
- (2) A claim form must be filed by the claimant not later than five (5) years after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than five (5) years after the death of the victim; provided, however, that upon good cause shown, the **Crime Victims Compensation Board**~~[commission]~~ may extend the time for filing if, in a particular case, the interest of justice so requires.
- (3) Claims shall be filed **with the board**~~[in the office of the commission in person or by mail]~~ in accordance with the administrative regulations promulgated by the **board**~~[commission]~~. Only printed claim forms supplied by the **board**~~[commission]~~ shall be accepted. The **board**~~[commission]~~ shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and alleging the jurisdiction requirements set forth in KRS 49.270 to 49.490 and meeting the requirements as to form in the rules and regulations of the **board**~~[commission]~~.
- (4) Upon filing of a claim pursuant to KRS 49.270 to 49.490, the **board**~~[commission]~~ shall promptly notify the United States attorney (if a federal offense is involved), the Commonwealth's attorney or county attorney of the county wherein the crime is alleged to have occurred. If, within ten (10) days after such notification, such United States attorney, Commonwealth's attorney, or county attorney advises the **board**~~[commission]~~ that a



criminal prosecution is pending upon the same alleged crime and requests that action by the **board**~~[commission]~~ be deferred, the **board**~~[commission]~~ shall defer all proceedings under KRS 49.270 to 49.490 until such time as such criminal prosecution has been concluded, and shall so notify such United States attorney, Commonwealth's or county attorney, and the claimant. When such criminal prosecution has been concluded such United States attorney, Commonwealth's or county attorney shall promptly so notify the **board**~~[commission]~~. Nothing in this section shall limit the authority of the **board**~~[commission]~~ to grant emergency awards pursuant to KRS 49.360.

➔Section 41. KRS 49.340 is amended to read as follows:

- (1) A claim, when accepted for filing, shall be assigned by the executive director of the **Office of Claims and Appeals**~~[commission]~~ to an investigator for investigation. All claims arising from the death of an individual as a direct result of a crime shall be considered together.
- (2) The investigator to whom such claim is assigned shall examine the papers filed in support of the claim and the validity of the claim. The investigation shall include but not be limited to an examination of police, court, and official records and reports concerning the crime.
- (3) If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the **board**~~[commission]~~ may order the victim or claimant to submit to a mental or physical examination by a physician or psychiatrist, and may order an autopsy of a deceased victim. A report upon an examination shall be filed with the investigator setting out findings, including results of all tests made, diagnosis, prognosis, and other conclusions.
- (4) For purposes of KRS 49.270 to 49.490, there is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under KRS 49.270 to 49.490 in which that condition is an element.
- (5) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.
- (6) Upon completion of the investigator's report, the claim shall be assigned to a **board**~~[commission]~~ member who may decide the claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of the claim within thirty (30) days of the assignment of the claim. If the **board**~~[commission]~~ member is unable to decide the claim upon the basis of the **documents**~~[papers]~~ and the report, **a hearing shall be ordered**~~[he shall order a hearing]~~.
- (7) The hearing shall be conducted in accordance with KRS Chapter 13B **and may be held at any location within the Commonwealth, with a view to securing opportunity for crime victims to appear before it with as little inconvenience and expense as practicable. When any member of the board is attending hearings at any place other than Frankfort, Kentucky, expenses necessarily incurred in the performance of such duty shall be paid by the state upon certification by the executive director of the Office of Claims and Appeals of an itemized statement of such expenses in accordance with Finance and Administration Cabinet administrative regulations.**
- ~~(8)~~~~(7)~~ After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the **board**~~[commission]~~ member to whom the claim was assigned shall issue a recommended order either granting an award pursuant to KRS 49.370 or deny the claim. The **board**~~[commission]~~ shall review the recommended order and any exceptions filed to it, and shall by majority vote issue a final order.
- ~~(9)~~~~(8)~~ A final order of the **board**~~[commission]~~ may be appealed by filing a petition for judicial review in the county where the claim accrued or in Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 42. KRS 49.350 is amended to read as follows:

Following the initial filing of a claim, if a claimant or victim does not take such further steps as may be necessary to support or perfect the claim as may be required by the **Crime Victims Compensation Board**~~[commission]~~ within thirty (30) days after such requirement is made by the **board**~~[commission]~~, the claimant or victim shall be deemed in default. In such case the **board**~~[commission]~~ shall summarily deny the claim and the claimant or victim shall be forever barred from reasserting the claim. The **board**~~[commission]~~ may remit such proceedings on good cause shown that the failure to take the steps required by the **board**~~[commission]~~ was totally and completely beyond the control of the claimant or victim.

➔Section 43. KRS 49.360 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 49.340, if it appears to the *Crime Victims Compensation Board*~~[commission]~~ member to whom a claim is assigned, prior to taking action upon such claim that:
  - (a) Such claim is one with respect to which an award probably will be made; and
  - (b) Undue hardship will result to the claimant if immediate payment is not made;
 emergency payment under subsection (2) of this section may be made.
- (2) Upon such findings under subsection (1) of this section, the *board*~~[commission]~~ member may make an emergency award to the claimant pending a final decision in the case provided that:
  - (a) The amount of such emergency award shall not exceed five hundred dollars (\$500);
  - (b) The amount of such emergency award shall be deducted from any final award made to the claimant; and
  - (c) The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the *board*~~[commission]~~.

➔Section 44. KRS 49.370 is amended to read as follows:

- (1) No award shall be made unless the *Crime Victims Compensation Board*~~[commission]~~ or *board*~~[commission]~~ member, as the case may be, finds that:
  - (a) Criminally injurious conduct occurred;
  - (b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and
  - (c) Police or court records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police or court records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the *board*~~[commission]~~, for good cause shown, finds the delay to have been justified.
- (2) Except for claims related to sexual assault, human trafficking, and domestic violence, the *board*~~[commission]~~ upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.
- (3) Any award made pursuant to KRS 49.270 to 49.490 shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Mental health counseling shall be paid for a maximum of two (2) years, but only after proper documentation is submitted to the *board*~~[commission]~~ stating what treatment is planned and for what period of time. The *board*~~[commission]~~ shall have the power to discontinue payment of mental health counseling at any time within the two (2) year period. Replacement of eyeglasses and other corrective lenses shall be included in an award, provided they were stolen, destroyed, or damaged during the crime.
- (4) Any award made for loss of earnings or financial support may be considered for a claimant who has loss of support or wages due to the crime for which the claim is filed. Unless reduced pursuant to other provisions of KRS 49.270 to 49.490, the award shall be equal to net earnings at the time of the criminally injurious conduct; however, no such award shall exceed one hundred fifty dollars (\$150) for each week of lost earnings or financial support. The wage earner or source of support must have been employed or paying support at the time the crime occurred. Said employment or support shall be verified by the staff of the *board*~~[commission]~~ after information is provided by the claimant or victim. Should the claimant or victim fail to supply the *board*~~[commission]~~ with the information requested, the portion of the claim for lost wages or support shall be denied. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct, the award shall be apportioned by the *board*~~[commission]~~ among the claimants.
- (5) The *board*~~[commission]~~ is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include funeral costs, a monument, and grave plot. In no event shall an award for funeral expenses exceed five thousand dollars (\$5,000).
- (6) Any award made under KRS 49.270 to 49.490 shall not exceed twenty-five thousand dollars (\$25,000) in total compensation to be received by or paid on behalf of a claimant from the fund.

- (7) No award shall be made for any type of property loss or damage, except as otherwise permitted in KRS 49.270 to 49.490.

➔Section 45. KRS 49.380 is amended to read as follows:

- (1) Upon the filing of an application for a claim with the **Crime Victims Compensation Board**~~[commission]~~, all debt collection actions by a creditor or the creditor's agent, against the claimant for a debt or expense covered under KRS 49.370(3) and related to the substance of the claim shall cease pending a resolution of the claim by the **board**~~[commission]~~, if the claimant:

- (a) Provides written notice to the creditor or creditor's agent that a claim has been submitted to the **board**~~[commission]~~; and
- (b) Authorizes the creditor or creditor's agent to confirm with the **board**~~[commission]~~ the claimant's application with the **board**~~[commission]~~ and that the debt or expense upon which the collection action is based may be covered under KRS 49.370(3).

- (2) The **board**~~[commission]~~ shall, upon the written request of a creditor or creditor's agent, notify the creditor or creditor's agent when a claim has been resolved.

➔Section 46. KRS 49.390 is amended to read as follows:

- (1) Any award made pursuant to KRS 49.270 to 49.490 shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury from the following sources:

- (a) From or on behalf of the person who committed the crime;
- (b) Under insurance programs mandated by law;
- (c) From public funds;
- (d) Under any contract of insurance wherein the claimant is the insured or beneficiary;
- (e) As an emergency award pursuant to KRS 49.360; and
- (f) From donations made on behalf of the victim or claimant toward expenses incurred as a result of the crime.

- (2) In determining the amount of an award, the **Crime Victims Compensation Board**~~[commission]~~ or **board**~~[commission]~~ member shall determine whether, because of his or her conduct, the claimant or the victim of such crime contributed to the infliction of the victim's injury, and shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; however, the **board**~~[commission]~~ or **board**~~[commission]~~ member may disregard for this purpose the responsibility of the claimant or the victim for the victim's injury where the record shows that such responsibility was attributable to efforts by the claimant or victim to prevent a crime or an attempted crime from occurrence in his or her presence or to apprehend a person who had committed a crime in his or her presence or had in fact committed a felony. The **board**~~[commission]~~ or **board**~~[commission]~~ members may request that either the county attorney or Commonwealth's attorney or both state whether in their opinion, the victim suffered injuries as the result of a crime and has cooperated with the prosecution and law enforcement authorities. The **board**~~[commission]~~ or **board**~~[commission]~~ member shall not be bound by such opinions and recommendations and if needed may order a further investigation of the claim.

- (3) The **board**~~[commission]~~ or **board**~~[commission]~~ member may consider whether the victim's injuries were the ordinary and foreseeable result of unlawful and criminal activities in determining the claimant's eligibility for an award. If the **board**~~[commission]~~ or **board**~~[commission]~~ member finds that the claimant will not suffer serious financial hardship if not granted financial assistance pursuant to KRS 49.270 to 49.490, the **board**~~[commission]~~ or **board**~~[commission]~~ member shall deny an award. In determining such serious financial hardship, the **board**~~[commission]~~ or **board**~~[commission]~~ member shall consider all of the financial resources of the claimant. The **board**~~[commission]~~ shall establish specific standards by rule for determining such serious financial hardships.

➔Section 47. KRS 49.400 is amended to read as follows:

Any person who procures or attempts to procure compensation with the **Crime Victims Compensation Board**~~[commission]~~ by filing false information shall have the claim denied and be forever barred from filing a claim with this **board**~~[commission]~~.

➔Section 48. KRS 49.410 is amended to read as follows:

- (1) The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to KRS 49.270 to 49.490 shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.
- (2) The **Crime Victims Compensation Board**~~[commission]~~ shall reconsider at least annually every award being paid in installments. An order or reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud.

➔Section 49. KRS 49.420 is amended to read as follows:

- (1) The **Crime Victims Compensation Board**~~[commission]~~ may award a lump-sum payment not to exceed twenty-five thousand dollars (\$25,000) to the family of a police officer employed by a city, county, or urban-county government who is killed in the line of duty as a police officer for such city, county, or urban-county and who is not eligible to receive death or disability benefits under a pension plan of the city, county, or urban-county.
- (2) This section shall apply to any officer killed in the line of duty since January 1, 1986.

➔Section 50. KRS 49.430 is amended to read as follows:

The **Crime Victims Compensation Board**~~[commission]~~ may apply for funds from, and submit all necessary forms to, any federal agency participating in a cooperative program to compensate victims of crime.

➔Section 51. KRS 49.440 is amended to read as follows:

**The Crime Victims Compensation Board shall maintain the official record of the claim, including evidence entered into the record at a hearing on the claim, and the final action taken on each claim. All records of proceedings shall be public records**~~[The record of a proceeding before the commission or a commission member shall be a public record]~~; provided, however, that any record or report obtained by the **board**~~[commission]~~, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

➔Section 52. KRS 49.450 is amended to read as follows:

- (1) Every person contracting with any person or the representative or assignee of any person accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio, or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the **Crime Victims Compensation Board**~~[commission]~~ any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives.
- (2) After deducting all sums paid to the victim by the **board**~~[commission]~~, the **board**~~[commission]~~ shall deposit such moneys in its accounts for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime and provided further that such victim, within five (5) years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.
- (3) Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five (5) years have elapsed from the **board's**~~[commission's]~~ receipt of such funds and that such person has not been convicted of said crime and further that no actions are pending against such person in connection with the crime or pursuant to this section, the **board**~~[commission]~~ shall immediately pay over any such moneys to such person.
- (4) Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five (5) year period provided for in subsection (2) of this section shall not begin to run until the **board**~~[commission]~~ has received such moneys.
- (5) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.
- (6) The failure of a person to pay moneys to the **board**~~[commission]~~ in accordance with subsection (1) shall create a debt due and owing to the **board**~~[commission]~~ from that person and shall constitute a preferential lien to the state which may be collected by the **board**~~[commission]~~ by civil process.

➔Section 53. KRS 49.460 is amended to read as follows:

(1) No right of action at law against a person who has committed a criminal act for damages as a consequence of such act shall be lost as a consequence of receiving benefits under the provisions of KRS 49.270 to 49.490. In the event any person receiving benefits under KRS 49.270 to 49.490 additionally seeks a remedy for damages from the person or persons who have committed the criminal act resulting in damages, then and in that event the ***Crime Victims Compensation Board***~~[commission]~~ shall be subrogated to and have a lien upon any recovery so made to the extent of the payments made by the state to or on behalf of such person under KRS 49.270 to 49.490.

(2) If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that compensation is awarded from a source which is, or, if readily available to the victim or claimant would be, a collateral source.

➔Section 54. KRS 49.480 is amended to read as follows:

(1) There is established in the State Treasury the crime victims' compensation fund, hereinafter referred to as the "fund," to be administered by the ***Crime Victims Compensation Board***~~[commission]~~. Nothing herein shall be construed to limit the power of the court to order additional forms of restitution, including public or charitable work or reparation to the victim, to the fund, or otherwise as authorized by law.

(2) The fund shall consist of moneys from the following: appropriations by the General Assembly; the federal government; disbursements provided under KRS 42.320(2)(g); and any other public or private source. Any unexpended balance remaining in the fund at the end of the biennium shall not lapse and be transferred to the general fund, but shall remain in the crime victims' compensation fund. Any funds not utilized by the ***board***~~[commission]~~ shall be used to provide assistance to programs for victims, and the ***board***~~[commission]~~ shall allocate such funds to any agency providing services to victims. In the event there are insufficient funds in the fund to pay all claims in full, all claims shall be paid at seventy percent (70%). If there are no moneys in the fund, then no claim shall be paid until moneys have again accumulated. In addition to payment of claims, moneys in the fund shall be used to pay all the necessary and proper expenses of the ***board***~~[commission]~~.

➔Section 55. KRS 49.490 is amended to read as follows:

(1) There is established in the State Treasury the sexual assault victim assistance fund to be administered by the ***Crime Victims Compensation Board***~~[commission]~~ for the purpose of funding medical examinations for victims of sexual assault as provided in subsection (4) of this section and in KRS 216B.400. All moneys deposited or paid into the sexual assault victim assistance fund are appropriated and shall be available to the ***board***~~[commission]~~. Funds shall be disbursed by the State Treasurer upon the warrant of the ***board***~~[commission]~~.

(2) The sexual assault victim assistance fund may receive state general fund appropriations, gifts, grants, federal funds, or other public or private funds or donations. Any federal matching funds received by the ***board***~~[commission]~~ or the crime victims' compensation fund for sexual assault victim assistance payments shall be deposited into the sexual assault victim assistance fund.

(3) Any unencumbered or unallocated balances in the sexual assault victim assistance fund shall be invested as provided in KRS 42.500(9). Any income earned from investment, along with the unallocated or unencumbered balances in the fund, shall not lapse and shall be deemed a trust and agency account available solely for the purposes specified in subsection (1) of this section.

(4) (a) For purposes of this section, a children's advocacy center is a center as defined in KRS 620.020 that operates consistent with administrative regulations promulgated by the Cabinet for Health and Family Services.

(b) Upon receipt of a completed original claim form supplied by the ***board***~~[commission]~~ and itemized bill for a child sexual abuse medical examination performed at a children's advocacy center, the ***board***~~[commission]~~ shall reimburse the children's advocacy center for actual costs up to but not exceeding the amount of reimbursement established through administrative regulation promulgated by the Department for Medicaid Services.

(c) Independent investigation by the ***board***~~[commission]~~ shall not be required for payment of claims under this section; however, the ***board***~~[commission]~~ may require additional documentation as proof that the medical examination was performed.

(5) If sexual assault victim assistance funds are insufficient to pay claims under subsection (4) of this section or KRS 216B.400, payment shall be made from the crime victims' compensation fund.

➔Section 56. KRS 49.990 is amended to read as follows:

Any person who fails or refuses to obey a subpoena or order of the **Board of Tax Appeals, the Crime Victims Compensation Board, or the Board of Claims**~~[commission]~~ made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

➔Section 57. KRS 62.160 is amended to read as follows:

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

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

Secretary of tourism, arts and heritage .....25,000

Commissioner for community based services .....20,000

Member of the Public Service Commission .....10,000

Member of State Fair Board .....10,000

Member of Fish and Wildlife Resources Commission .....1,000

Member of *Board of Tax Appeals* [~~Kentucky Claims Commission~~] .....10,000

**Member of Board of Claims.....10,000**

**Member of Crime Victims Compensation Board.....10,000**

Associate member of Alcoholic Beverage Control Board .....5,000

Commissioner of local government .....100,000

➔Section 58. KRS 131.081 is amended to read as follows:

The following rules, principles, or requirements shall apply in the administration of all taxes subject to the jurisdiction of the Department of Revenue.

- (1) The department shall develop and implement a Kentucky tax education and information program directed at new taxpayers, taxpayer and industry groups, and department employees to enhance the understanding of and compliance with Kentucky tax laws, including the application of new tax legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.
- (2) The department shall publish brief statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of taxpayers and the department. These statements shall be provided to taxpayers with the initial notice of audit; each original notice of tax due; each denial or reduction of a refund or credit claimed by a taxpayer; each denial, cancellation, or revocation of any license, permit, or other required authorization applied for or held by a taxpayer; and, if practical and appropriate, in informational publications by the department distributed to the public.
- (3) Taxpayers shall have the right to be assisted or represented by an attorney, accountant, or other person in any conference, hearing, or other matter before the department. The taxpayer shall be informed of this right prior to conduct of any conference or hearing.
- (4) The department shall perform audits and conduct conferences and hearings only at reasonable times and places.
- (5) Taxpayers shall have the right to make audio recordings of any conference with or hearing by the department. The department may make similar audio recordings if prior written notice is given to the taxpayer or if the taxpayer records the conference or hearing. The taxpayer shall be entitled to a copy of this department recording or a transcript as provided in KRS 61.874.
- (6) If any taxpayer's failure to submit a timely return or payment to the department is due to the taxpayer's reasonable reliance on written advice from the department, the taxpayer shall be relieved of any penalty or interest with respect thereto, provided the taxpayer requested the advice in writing from the department and the specific facts and circumstances of the activity or transaction were fully described in the taxpayer's request, the department did not subsequently rescind or modify the advice in writing, and there were no subsequent changes in applicable laws or regulations or a final decision of a court which rendered the department's earlier written advice no longer valid.
- (7) Taxpayers shall have the right to receive a copy of any audit of the department by the Auditor of Public Accounts relating to the department's compliance with the provisions of KRS 131.041 to 131.081.
- (8) The department shall include with each notice of tax due a clear and concise description of the basis and amount of any tax, penalty, and interest assessed against the taxpayer, and copies of the agent's audit workpapers and the agent's written narrative setting forth the grounds upon which the assessment is made. Taxpayers shall be similarly notified regarding the denial or reduction of any refund or credit claim filed by a taxpayer.
- (9) (a) Taxpayers shall have the right to an installment payment agreement for the payment of delinquent taxes, penalties, and interest owed, provided the taxpayer requests the agreement in writing clearly demonstrating:

1. His or her inability to pay in full; and
  2. That the agreement will facilitate collection by the department of the amounts owed.
- (b) The department may modify or terminate an installment payment agreement and may pursue statutory remedies against the taxpayer if it determines that:
1. The taxpayer has not complied with the terms of the agreement, including minimum payment requirements established by the agreement;
  2. The taxpayers' financial condition has sufficiently changed;
  3. The taxpayer fails to provide any requested financial condition update information;
  4. The taxpayer gave false or misleading information in securing the agreement; or
  5. The taxpayer fails to timely report and pay any other tax due the Commonwealth.
- (c) The department shall give written notice to the taxpayer at least thirty (30) days prior to modifying or terminating an installment payment agreement unless the department has reason to believe that collection of the amounts owed will be jeopardized in whole or in part by delay.
- (10) The department shall not knowingly authorize, require, or conduct any investigation or surveillance of any person for nontax administration related purposes, except internal security related investigations involving Department of Revenue personnel.
- (11) In addition to the circumstances under which an extension of time for filing reports or returns may be granted pursuant to KRS 131.170, taxpayers shall be entitled to the same extension of the due date of any comparable Kentucky tax report or return for which the taxpayer has secured a written extension from the Internal Revenue Service provided the taxpayer notifies the department in writing and provides a copy of the extension at the time and in the manner which the department may require.
- (12) The department shall bear the cost or, if paid by the taxpayer, reimburse the taxpayer for recording or bank charges as the direct result of any erroneous lien or levy by the department, provided the erroneous lien or levy was caused by department error and, prior to issuance of the erroneous lien or levy, the taxpayer timely responded to all contacts by the department and provided information or documentation sufficient to establish his or her position. When the department releases any erroneous lien or levy, notice of the fact shall be mailed to the taxpayer and, if requested by the taxpayer, a copy of the release, together with an explanation, shall be mailed to the major credit reporting companies located in the county where it was filed.
- (13) (a) The department shall not evaluate individual officers or employees on the basis of taxes assessed or collected or impose or suggest tax assessment or collection quotas or goals.
- (b) No arrangement or contract shall be entered into for the service to:
1. Examine a taxpayer's books and records;
  2. Collect a tax from a taxpayer; or
  3. Provide legal representation of the department;
- if any part of the compensation or other benefits paid or payable for the service is contingent upon or otherwise related to the amount of tax, interest, fee, or penalty assessed against or collected from the taxpayer. Any such arrangement or contract shall be void and unenforceable.
- (14) Taxpayers shall have the right to bring an action for damages against the Commonwealth to the **Board of Tax Appeals** ~~[Kentucky Claims Commission]~~ for actual and direct monetary damages sustained by the taxpayer as a result of willful, reckless, or intentional disregard by department employees of the rights of taxpayers as set out in KRS 131.041 to 131.081 or in the tax laws administered by the department. In the awarding of damages pursuant to this subsection, the **board** ~~[commission]~~ shall take into consideration the negligence or omissions, if any, on the part of the taxpayer which contributed to the damages. If any proceeding brought by a taxpayer is ruled frivolous by the **Board of Tax Appeals** ~~[commission]~~, the department shall be reimbursed by the taxpayer for its costs in defending the action. Any claims brought pursuant to this subsection shall be in accordance with KRS 49.040 to 49.180.
- (15) Taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any attached information or documents. Except as provided in KRS 131.190, no information pertaining to the returns, reports, or the affairs of a person's business shall be divulged by the



department to any person or be intentionally and without authorization inspected by any present or former commissioner or employee of the Department of Revenue, member of a county board of assessment appeals, property valuation administrator or employee, or any other person.

➔Section 59. KRS 131.110 is amended to read as follows:

- (1) (a) The Department of Revenue shall mail to the taxpayer a notice of any tax assessed by it. The assessment shall be due and payable if not protested in writing to the department within:
  1. Forty-five (45) days from the date of notice, for assessments issued prior to July 1, 2018; and
  2. Sixty (60) days from the date of notice, for assessments issued on or after July 1, 2018.
- (b) Claims for refund of paid assessments may be made under KRS 134.580 and denials appealed under KRS 49.220.
- (c)
  1. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.
  2. Upon written request, the department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.
  3. The refusal of the extension may be reviewed in the same manner as a protested assessment.
- (2) After a timely protest has been filed, the taxpayer may request a conference with the department. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative. Further conferences may be held by mutual agreement.
- (3) After considering the taxpayer's protest, including any matters presented at the final conference, the department shall issue a final ruling on any matter still in controversy, which shall be mailed to the taxpayer. The ruling shall state that it is a final ruling of the department, generally state the issues in controversy, the department's position thereon and set forth the procedure for prosecuting an appeal to the **Board of Tax Appeals** ~~[Kentucky Claims Commission]~~.
- (4) The taxpayer may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the department shall issue such ruling within thirty (30) days from the date the request is received by the department.
- (5) After a final ruling has been issued, the taxpayer may appeal to the **Board of Tax Appeals** ~~[Kentucky Claims Commission]~~ pursuant to the provisions of KRS 49.220.

➔Section 60. KRS 131.180 is amended to read as follows:

The provisions of this section shall be known as the "Uniform Civil Penalty Act." Penalties to be assessed in accordance with this section shall apply as follows unless otherwise provided by law:

- (1) Any taxpayer who files any return or report after the due date prescribed for filing or the due date as extended by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the total tax due for each thirty (30) days or fraction thereof that the report or return is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the total tax due; however, the penalty shall not be less than ten dollars (\$10);~~;~~
- (2) Any taxpayer who fails to withhold or collect any tax as required by law, fails to pay the tax computed due on a return or report on or before the due date prescribed for it or the due date as extended by the department or, excluding underpayments determined under KRS 141.044 or 141.305, fails to have timely paid at least seventy-five percent (75%) of the tax determined due by the department shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to two percent (2%) of the tax not withheld, collected, or timely paid for each thirty (30) days or fraction thereof that the withholding, collection, or payment is late. The total penalty levied pursuant to this subsection shall not exceed twenty percent (20%) of the tax not timely withheld, collected, or paid; however, the penalty shall not be less than ten dollars (\$10);~~;~~
- (3) If any taxpayer fails or refuses to make and file a report or return or furnish any information requested in writing by the department, the department may make an estimate of the tax due from any information in its possession, assess the tax at not more than twice the amount estimated to be due, and add a penalty equal to five percent (5%) of the tax assessed for each thirty (30) days or fraction thereof that the return or report is not

filed. The total penalty levied pursuant to this subsection shall not exceed fifty percent (50%) of the tax assessed; however, the penalty shall not be less than one hundred dollars (\$100) unless the taxpayer demonstrates that the failure to file was due to reasonable cause as defined in KRS 131.010(9). This penalty shall be applicable whether or not any tax is determined to be due on a subsequently filed return or if the subsequently filed return results in a refund; ~~and~~

- (4) If any taxpayer fails or refuses to pay within sixty (60) days of the due date any tax assessed by the department which is not protested in accordance with KRS 131.110, there shall be added a penalty equal to two percent (2%) of the unpaid tax for each thirty (30) days or fraction thereof that the tax is final, due, and owing, but not paid.
- (5) Any taxpayer who fails to obtain any identification number, permit, license, or other document of authority from the department within the time required by law shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty equal to ten percent (10%) of any cost or fee required to be paid for the identification number, permit, license, or other document of authority; however, the penalty shall not be less than fifty dollars (\$50); ~~and~~
- (6) If any tax assessed by the department is the result of negligence by a taxpayer or other person, a penalty equal to ten percent (10%) of the tax so assessed shall be paid by the taxpayer or other person who was negligent; ~~and~~
- (7) If any tax assessed by the department is the result of fraud committed by the taxpayer or other person, a penalty equal to fifty percent (50%) of the tax so assessed shall be paid by the taxpayer or other person who committed fraud; ~~and~~
- (8) If any check tendered to the department is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the taxpayer who tendered the check, upon notice and demand of the department, an amount equal to ten percent (10%) of the check. The penalty under this section shall not be less than ten dollars (\$10) nor more than one hundred dollars (\$100). If the taxpayer who tendered the check shows to the department's satisfaction that the failure to honor payment of the check resulted from error by parties other than the taxpayer, the department shall waive the penalty; ~~and~~
- (9) Any person who fails to make any tax report or return or pay any tax within the time, or in the manner required by law, for which a specific civil penalty is not provided by law, shall pay a penalty as provided in this section, with interest from the date due at the tax interest rate as defined in KRS 131.010(6); ~~and~~
- (10) The penalties levied pursuant to subsection (4) of this section shall apply to any tax assessment protested pursuant to KRS 131.110 to the extent that any appeal of the assessment or portion of it is ruled by the **Board of Tax Appeals** ~~{Kentucky Claims Commission}~~ or, if appealed from, the court of last resort, as not protested, appealed, or pursued in good faith by the taxpayer; ~~and~~
- (11) Nothing in this section shall be construed to prevent the assessment or collection of more than one (1) of the penalties levied under this section or any other civil or criminal penalty provided for violation of the law for which penalties are imposed; **and** ~~and~~
- (12) All penalties levied pursuant to this section shall be assessed, collected, and paid in the same manner as taxes. Any corporate officer or other person who becomes liable for payment of any tax assessed by the department shall likewise be liable for all penalties and interest applicable thereto.

➔Section 61. KRS 131.622 is amended to read as follows:

- (1) (a) The following shall be contraband and subject to seizure and destruction:
  1. Any cigarettes that have been affixed with a stamp in this state in violation of KRS 131.612; or
  2. Any cigarettes in the possession of a retailer from a tobacco product manufacturer or brand family that has been removed from the directory.
- (b) Whenever any peace officer of this state, or any representative of the department, finds any contraband cigarettes, the cigarettes shall be immediately seized and stored in a depository to be selected by the officer or representative.
- (c) The seized cigarettes shall be held for a period of twenty (20) days to allow the owner or any person having an interest in the cigarettes to protest the seizure.
- (d) At the time of seizure, the officer or representative shall:
  1. Notify the department of the nature and quantity of the cigarettes seized; and

2. Deliver to the person in whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall state on its face the date of seizure, and a notice that the cigarettes shall be destroyed if the seizure is not protested in writing to the Department of Revenue, Frankfort, Kentucky, within twenty (20) days from the seizure.
- (e) The owner or any person having an interest in the seized cigarettes may appeal to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ a final determination made by the department pursuant to KRS 49.220.
- (f) If the owner or any person having an interest in the seized cigarettes fails to protest the seizure before the end of the twenty (20) day holding period, the department shall destroy the seized cigarettes.
- (2) The Attorney General may seek an injunction to restrain a violation of KRS 131.612 or 131.616 by a distributor or stamping agent and to compel the distributor or stamping agent to comply with KRS 131.612 and 131.616. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and attorneys' fees from any distributor or stamping agent found to be in violation of KRS 131.612 or 131.616.
- (3) No stamping agent, distributor, retailer, or any other person shall sell or distribute cigarettes, or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the stamping agent, distributor, retailer, or person knows are intended for distribution or sale in the state in violation of KRS 131.612. A violation of this section is a Class A misdemeanor.
- (4) Nothing in this section shall prohibit a stamping agent or distributor from possessing unstamped containers of cigarettes held in inventory for delivery to, or for sale in, another state if in possession of proof that the cigarettes are intended for sale in another state.
- (5) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent or distributor has violated KRS 131.612 or any administrative regulation promulgated pursuant to KRS 131.600 to 131.630, the commissioner may suspend the sale of cigarette stamps to the stamping agent or distributor for failure to comply with the provisions of KRS 131.600 to 131.630.

➔Section 62. KRS 132.310 is amended to read as follows:

- (1) Any person who has failed to list for taxation any property omitted from assessment, except such as is subject to assessment by the Department of Revenue, may at any time list such property with the property valuation administrator. The property valuation administrator shall proceed to assess any omitted real property and shall within ten (10) days from the date the real property was listed notify the taxpayer of the amount of the assessment. The notice shall be given as provided in KRS 132.450(4). The Department of Revenue shall assess any omitted personal property and provide notice to the taxpayer in the manner provided in KRS 131.110.
- (2) The property valuation administrator may at any time list and assess any real property which may have been omitted from the regular assessment. Immediately upon listing and assessing omitted real property, the property valuation administrator shall notify the taxpayer of the amount of the assessment. The notice shall be given as provided in KRS 132.450(4). If the property valuation administrator fails to assess any omitted real property, the Department of Revenue may initiate assessment and collection procedures under the same provisions it uses for omitted personal property.
- (3) The notice to the taxpayer required by subsections (1) and (2) of this section shall specify a date and time at which the county board of assessment appeals will hear the taxpayer's protest of the omitted assessment. For purposes of hearing appeals from omitted assessments the county judge/executive shall notify the chairman of the board of assessment appeals of the date set for hearing and may authorize one (1) member of the board to hear the appeal and issue a ruling of his decision on the assessment, which shall be appealable, to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ as provided by **subsection (3) of Section 32 of this Act**~~[KRS 49.220(2)]~~.
- (4) Any property voluntarily listed as omitted property for taxation under this section shall be subject to penalties provided in KRS 132.290(3). Omitted property listed for taxation under this section by the property valuation administrator shall be subject to the penalties provided in KRS 132.290(4).

➔Section 63. KRS 132.460 is amended to read as follows:

The property valuation administrator, or an authorized deputy, shall attend all hearings before the county board of assessment appeals and before the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.200 to 49.250 relative to his assessment and submit to examination and fully disclose to them such information as he may

have and any other matters pertinent to the inquiry being made. He shall be entitled to reimbursement from the county for expenses incurred in official business outside his county. If the Department of Revenue directs him to perform official duties outside of his county, the expenses shall be paid from the appropriation for the payment of the salaries of the property valuation administrators. Such reimbursement shall be paid on the same basis as employees of the Commonwealth are paid for travel expenses.

➔Section 64. KRS 132.620 is amended to read as follows:

- (1) The Department of Revenue shall recover from any property valuation administrator all compensation paid to him for assessments that were unauthorized or excessive when and to the extent it is determined by a final order of the board of assessment appeals, **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.200 to 49.250, or a court of competent jurisdiction that such assessments were unauthorized or excessive. Whenever the property valuation administrator fails to render the services required of him or he performs any of his duties in such a manner as to fail to comply substantially with the requirements of the law, he shall be required to pay a sum that will reasonably compensate the Commonwealth of Kentucky for its costs in rendering the duties required to be performed by the property valuation administrator. The Department of Revenue shall notify the property valuation administrator by certified mail, return receipt requested, of any amount charged to be due under this section and a statement of the reasons therefor. The property valuation administrator shall be entitled to a hearing before the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~, and an appeal may be taken from the final action of the ~~board~~~~[Kentucky Claims Commission]~~ to the courts as provided by law.
- (2) Any sum that may become due from any property valuation administrator by reason of this section may be deducted from any amount that the Commonwealth of Kentucky may become obliged to pay such property valuation administrator, or it may be collected from the bondsman of the property valuation administrator.

➔Section 65. KRS 133.120 is amended to read as follows:

- (1) (a) Any taxpayer desiring to appeal an assessment on real property made by the property valuation administrator shall first request a conference with the property valuation administrator or his or her designated deputy. The conference shall be held prior to or during the inspection period provided for in KRS 133.045, or during an extension granted under subsection (2)(d) of this section.
- (b) 1. Any person receiving compensation to represent a property owner at a conference with the property valuation administrator for a real property assessment shall be:
  - a. An attorney;
  - b. A certified public accountant;
  - c. A certified real estate broker;
  - d. A Kentucky licensed real estate broker;
  - e. An employee of the property owner;
  - f. A licensed or certified Kentucky real estate appraiser;
  - g. An appraiser who possesses a temporary practice permit or reciprocal license or certification in Kentucky to perform appraisals and whose license or certification requires him or her to conform to the Uniform Standards of Professional Appraisal Practice; or
  - h. Any other individual possessing a professional appraisal designation recognized by the department.
2. A person representing a property owner before the property valuation administrator shall present written authorization from the property owner which sets forth his or her professional capacity and shall disclose to the property valuation administrator any personal or private interests he or she may have in the matter, including any contingency fee arrangements, except that attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.
- (c) During this conference, the property valuation administrator or his or her deputy shall provide an explanation to the taxpayer of the constitutional and statutory provisions governing property tax administration, including the appeal process, as well as an explanation of the procedures followed in deriving the assessed value for the taxpayer's property.

- (d) The property valuation administrator or his or her deputy shall keep a record of each conference which shall include but not be limited to the initial assessed value, the value claimed by the taxpayer, an explanation of any changes offered or agreed to by each party, and a brief account of the outcome of the conference.
  - (e) At the request of the taxpayer, the conference may be held by telephone.
- (2)
- (a) Any taxpayer still aggrieved by an assessment on real property made by the property valuation administrator after complying with the provisions of subsection (1) of this section may appeal to the board of assessment appeals.
  - (b) The taxpayer shall appeal his or her assessment by filing in person or sending a letter or other written petition to the county clerk stating the reasons for appeal, identifying the property for which the appeal is filed, and stating the taxpayer's opinion of the fair cash value of the property.
  - (c) The appeal shall be filed no later than one (1) workday following the conclusion of the inspection period provided for in KRS 133.045 or no later than the last day of an extension granted under paragraph (d) of this subsection.
  - (d) A property valuation administrator may make a written request to the department to extend the deadline in his or her county of jurisdiction to allow the completion of the conferences requested during the inspection period required by subsection (1)(a) of this section and to extend the filing deadline for appeals to the board of assessment appeals. If approved by the department, the deadline for the completion of the conferences requested during the inspection period and filing appeals shall be extended for a period not to exceed twenty-five (25) days from the date of the original filing deadline.
  - (e) The county clerk shall notify the department of all assessment appeals and of the date and times of the hearings.
  - (f) The board of assessment appeals may review and change any assessment made by the property valuation administrator upon recommendation of the county judge/executive, mayor of any city using the county assessment, or the superintendent of any school district in which the property is located, if the recommendation is made to the board in writing specifying the individual properties recommended for review and is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045, or no later than the last day of an extension granted under paragraph (d) of this subsection, or upon the written recommendation of the department. If the board of assessment appeals determines that the assessment should be increased, it shall give the taxpayer notice in the manner required by subsection (4) of KRS 132.450, specifying a date when the board will hear the taxpayer, if he or she so desires, in protest of an increase.
  - (g) Any real property owner who has listed his or her property with the property valuation administrator at its fair cash value may ask the county board of assessment appeals to review the assessments of real properties he or she believes to be assessed at less than fair cash value, if he or she specifies in writing the individual properties for which the review is sought and factual information upon which his or her request is based, such as comparable sales or cost data and if the request is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045, or no later than the last day of an extension granted under paragraph (d) of this subsection.
  - (h) Nothing in this section shall be construed as granting any property owner the right to request a blanket review of properties or the board the power to conduct such a review.
- (3)
- (a) The board of assessment appeals shall hold a public hearing for each individual taxpayer appeal in protest of the assessment by the property valuation administrator filed in accordance with the provisions of subsection (2) of this section, and after hearing all the evidence, shall fix the assessment of the property at its fair cash value.
  - (b) The department may be present at the hearing and present any pertinent evidence as it pertains to the appeal.
  - (c) The taxpayer shall provide factual evidence to support his or her appeal. If the taxpayer fails to provide reasonable information pertaining to the value of the property requested by the property valuation administrator, the department, or any member of the board, his or her appeal shall be denied.

- (d) This information shall include but not be limited to the physical characteristics of land and improvements, insurance policies, cost of construction, real estate sales listings and contracts, income and expense statements for commercial property, and loans or mortgages.
  - (e) The board of assessment appeals shall only hear and consider evidence which has been submitted to it in the presence of both the property valuation administrator or his or her designated deputy and the taxpayer or his or her authorized representative.
- (4) (a) Any person receiving compensation to represent a property owner in an appeal before the board shall be:
- 1. An attorney;
  - 2. A certified public accountant;
  - 3. A certified real estate broker;
  - 4. A Kentucky licensed real estate broker;
  - 5. An employee of the taxpayer;
  - 6. A licensed or certified Kentucky real estate appraiser;
  - 7. An appraiser who possesses a temporary practice permit or reciprocal license or certification in Kentucky to perform appraisals and whose license or certification requires him or her to conform to the Uniform Standards of Professional Appraisal Practice; or
  - 8. Any other individual possessing a professional appraisal designation recognized by the department.
- (b) A person representing a property owner before the county board of assessment appeals shall present a written authorization from the property owner which sets forth his or her professional capacity and shall disclose to the county board of assessment appeals any personal or private interests he or she may have in the matter, including any contingency fee arrangements, except that attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.
- (5) The board shall provide a written opinion justifying its action for each assessment either decreased or increased in the record of its proceedings and orders required in KRS 133.125 on forms or in a format provided or approved by the department.
- (6) The board shall report to the property valuation administrator any real property omitted from the tax roll. The property valuation administrator shall assess the property and immediately give notice to the taxpayer in the manner required by KRS 132.450(4), specifying a date when the board of assessment appeals will hear the taxpayer, if he or she so desires, in protest of the action of the property valuation administrator.
- (7) The board of assessment appeals shall have power to issue subpoenas, compel the attendance of witnesses, and adopt rules and regulations concerning the conduct of its business. Any member of the board shall have power to administer oaths to any witness in proceedings before the board.
- (8) The powers of the board of assessment appeals shall be limited to those specifically granted by this section.
- (9) No appeal shall delay the collection or payment of any taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which he or she claims as true value and stated in the petition of appeal filed in accordance with the provisions of subsection (1) of this section. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the tax would have become due if no appeal had been taken. The provisions of KRS 134.015(6) shall apply to the tax bill.
- (10) Any member of the county board of assessment appeals may be required to give evidence in support of the board's findings in any appeal from its actions to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220. Any persons aggrieved by a decision of the board, including the property valuation administrator, taxpayer, and department, may appeal the decision to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220. Any taxpayer failing to appeal to the county board of assessment appeals, or failing to appear before the board, either in person or by designated representative, shall not be eligible to appeal directly to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~.

- (11) The county attorney shall represent the interest of the state and county in all hearings before the board of assessment appeals and on all appeals prosecuted from its decision. If the county attorney is unable to represent the state and county, he or she the fiscal court shall arrange for substitute representation.
- (12) Taxpayers shall have the right to make audio recordings of the hearing before the county board of assessment appeals. The property valuation administrator may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of the department's recording as provided in KRS 61.874.
- (13) The county board of assessment appeals shall physically inspect a property upon the request of the property owner or property valuation administrator.

➔Section 66. KRS 133.170 is amended to read as follows:

- (1) When the Department of Revenue has completed its equalization of the assessment of the property in any county, it shall certify its action to the county judge/executive, with a copy of the certification for the county clerk, to be laid before the fiscal court of the county.
- (2) If the fiscal court deems it proper to ask for a review of the aggregate equalization of any class or subclass of property, it shall direct the county attorney to prosecute an appeal of the aggregate increase to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220 within ten (10) days from the date of the certification.
- (3) Within ten (10) days from the date that the department's aggregate equalization of any or all classes or subclasses of property becomes final by failure of the fiscal court to prosecute an appeal or by order of the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.200 to 49.250 or the courts, the fiscal court shall cause to be published, at least one (1) time, in the newspaper having the largest circulation within the county, a public notice of the department's action.
- (4) Within ten (10) days from the date of the publication of the notice required in subsection (3) of this section, any individual taxpayer whose property assessment is increased above its fair cash value by the equalization action may file with the county clerk an application for exoneration of his property assessment from the increase. The application shall be filed in duplicate and shall include the name and address of the person in whose name the property is assessed; the assessment of the property before the increase; the description and location of the property including the description shown on the tax roll; the property owner's reason for appeal; and all other pertinent facts having a bearing upon its value. The county clerk shall forward one (1) copy, of each application for exoneration to the Department of Revenue and shall exclude the amount of the equalization increase from the assessment in the preparation of the property tax bill for each property for which an application for exoneration has been filed.
- (5) The county judge/executive shall reconvene the board of supervisors immediately following the close of the period for filing applications for exoneration from the increase. The board shall schedule and conduct hearings on all applications in the manner prescribed for hearing appeals by KRS 133.120; however, the board shall not have authority to reduce any assessment to an amount less than that listed for the property at the time of adjournment of the regular board session.
- (6) The county clerk shall act as clerk of the reconvened board and shall keep an accurate record of the proceedings in the same manner as provided by KRS 133.125. Within five (5) days of the adjournment of the reconvened board, he shall notify each property owner in writing of the final action of the board with relation to the equalization increase and shall forward a copy of the proceedings certified by the chairman of the board and attested by him to the Department of Revenue and to the other taxing districts participating in the tax.
- (7) Any taxpayer whose application has been denied, in whole or in part, may appeal to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ as provided in KRS 49.220, and appeals thereafter may be taken to the courts as provided in KRS 49.250.
- (8) The provisions of KRS 133.120(9) shall apply to the payment of taxes upon any property assessment for which an application for exoneration has been filed.
- (9) The provisions of subsections (4), (5), (6), (7), and (8) of this section shall only apply to appeals growing out of equalization action by the Department of Revenue under the provisions of KRS 133.150.

➔Section 67. KRS 133.215 is amended to read as follows:

The sheriff shall be entitled to the fee prescribed by KRS 64.090 for serving a subpoena for the board of assessment appeals. He shall also have a like fee for serving a subpoena or notice for the **Board of Tax Appeals**~~[Kentucky~~

~~Claims Commission~~ regarding any proceeding for the assessment of property subject to local taxation. Said fees shall be paid out of the county levy.

➔Section 68. KRS 134.551 is amended to read as follows:

- (1) If a certificate of delinquency or personal property certificate of delinquency held by an individual is declared void by a court of competent jurisdiction because of the irregularity of taxing officers, the amount for which the certificate was issued shall be refunded by the state, county, and taxing districts on a pro rata basis. If a school district or county is unable to make the refund currently when requested, it shall be given preference from the next year's revenue. The application for refund must be made within one (1) year after the judgment. The property covered by the void certificate shall be assessed immediately as omitted property and the tax bill shall be payable as soon as prepared.
- (2) (a) If a certificate of delinquency held by a third-party purchaser who paid the certificate of delinquency to the county clerk:
  1. Is unenforceable because:
    - a. It is a duplicate certificate of delinquency;
    - b. The tax liability represented by the certificate of delinquency was satisfied prior to the purchase of the certificate of delinquency;
    - c. All or a portion of the certificate of delinquency is exonerated; or
    - d. The property to which the certificate of delinquency applies was not subject to taxes as a matter of law as certified by the property valuation administrator; or
  2. Should not have been sold because, on the date of the annual sale, the certificate of delinquency met the requirements for inclusion on the protected list pursuant to KRS 134.504(10) and it:
    - a. Was included on the protected list;
    - b. Was mistakenly left off the protected list; or
    - c. Became eligible for inclusion on the protected list between the date the protected list was submitted and the date of sale;

the third-party purchaser may apply to the county clerk for a refund.
- (b) The application for refund filed with the county clerk shall include written proof that one (1) of the situations described in paragraph (a) of this subsection exists with regard to the certificate of delinquency for which a refund is sought.
- (c)
  1. Upon acceptance and approval of the application for refund, the county clerk shall approve a refund of the amount paid to the county clerk by the third-party purchaser in satisfaction of the certificate of delinquency. The refunded amount shall not include any filing fees paid by the third-party purchaser to the county clerk.
  2. Amounts refunded to the third-party purchaser shall be deducted from amounts in the hands of the county clerk due to the state, county, taxing districts, sheriff, county attorney, and the county clerk on a pro rata basis, if the county clerk has sufficient funds in his or her hands to make the refund.
  3. If the county clerk does not have sufficient funds to make the refund at the time the refund is approved, the county clerk may either:
    - a. Retain the approved refund claim in his or her office and make the refund payment as soon as he or she has sufficient funds in his or her hands to make the refund payment; or
    - b. Provide a signed letter to the person to whom payment is due, which includes the amount due from each taxing jurisdiction or fee office, and which directs each taxing jurisdiction or fee official to pay to the person the amount due and owing from that taxing jurisdiction or fee official as reflected in the letter.
  4. Upon the making of a refund to a third-party purchaser, the county clerk shall issue and file a release of the lien on the property assessed for taxes as provided in this subparagraph without charge to the third-party purchaser. The release shall be linked to the encumbrance in the county clerk's indexing system.



- a. The department shall prepare a release form to be used by the county clerk when a refund is paid under this paragraph. The form shall include, at a minimum, the following:
    - i. The name and address of the taxpayer;
    - ii. The name and address of the third-party purchaser;
    - iii. The book and page number of the third-party purchaser's lis pendens filing;
    - iv. The property address;
    - v. The applicable tax year; and
    - vi. The map identification number or tax bill number.
  - b. The release form shall be signed by the government official responsible for making the correction.
  - c. In addition to the signed release form, information filed by the county clerk shall include a copy of the documentation provided by the government official and a copy of the refund check or letter of refund authorization issued to the third-party purchaser. The county clerk shall record and file this information without a fee.
  - d. The county clerk shall also make any necessary corrections to the tax records within the office of the county clerk.
  - e. The county clerk shall return the release document to the taxpayer and shall provide a copy of the release document to the third-party purchaser.
- (d) If the county clerk denies the application for refund, or the property valuation administrator fails to certify that property was not subject to taxes as a matter of law, the third-party purchaser may appeal the decision of the county clerk or the property valuation administrator to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.

➔Section 69. KRS 134.580 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Agency" means the agency of state government which administers the tax to be refunded or credited; and
  - (b) "Overpayment" or "payment where no tax was due" means the excess of the tax payments made over the correct tax liability determined under the terms of the applicable statute without reference to the constitutionality of the statute.
- (2) When money has been paid into the State Treasury in payment of any state taxes, except ad valorem taxes, whether payment was made voluntarily or involuntarily, the appropriate agency shall authorize refunds to the person who paid the tax, or to his heirs, personal representatives or assigns, of any overpayment of tax and any payment where no tax was due. When a bona fide controversy exists between the agency and the taxpayer as to the liability of the taxpayer for the payment of tax claimed to be due by the agency, the taxpayer may pay the amount claimed by the agency to be due, and if an appeal is taken by the taxpayer from the ruling of the agency within the time provided by KRS 49.220 and it is finally adjudged that the taxpayer was not liable for the payment of the tax or any part thereof, the agency shall authorize the refund or credit as the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ or courts may direct.
- (3) No refund shall be made unless each taxpayer individually files an application or claim for the refund within four (4) years from the date payment was made. Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based. Denials of refund claims or applications may be protested and appealed in accordance with KRS 49.220 and 131.110.
- (4) Notwithstanding any provision of this section, when an assessment of limited liability entity tax is made under KRS 141.0401 against a pass-through entity as defined in KRS 141.206, the corporation or individual partners, members, or shareholders of the pass-through entity shall have the greater of the time period provided by this section or one hundred eighty (180) days from the date the assessment becomes final to file amended returns requesting any refund of tax for the taxable year of the assessment and to allow for items of income, deduction, and credit to be properly reported on the returns of the partners, members, or shareholders of the pass-through entity subject to adjustment.

- (5) Refunds shall be authorized with interest as provided in KRS 131.183. The refunds authorized by this section shall be made in the same manner as other claims on the State Treasury are paid. They shall not be charged against any appropriation, but shall be deducted from tax receipts for the current fiscal year.
- (6) Nothing in this section shall be construed to authorize the agency to make or cause to be made any refund except within four (4) years of the date prescribed by law for the filing of a return including any extension of time for filing the return, or the date the money was paid into the State Treasury, whichever is the later, except in any case where the assessment period has been extended by written agreement between the taxpayer and the department, the limitation contained in this subsection shall be extended accordingly. Nothing in this section shall be construed as requiring the agency to authorize any refund to a taxpayer without demand from the taxpayer, if in the opinion of the agency the cost to the state of authorizing the refund would be greater than the amount that should be refunded or credited.
- (7) This section shall not apply to any case in which the statute may be held unconstitutional, either in whole or in part.
- (8) In cases in which a statute has been held unconstitutional, taxes paid thereunder may be refunded to the extent provided by KRS 134.590, and by the statute held unconstitutional.
- (9) No person shall secure a refund of motor fuels tax under KRS 134.580 unless the person holds an unrevoked refund permit issued by the department before the purchase of gasoline or special fuels and that permit entitles the person to apply for a refund under KRS 138.344 to 138.355.
- (10) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary:
  - (a) The Commonwealth hereby revokes and withdraws its consent to suit in any forum whatsoever on any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return. No such claim shall be effective or recognized for any purpose;
  - (b) Any stated or implied consent for the Commonwealth of Kentucky, or any agent or officer of the Commonwealth of Kentucky, to be sued by any person for any legal, equitable, or other relief with respect to any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, is hereby withdrawn; and
  - (c) The provisions of this subsection shall apply retroactively for all taxable years ending before December 31, 1995, and shall apply to all claims for such taxable years pending in any judicial or administrative forum.
- (11) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary:
  - (a) No money shall be drawn from the State Treasury for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return; and
  - (b) No provision of the Kentucky Revised Statutes shall constitute an appropriation or mandated appropriation for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.

➔Section 70. KRS 136.050 is amended to read as follows:

- (1) Except where otherwise specially provided, all corporations required to make reports to the Department of Revenue shall pay all taxes due the state from them into the State Treasury at the same time as natural persons are required to pay taxes, and when delinquent shall pay the same rate of interest and penalties as natural persons who are delinquent.
- (2) All state taxes assessed against any corporation under the provisions of KRS 136.120 to 136.200 shall be due and payable as provided in KRS 131.110. All county, city, school, and other taxes so assessed shall be due and

payable thirty (30) days after notice of the amount of the tax is given by the collecting officer. The state, county, city, school, and other taxes found to be due on any protested assessment or portion thereof shall begin to bear legal interest on the sixty-first day after the **Board of Tax Appeals** [~~Kentucky Claims Commission~~] acknowledges receipt of a protest of any assessment or enters an order to certify the unprotested portion of any assessment until paid, except that in no event shall interest begin to accrue prior to January 1 following April 30 of the year in which the report is due. Every corporation so assessed that fails to pay its taxes when due shall be deemed delinquent, a penalty of ten percent (10%) on the amount of the tax shall attach, and thereafter the tax shall bear interest at the tax interest rate as defined in KRS 131.010(6).

➔Section 71. KRS 136.658 is amended to read as follows:

- (1) The Local Distribution Fund Oversight Committee is hereby created and administratively attached to and staffed by the department. The oversight committee shall consist of nine (9) members appointed by the Governor and shall be representative of local government and state government officials. The Governor shall receive recommendations for four (4) members each from the Kentucky Association of Counties and the Kentucky League of Cities from which the Governor shall select two (2) members each. The Governor shall receive recommendations for two (2) members each from the Kentucky School Board Association, the Kentucky Superintendents Association, and the Kentucky School Administrators Association from which the Governor shall select one (1) member each. One (1) member shall be appointed by the Governor to represent the interests of special districts other than school districts. The remaining member shall be the commissioner of the Department for Local Government, who shall serve as chairperson of the oversight committee. The members shall serve for a term of three (3) years. Five (5) members of the oversight committee shall constitute a quorum. A member may be removed for cause in accordance with procedures established by the oversight committee and shall serve without salary but shall be reimbursed for expenses in the same manner as state employees. Any vacancy occurring on the oversight committee shall be filled by the Governor for the unexpired term.
- (2) The duties of the oversight committee shall be:
  - (a) To monitor the department's implementation and distribution of funds from the gross revenues and excise tax fund and the state baseline and local growth fund and to report its findings to the commissioner of the department; and
  - (b) To act as a finder of fact for the commissioner of the department in disputes in and between political subdivisions, school districts, special districts, and sheriff departments, and between political subdivisions, school districts, special districts, and sheriff departments, and the department regarding the implementation and distribution of funds from the gross revenues and excise tax fund and the state baseline and local growth fund.
- (3) The department shall provide the oversight committee with an annual report reflecting the amounts distributed to each participating political subdivision, school district, special district, or sheriff department.
- (4) Any political subdivision, school district, special district, or sheriff department may file a complaint and request a hearing with the oversight committee on a form prescribed by the committee. The oversight committee shall give notice to any political subdivision, school district, special district, or sheriff department that may be affected by the complaint. Any political subdivision, school district, special district, or sheriff department intending to respond to the complaint shall do so in writing within thirty (30) days of notice of the complaint.
- (5) In conducting its business:
  - (a) The oversight committee shall give due notice of the times and places of its hearings;
  - (b) The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses;
  - (c) The oversight committee shall act by majority vote;
  - (d) The oversight committee shall adopt and publish rules of procedure and practice regarding its hearings; and
  - (e) The oversight committee shall make written findings and recommendations to the commissioner of the department.
- (6) The commissioner of the department shall review the findings and recommendations of the oversight committee and issue a final ruling within sixty (60) days of receipt of the recommendations.

- (7) The parties in the dispute shall have the rights and duties to appeal any final ruling to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ under KRS 49.220.
- (8) Nothing contained in this section shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the hearing process.

➔Section 72. KRS 137.160 is amended to read as follows:

- (1) When the Department of Revenue has received the reports provided for in KRS 137.130, it shall, upon such reports and such other reports and information as it may secure, assess the value of all grades or kinds of crude petroleum reported for each month.
- (2) Where the report shows no sale of crude petroleum during the month covered by the report, the market value of crude petroleum on the first business day after the tenth day of the month in which the report is made shall be fixed by the department as the assessed value of all crude petroleum covered by the report. Where the report shows that all crude petroleum reported has been sold during the month covered by the report, the market price of such crude petroleum on each day of sale shall be the assessed value of all crude petroleum sold on that date of sale, and the total amount of the tax to be reported as the assessment on the report shall be the total of the assessments made on such sales. If the report shows that part of the crude petroleum reported has been sold and part remains unsold, the market price of the crude petroleum on the first business day after the tenth day of the month following the month covered by the report shall be fixed as the assessed value of the portion of the crude petroleum unsold, the market price of the crude petroleum on each day of sale shall be the assessed value of the portion sold, and the total amount of the tax to be reported as the assessment on the report shall be the total of the assessments made on the sold and unsold crude petroleum. The department, in making its assessments, shall take into consideration transportation charges.
- (3) The department shall, by the last day of the month in which the reports are required to be made, notify each transporter of his assessment, and certify the assessment to the county clerk of each county that has reported the levy of a county tax under KRS 137.150. The county clerk shall immediately deliver a copy thereof to the sheriff for collection of the county tax. The transporter so notified of the assessment shall have the right to an appeal to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.

➔Section 73. KRS 138.132 is amended to read as follows:

- (1) It is the declared legislative intent of KRS 138.130 to 138.205 that any untax-paid tobacco products or vapor products held, owned, possessed, or in control of any person other than as provided in KRS 138.130 to 138.205 are contraband and subject to seizure and forfeiture as set out in this section.
- (2) (a) If a retailer, who is not a licensed retail distributor, purchases tobacco products or vapor products from a licensed distributor and the purchase invoice does not contain the separate identification and display of the tobacco products tax or vapor products tax, the retailer shall, within twenty-four (24) hours, notify the department in writing.
- (b) The notification shall include the name and address of the person from whom the tobacco products or vapor products were purchased and a copy of the purchase invoice.
- (c) The tobacco products or vapor products for which the required information was not included on the invoice shall be retained by the retailer, and not sold, for a period of fifteen (15) days after giving the proper notice as required by this subsection.
- (d) After the fifteen (15) day period, the retailer may pay the tax due on the tobacco products or vapor products described in paragraph (c) of this subsection according to administrative regulations promulgated by the department, and after which may proceed to sell the tobacco products or vapor products.
- (3) If a retailer, who is not a licensed retail distributor, purchases tobacco products or vapor products for resale from a person not licensed under KRS 138.195(7), which is prohibited by KRS 138.140(2), the retailer may not sell those tobacco products or vapor products until the retailer applies for and is granted a retail distributor's license under KRS 138.195(7)(b).
- (4) If, upon examination, the department determines that the retailer has failed to comply with the provisions of subsection (3) of this section, the retailer shall pay all tax and interest and applicable penalties due and the following shall apply:
- (a) For the first offense, an additional penalty shall be assessed equal to ten percent (10%) of the tax due;

- (b) For a second offense within three (3) years or less of the first offense, an additional penalty shall be assessed equal to twenty-five percent (25%) of the tax due; and
  - (c) For a third offense or subsequent offense within three (3) years or less of the first offense, the tobacco products or vapor products shall be contraband and subject to seizure and forfeiture as provided in subsection (5) of this section.
- (5)
- (a) Whenever a representative of the department finds contraband tobacco products or contraband vapor products within the borders of this state, the tobacco products or vapor products shall be immediately seized and stored in a depository to be determined by the representative.
  - (b) At the time of seizure, the representative shall deliver to the person in whose custody the tobacco products or vapor products are found a receipt for the seized products. The receipt shall state on its face that any inquiry concerning any tobacco products or vapor products seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.
  - (c) Immediately upon seizure, the representative shall notify the commissioner of the nature and quantity of the tobacco products or vapor products seized. Any seized tobacco products or vapor products shall be held for a period of twenty (20) days, and if after that period no person has claimed the tobacco products or vapor products as his or her property, the commissioner shall cause the tobacco products or vapor products to be destroyed.
- (6) All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco products or vapor products involved in a knowing and intentional violation of KRS 138.130 to 138.205 shall be contraband and subject to seizure and forfeiture as follows:
- (a) The department's representative shall seize the property and store the property in a safe place selected by the representative; and
  - (b) The representative shall proceed as provided in KRS 138.165(2). The commissioner shall cause the property to be sold after notice published pursuant to KRS Chapter 424. The proceeds from the sale shall be applied as provided in KRS 138.165(2).
- (7) The owner or any person having an interest in the fixtures, materials, or personal property that has been seized as provided by subsection (6) of this section may apply to the commissioner for remission of the forfeiture for good cause shown. If it is shown to the satisfaction of the commissioner that the owner or person having an interest in the property was without fault, the department shall remit the forfeiture.
- (8) Any party aggrieved by an order entered under this section may appeal to the **Board of Tax Appeals**, ~~Kentucky Claims Commission~~ pursuant to KRS 49.220.

➔Section 74. KRS 138.165 is amended to read as follows:

- (1) It is declared to be the legislative intent of KRS 138.130 to 138.205 that any untax-paid cigarettes held, owned, possessed, or in control of any person other than as provided in KRS 138.130 to 138.205 are contraband and subject to seizure and forfeiture as set out in this section.
- (2)
- (a) Whenever any peace officer of this state, or any representative of the department, finds any untax-paid cigarettes within the borders of this state in the possession of any person other than a licensee authorized to possess untax-paid cigarettes by the provisions of KRS 138.130 to 138.205, those cigarettes shall be immediately seized and stored in a depository to be selected by the officer or agent.
  - (b) At the time of seizure, the officer or agent shall deliver to the person in whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall state on its face that any inquiry concerning any goods seized shall be directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.
  - (c) Immediately upon seizure, the officer or agent shall notify the commissioner of the department of the nature and quantity of the goods seized.
  - (d) Any seized goods shall be held for a period of twenty (20) days and if after that period no person has claimed the cigarettes, the commissioner shall cause the same to be exposed to public sale to any person authorized to purchase untax-paid cigarettes. The sale shall be on notice published pursuant to KRS Chapter 424. All proceeds, less the cost of sale, from the sale shall be paid into the Kentucky State Treasury for general fund purposes.
- (3) It is declared to be the legislative intent that any vending machine used for dispensing cigarettes on which Kentucky cigarette tax has not been paid is contraband and subject to seizure and forfeiture. In the event any

peace officer or agent of the department finds any vending machine within the borders of this state dispensing untax-paid cigarettes, the officer or agent shall immediately seize the vending machine and store the vending machine in a safe place selected by the officer or agent. The officer or agent shall proceed as provided in subsection (2) of this section and the commissioner of the department shall cause the vending machine to be sold, and the proceeds applied, as established in subsection (2) of this section.

- (4) No untax-paid cigarettes shall be transported within this state by any person other than a manufacturer or a person licensed under the provisions of KRS 138.195. It is declared to be the legislative intent that any motor vehicle used to transport any such cigarettes by other persons is contraband and subject to seizure and forfeiture. If any peace officer or agent of the department finds any such motor vehicle, the vehicle shall be seized immediately and stored in a safe place. The peace officer or agent of the department shall proceed as provided in subsection (2) of this section, and the commissioner of the department shall cause the motor vehicle to be sold, and the proceeds applied, as established in subsection (2) of this section.
- (5) (a) The owner or any person having an interest in any goods, machines, or vehicles seized as provided under subsections (1) to (4) of this section may apply to the commissioner of the department for remission of the forfeiture for good cause shown.
- (b) If it is shown to the satisfaction of the ~~department that~~ *department that* the owner was without fault in the possession, dispensing, or transportation of the untax-paid cigarettes, the department shall remit the forfeiture.
- (c) If the department determines that the possession, dispensing, or transportation of untax-paid cigarettes was willful or intentional, the department may nevertheless remit the forfeiture on condition that the owner pay a penalty to be prescribed by the department of not more than fifty percent (50%) of the value of the property forfeited. All taxes due on untax-paid cigarettes shall be paid in addition to the penalty, if any.
- (6) Any party aggrieved by an order entered hereunder may appeal to the *Board of Tax Appeals* ~~Kentucky Claims Commission~~ pursuant to KRS 49.220.

➔Section 75. KRS 138.195 is amended to read as follows:

- (1) (a) No person other than a manufacturer shall acquire cigarettes in this state on which the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler, nonresident wholesaler, vending machine operator, sub-jobber, transporter or unclassified acquirer of such cigarettes without first obtaining a license from the department as set out in this section.
- (b) No person shall act as a distributor of tobacco products or vapor products without first obtaining a license from the department as set out in this section.
- (c) For licenses effective for periods beginning on or after July 1, 2015, no individual, entity, or any other group or combination acting as a unit may be eligible to obtain a license under this section if the individual, or any partner, director, principal officer, or manager of the entity or any other group or combination acting as a unit has been convicted of or entered a plea of guilty or nolo contendere to:
1. A crime relating to the reporting, distribution, sale, or taxation of cigarettes, tobacco products, or vapor products; or
  2. A crime involving fraud, falsification of records, improper business transactions or reporting;
- for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence.
- (2) (a) Each resident wholesaler shall secure a separate license for each place of business at which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky cigarette tax has not been paid are received.
- (b) Each nonresident wholesaler shall secure a separate license for each place of business at which evidence of Kentucky cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid.
- (c) Each license shall be secured on or before July 1 of each year.
- (d) Each licensee shall pay the sum of five hundred dollars (\$500) for each year, or portion thereof, for which each license is secured.

- (3)
  - (a) Each sub-jobber shall secure a separate license for each place of business from which cigarettes, upon which the cigarette tax has been paid, are made available to retailers, whether the place of business is located within or without this state.
  - (b) Each license shall be secured on or before July 1 of each year.
  - (c) Each licensee shall pay the sum of five hundred dollars (\$500) for each year, or portion thereof, for which each license is secured.
- (4)
  - (a) Each vending machine operator shall secure a license for the privilege of dispensing cigarettes, on which the cigarette tax has been paid, by vending machines.
  - (b) Each license shall be secured on or before July 1 of each year.
  - (c) Each licensee shall pay the sum of twenty-five dollars (\$25) for each year, or portion thereof, for which each license is secured.
  - (d) No vending machine shall be operated within this Commonwealth without having prominently affixed thereto the name of its operator and the license number assigned to that operator by the department.
  - (e) The department shall prescribe by administrative regulation the manner in which the information shall be affixed to the vending machine.
- (5)
  - (a) Each transporter shall secure a license for the privilege of transporting cigarettes within this state.
  - (b) Each license shall be secured on or before July 1 of each year.
  - (c) Each licensee shall pay the sum of fifty dollars (\$50) for each year, or portion thereof, for which each license is secured.
  - (d) No transporter shall transport any cigarettes without having in actual possession an invoice or bill of lading therefor, showing:
    1. The name and address of the consignor and consignee;
    2. The date acquired by the transporter;
    3. The name and address of the transporter;
    4. The quantity of cigarettes being transported; and
    5. The license number assigned to the transporter by the department.
- (6) Each unclassified acquirer shall secure a license for the privilege of acquiring cigarettes on which the cigarette tax has not been paid. The license shall be secured on or before July 1 of each year. Each licensee shall pay the sum of fifty dollars (\$50) for each year, or portion thereof, for which the license is secured.
- (7)
  - (a)
    1. Each distributor shall secure a license for the privilege of selling tobacco products or vapor products in this state. Each license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each year, or portion thereof, for which the license is secured.
    2.
      - a. A resident wholesaler, nonresident wholesaler, or subjobber licensed under this section may also obtain and maintain a distributor's license at each place of business at no additional cost each year.
      - b. An unclassified acquirer licensed under this section may also obtain and maintain a distributor's license for the privilege of selling tobacco products or vapor products in this state. The license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of four hundred fifty dollars (\$450) for each year, or portion thereof, for which the license is secured.
    3. The department may, upon application, grant a distributor's license to a person other than a retailer and who is not otherwise required to hold a distributor's license under this paragraph. If the department grants the license, the licensee shall pay the sum of five hundred dollars (\$500) for each year, or portion thereof, for which the license is secured, and the licensee shall be subject to the excise tax in the same manner and subject to the same requirements as a distributor required to be licensed under this paragraph.

- (b) The department may, upon application, grant a retail distributor's license to a retailer for the privilege of purchasing tobacco products or vapor products from a distributor not licensed by the department. If the department grants the license, the licensee shall pay the sum of one hundred dollars (\$100) for each year, or portion thereof, for which the license is secured.
- (8) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department from requiring a person to purchase more than one (1) license if the nature of that person's business is so diversified as to justify the requirement.
- (9) (a) The department may by administrative regulation require any person requesting a license or holding a license under this section to supply such information concerning his business, sales or any privilege exercised, as is deemed reasonably necessary for the regulation of the licensees, and to protect the revenues of the state.
- (b) Failure on the part of the applicant or licensee to:
1. Comply with KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative regulations promulgated thereunder; or
  2. Permit an inspection of premises, machines, or vehicles by an authorized agent of the department at any reasonable time;
- shall be grounds for the denial or revocation of any license issued by the department, after due notice and a hearing by the department.
- (c) The commissioner may assign a time and place for the hearing and may appoint a conferee who shall conduct a hearing, receive evidence, and hear arguments.
- (d) The conferee shall thereupon file a report with the commissioner together with a recommendation as to the denial or revocation of the license.
- (e) From any denial or revocation made by the commissioner on the report, the licensee may prosecute an appeal to the **Board of Tax Appeals** ~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.
- (f) Any person whose license has been revoked for the willful violation of any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, or 248.754 or any administrative regulations promulgated thereunder shall not be entitled to any license provided for in this section, or have any interest in any license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of two (2) years after the revocation.
- (10) No license issued pursuant to this section shall be transferable or negotiable, except that a license may be transferred between an individual and a corporation, if that individual is the exclusive owner of that corporation, or between a subsidiary corporation and its parent corporation.
- (11) Every manufacturer located or doing business in this state and the first person to import cigarettes into this state shall keep written records of all shipments of cigarettes to persons within this state, and shall submit to the department monthly reports of such shipments. All books, records, invoices, and documents required by this section shall be preserved in a form prescribed by the department for not less than four (4) years from the making of the records unless the department authorizes, in writing, the destruction of the records.
- (12) No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untax-paid cigarettes.
- (13) (a) Licensed distributors of tobacco products or vapor products shall pay and report the tobacco products tax or vapor products tax on or before the twentieth day of the calendar month following the month in which the possession or title of the tobacco products or vapor products are transferred from the licensed distributor to retailers or consumers in this state, as the case may be.
- (b) Retailers who have applied for and been granted a retail distributor's license for the privilege of purchasing tobacco products or vapor products from a person who is not a distributor licensed under KRS 138.195(7)(a) shall report and pay the tobacco products tax or vapor products tax on or before the twentieth day of the calendar month following the month in which the products are acquired by the licensed retail distributors.
- (c) If the distributor or retail distributor timely reports and pays the tax due, the distributor or retail distributor may deduct an amount equal to one percent (1%) of the tax due.



- (d) The department shall promulgate administrative regulations setting forth the details of the reporting requirements.
- (14) A tax return shall be filed for each reporting period whether or not tax is due.
- (15) Any license issued by the department under this section shall not be construed to waive or condone any violation that occurred or may have occurred prior to the issuance of the license and shall not prevent subsequent proceedings against the licensee.
- (16) (a) The department may deny the issuance of a license under this section if:
  - 1. The applicant has made any material false statement on the application for the license; or
  - 2. The applicant has violated any provision of KRS 131.600 to 131.630, 138.130 to 138.205, 248.754, or 248.756 or any administrative regulations promulgated thereunder.
- (b) If the department denies the applicant a license under this section, the department shall notify the applicant of the grounds for the denial, and the applicant may request a hearing and appeal the denial as provided in subsection (9) of this section.

➔Section 76. KRS 138.340 is amended to read as follows:

- (1) If any dealer or transporter required to be licensed under KRS 138.310 files a false report of the data or information required by KRS 138.210 to 138.280, or fails, refuses or neglects to file the reports required by those sections, even though no tax is due, or to pay the full amount of tax as required by those sections, or fails to meet the qualifications of a dealer as set out in KRS 138.210, or violates any other provision of this chapter, the license of the dealer or transporter may be revoked by the Department of Revenue. The licensee shall be notified by certified or registered letter or summons. The letter or summons shall apprise the licensee of the charge or charges made against him and he shall have a reasonable opportunity to be heard before his license may be revoked. The summons may be served in the same manner and by the same officers or persons as provided by the Rules of Civil Procedure, or it may be served in that manner by an employee of the Department of Revenue. The hearing shall be set at least five (5) days after the summons is served or the letter delivered. Any aggrieved licensee may appeal from an order of revocation by the Department of Revenue to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220, subject to the condition that the licensee has made bond sufficient in the opinion of the Department of Revenue to protect the Commonwealth from loss of revenue.
- (2) The department may cancel the license:
  - (a) Upon request in writing from the licensee, the cancellation to become effective sixty (60) days from the date of receipt of the request; or
  - (b) Upon determination that the licensee has had no reportable activity in Kentucky for at least the immediately preceding six (6) consecutive monthly reporting periods.

➔Section 77. KRS 138.354 is amended to read as follows:

- (1) No person shall make a false or fraudulent statement in an application for a refund permit or in a gasoline or special fuel refund invoice, or in an application for a refund of any taxes as set out in KRS 138.344 to 138.355; or fraudulently obtain a refund of such taxes; or knowingly aid or assist in making any such false or fraudulent statement or claim; or having bought gasoline or special fuel under the provisions of KRS 138.344 to 138.355, shall use or permit such gasoline or special fuel or any part thereof to be used for any purpose other than as provided in KRS 138.344.
- (2) The refund permit of any person who shall violate any provision of subsection (1) of this section may be revoked by the Department of Revenue subject to appeal to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220, and may not be reissued until two (2) years have elapsed from the date of such revocation.
- (3) The refund permit of any person who shall violate any provision of KRS 138.344 to 138.355, other than those contained in subsection (1) of this section, may be suspended by the Department of Revenue for any period in its discretion not exceeding six (6) months with the right of appeal to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.
- (4) If a dealer violates any provision of KRS 138.344 to 138.355, his privilege to sign refund invoices may be suspended by the Department of Revenue for a period of not more than two (2) years subject to appeal to the

Kentucky Claims Commission pursuant to KRS 49.220. No refund shall be made on gasoline or special fuel purchased from a dealer while a suspension of his privilege to sign refund invoices is in effect.

➔Section 78. KRS 138.355 is amended to read as follows:

If the department reasonably believes that any dealer or refund permit holder has been guilty of a violation of KRS 138.344 to 138.355, which would subject the dealer or permit holder to a suspension or revocation of his license or permit under the provisions of subsections (2), (3) or (4) of KRS 138.354, said dealer or permit holder may be cited by the department to show cause at a public hearing before the Department of Revenue why his license or permit should not be suspended or revoked. The dealer or refund permit holder shall be notified by certified or registered letter. The letter shall inform the dealer or refund permit holder of the charge or charges made against him and he shall have a reasonable opportunity to be heard before his license or permit may be revoked or suspended. The hearing shall be set at least five (5) days after the receipt of the letter. Any aggrieved dealer or refund permit holder may appeal any order entered to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220, subject to the condition that he make bond sufficient in the opinion of the department to protect the Commonwealth from loss of revenue.

➔Section 79. KRS 138.729 is amended to read as follows:

Any final ruling of the Department of Vehicle Regulation with regard to the administration of KRS 138.655 to 138.725 shall be appealed to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.

➔Section 80. KRS 150.645 is amended to read as follows:

- (1) An owner, lessee or occupant of premises who gives permission to another person to hunt, fish, trap, camp or hike upon the premises shall owe no duty to keep the premises safe for entry or use by the person or to give warning of any hazardous conditions on the premises, and the owner, lessee, or occupant, by giving his permission, does not thereby extend any assurance that the premises are safe for such purpose, or constitute the person to whom permission is granted an invitee to whom a duty of care is owed. The owner, lessee, or occupant giving permission for any of the purposes stated above shall not be liable for any injury to any person or property caused by the negligent acts of any person to whom permission is granted. This section shall not limit the liability which would otherwise exist for willful and malicious failure to guard or to warn against a dangerous condition, use, structure, or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, or hike was granted for a consideration other than the consideration, if any, as set forth in KRS 411.190(1)(d), paid to said owner, lessee, or occupant by the state. The word "premises" as used in this section includes lands, private ways, and any buildings and structures thereon. Nothing in this section limits in any way any liability which otherwise exists.
- (2) Department employees who participate in bona fide wildlife management practices are agents of the department and state and, in the event property damage does occur, a claim for property damages may only be brought in the **Board of Claims**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.040 to 49.180.

➔Section 81. KRS 186.070 is amended to read as follows:

- (1) (a) Every manufacturer of, or dealer in, motor vehicles in this state shall register with each county clerk in which his principal office or place of business and branch office, sub-agent, or agency is located, and pay an annual registration fee of twenty-five dollars (\$25) to each clerk.
- (b) Upon receipt of the twenty-five dollar (\$25) fee, the clerk shall issue the manufacturer or dealer a certificate of registration and one (1) dealer plate. Every manufacturer or dealer registered under this section shall be furnished additional dealer's plates upon the payment of fourteen dollars and fifty cents (\$14.50) for each additional plate requested. Three dollars (\$3) shall be retained by the clerk for each additional plate issued.
- (c) A motor vehicle bearing dealer's plates may be used on the highways only by the following people:
  1. A licensed dealer, bona fide salesman, or employee of the dealer;
  2. A manufacturer or dealer licensed pursuant to the laws of this state transporting a motor vehicle to his place of retail business from a manufacturer or wholesale dealer in motor vehicles; and
  3. A bona fide customer of a licensed dealer, or the customer's employees when a motor vehicle is being demonstrated. This provision shall be limited to one (1) trip or demonstration to the same prospective customer.
- (d) License plates issued under this section shall annually expire on December 31.

- (e) As used in this section, "bona fide salesman or employee" means a licensed salesman, or an employee, who is actively engaged in and devotes a substantial part of his time to the conduct of the dealer business.
  - (f) A vehicle bearing a dealer plate, except when the vehicle is being transported to a dealer's place of business from a manufacturer, shall have, in the case of a new motor vehicle, a "monroney" sticker attached to the vehicle, or, in the case of a used motor vehicle, a Federal Trade Commission buyer's guide sticker attached to the vehicle.
- (2) (a) Each manufacturer and dealer when making application for dealer's plates shall file a verified statement on at least a quarterly basis with the county clerk, giving the name, address, and Social Security number of each dealer, and each bona fide salesman or employee entitled to the use of the plates for demonstration purposes only. When any bona fide registered salesman or employee is no longer employed by the manufacturer or dealer, the manufacturer or dealer shall file an amended verified statement with the clerk stating that fact, and when any additional salesmen or employees are employed, an amended verified statement showing their names and addresses shall be filed with the clerk so that the records in the clerk's office will at all times show the bona fide salesmen and employees actually in the service of the registered dealer or manufacturer;
- (b) The names of each dealer and each bona fide salesman and employee shall be entered by the clerk into the AVIS where it will be readily available to law enforcement agencies. The information shall be entered by the clerk immediately after each quarterly filing of the verified statement by the dealer;
- (c) Any person who is hired as a driver by a motor vehicle dealer for the limited, specific purpose of transporting a motor vehicle to or from that dealer's place of business may, for that purpose only, operate a motor vehicle bearing a dealer plate. For the purpose of that operation, the dealer shall provide to that driver a permit, provided by the Transportation Cabinet. The permit shall be valid for five (5) days from the date of issuance. A fee shall not be charged for the permit.
- (3) The license of any dealer or manufacturer may be revoked by the Transportation Cabinet for the violation of any of the provisions of this section. The manufacturer or dealer shall be given an opportunity to be heard in defense of the charge that he has violated any of the provisions of this section, and the Transportation Cabinet shall promulgate administrative regulations governing the revocation procedure. A manufacturer or dealer whose license is revoked may appeal the revocation to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220. The manufacturer or dealer whose license has been suspended shall be prohibited from engaging in the business of selling or buying motor vehicles. The license of any manufacturer or dealer shall be revoked for a period of one (1) year and his dealer's plates canceled if he violates any of the provisions of this section during this suspension period or has been suspended by the cabinet more than twice for violations of this section. At the end of the revocation or suspension period, the manufacturer or dealer whose license has been revoked or suspended and dealer's plates canceled may follow the provisions of this section and again be registered and secure dealer's plates from the clerk.
- (4) The Transportation Cabinet shall be responsible for the issuance and cancellation of the plates provided for in this section, and the motor vehicle commission shall be responsible for the enforcement of this section, except for the normal responsibilities of law enforcement agencies. The cabinet may promulgate administrative regulations pertaining to the administration of this section.

➔Section 82. KRS 211.392 is amended to read as follows:

- (1) Application for a fluidized bed combustion technology tax exemption certificate shall be filed with the Department of Revenue in the manner and form prescribed by the Department of Revenue and shall contain plans and specifications of the fluidized bed combustion unit, including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of installing a fluidized bed combustion unit to reduce the sulfur emissions from coal combustion, and any additional information deemed useful by the Department of Revenue for the proper administration of this section. If the Department of Revenue finds that the facility qualifies as a fluidized bed energy production facility, it shall enter a finding and issue a certificate to that effect. The effective date of the certificate shall be the date of issuance of the certificate.
- (2) Before the denial, revocation, or modification of a fluidized bed combustion technology tax exemption certificate, the Department of Revenue shall give the applicant written notice and shall afford the applicant an opportunity for a conference. The conference shall take place within sixty (60) days following notification.

The Department of Revenue shall on its own initiative revoke the certificate when any of the following appears:

- (a) The certificate was obtained by fraud or misrepresentation;
  - (b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the fluidized bed combustion unit; or
  - (c) The fluidized combustion unit to which the certificate relates has ceased to be the major energy source for the primary operations of the plant facility.
- (3) If the circumstances so require, the Department of Revenue, in lieu of revoking the certificate, may modify it.
  - (4) On mailing of notice of the action of the Department of Revenue revoking or modifying a certificate as provided in subsection (5) of this section, the certificate shall cease to be in force or shall remain in force only as modified as the case may require.
  - (5) A fluidized bed combustion technology tax exemption certificate, when issued, shall be sent by certified mail to the applicant. Notice of an order of the Department of Revenue denying, revoking, or modifying a certificate in the form of certified copies shall be sent by certified mail to the applicant or the holder.
  - (6) The applicant or holder of the certificate aggrieved by the refusal to issue, revocation, or modification of a fluidized bed combustion technology tax exemption certificate may appeal from the final ruling of the Department of Revenue to the **Board of Tax Appeals** ~~(Kentucky Claims Commission)~~ pursuant to KRS 49.220.
  - (7) In the event of the sale, lease, or other transfer of a fluidized bed combustion unit, not involving a different location or use, the holder of the fluidized bed construction technology tax exemption certificate for the facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on the facilities. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as the date of transfer, together with a copy of the instrument of transfer to the Department of Revenue.
  - (8) In the event a fluidized bed combustion unit for which an exemption certificate is held ceases to be used for the purpose of generating energy or is used for a purpose other than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of such change to the Department of Revenue.
  - (9) The fluidized bed combustion technology tax exemption certificate, upon approval, shall exempt the facilities from taxes outlined in the provision of this section and KRS Chapters 132, 136, 138, and 139. Each exemption certificate shall remain in force for a period of eight (8) years from the date of issuance and at the end of said period shall lapse. Any fluidized bed combustion unit previously exempt under the terms of this section shall not be eligible for recertification upon completion of the eight (8) year certificate period.

➔Section 83. KRS 216B.400 is amended to read as follows:

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his or her inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician, a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, or another qualified medical professional, as defined by administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, is available on call twenty-four (24) hours each day for the examinations of persons seeking treatment as victims of sexual offenses as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.
- (3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.
- (4) The physician, sexual assault nurse examiner, or other qualified medical professional, acting under a statewide medical forensic protocol which shall be developed by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, and promulgated by the secretary of justice and public safety pursuant to KRS Chapter 13A shall, upon the request of any peace

officer or prosecuting attorney, and with the consent of the victim, or upon the request of the victim, examine such person for the purposes of providing basic medical care relating to the incident and gathering samples that may be used as physical evidence. This examination shall include but not be limited to:

- (a) Basic treatment and sample gathering services; and
  - (b) Laboratory tests, as appropriate.
- (5) Each victim shall be informed of available services for treatment of sexually transmitted infections, pregnancy, and other medical and psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.
- (6) Each victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.
- (7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.
- (8) (a) The examinations provided in accordance with this section shall be paid for by the **Crime Victims Compensation Board**~~[Kentucky Claims Commission]~~ at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
- (b) Upon receipt of a completed claim form supplied by the board and an itemized billing for a forensic sexual assault examination or related services that are within the scope of practice of the respective provider and were performed no more than twelve (12) months prior to submission of the form, the board shall reimburse the hospital or sexual assault examination facility, pharmacist, health department, physician, sexual assault nurse examiner, or other qualified medical professional as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.
- (c) Independent investigation by the **Crime Victims Compensation Board**~~[Kentucky Claims Commission]~~ shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.
- (9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the pharmacist, the health department, the sexual assault nurse examiner, other qualified medical professional, the victim's insurance carrier, or the Commonwealth.
- (10) (a) Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement, except where reporting of abuse and neglect of a child or a vulnerable adult is required, as set forth in KRS 209.030 and 620.030. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system.
- (b) If the victim chooses to report to law enforcement, the hospital shall notify law enforcement within twenty-four (24) hours.
- (c) 1. All samples collected during an exam where the victim has chosen not to immediately report to law enforcement shall be stored, released, and destroyed, if appropriate, in accordance with an administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
2. Facilities collecting samples pursuant to this section may provide the required secure storage, sample destruction, and related activities, or may enter into agreements with other agencies qualified to do so, pursuant to administrative regulation.
3. All samples collected pursuant to this section shall be stored for at least one (1) year from the date of collection in accordance with the administrative regulation promulgated pursuant to this subsection.
4. Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within one (1) year after collection may be destroyed as set

forth in accordance with the administrative regulation promulgated pursuant to this subsection. The victim shall be informed of this process at the time of the examination. No hospital, sexual assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.

➔Section 84. KRS 224.1-310 is amended to read as follows:

- (1) Application for a pollution control tax exemption certificate shall be filed with the Department of Revenue in such manner and in such form as may be prescribed by regulations issued by the Department of Revenue and shall contain plans and specifications of the structure or structures including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of air, noise, waste or water pollution control and any additional information deemed necessary by the Department of Revenue for the proper administration of Acts 1974, Chapter 137. The cabinet shall provide technical assistance and factual information as requested in writing by the Department of Revenue. If the Department of Revenue finds that the facility qualifies as a pollution control facility as defined in KRS 224.1-300(1), it shall enter a finding and issue a certificate to that effect. The effective date of said certificate shall be the date of the making of the application for such certificate.
- (2) Before issuing a pollution control tax exemption certificate, the Department of Revenue shall give notice in writing by mail to the secretary of the cabinet, and shall afford to the applicant and to the secretary of the cabinet an opportunity for a hearing. On like notice and opportunity for a hearing, the Department of Revenue shall on its own initiative revoke such certificate whenever any of the following appears:
  - (a) The certificate was obtained by fraud or misrepresentation;
  - (b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the pollution control facilities; or
  - (c) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose.
- (3) Provided, however, that where the circumstances so require, the Department of Revenue in lieu of revoking such certificate may modify the same.
- (4) On the mailing of notice of the action of the Department of Revenue revoking or modifying a certificate as provided in subsection (5) of this section, such certificate shall cease to be in force or shall remain in force only as modified as the case may require.
- (5) A pollution control tax exemption certificate, when issued, shall be sent by certified mail to the applicant and notice of such issuance in the form of certified copies thereof shall be sent to the secretary of the cabinet. Notice of an order of the Department of Revenue denying, revoking, or modifying a certificate in the form of certified copies thereof shall be sent by certified mail to the applicant or the holder thereof and shall be sent to the secretary of the cabinet. The applicant or holder and the secretary of the cabinet are deemed parties for the purpose of the review afforded by subsection (6) of this section.
- (6) Any party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the final ruling of the Department of Revenue to the **Board of Tax Appeals** ~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.
- (7) In the event of the sale, lease, or other transfer of a pollution control facility, not involving a different location or use, the holder of a pollution control tax exemption certificate for such facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on such facility. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as of the date of transfer of the facility or the date of transfer of the certificate, whichever is earlier. The transferee shall give written notice of the effective date of the transfer, together with a copy of the instrument of transfer to the cabinet and to the Department of Revenue.
- (8) In the event a pollution control facility for which an exemption certificate is held ceases to be used for the primary purpose of pollution control or is used for a different purpose than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of such change to the cabinet and to the Department of Revenue.

➔Section 85. KRS 234.350 is amended to read as follows:

- (1) If a licensee at any time files a false monthly report of the information required, or fails or refuses to file the monthly report or to pay the full amount of the tax or violates any other provision of KRS 234.310 to 234.440,

without a showing that the failure was due to reasonable cause, the department may cancel the license and suspend the privilege of acting as a liquefied petroleum gas motor fuel dealer.

- (2) Upon voluntary surrender of the license or upon receipt of a written request by a licensee, the department may cancel his license, effective sixty (60) days from the date of request, but no license shall be canceled upon surrender or request unless the licensee has, prior to the date of cancellation, paid to this state all taxes, penalties, interest, and fines that are due or have accrued, and unless the licensee has surrendered to the department his license.
- (3) If upon investigation the department ascertains that any person to whom a license has been issued is no longer engaged as a liquefied petroleum gas motor fuel dealer or a liquefied petroleum gas motor fuel user-seller, and has not been so engaged for a period of six (6) months, the department may cancel the license by giving the person sixty (60) days' notice of cancellation, mailed to his last known address in which event the license shall be surrendered to the department.
- (4) Whenever a licensee ceases to engage in business within this state, he shall notify the department in writing within fifteen (15) days after discontinuance. All taxes that have accrued under KRS 234.310 to 234.440, whether or not then due, shall become due and payable concurrently with the discontinuance. The licensee shall make a report and pay all such taxes and any interest and penalties thereon, and shall surrender to the department his license.
- (5) If the department takes action to cancel a license as provided in this section, the licensee shall be notified by certified or registered letter or summons of the charges against him, and he shall be afforded an opportunity for an informal hearing on the matter. The hearing shall be set at least five (5) days from the date the letter is delivered or the summons is served. Any licensee aggrieved by a decision to cancel his license after the informal hearing may appeal the decision to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220 where he shall be granted an administrative hearing in accordance with KRS Chapter 13B.
- (6) If the license is canceled by the department as provided in this section, and if the licensee has paid to this state all taxes, interest, and penalties under KRS 234.310 to 234.440, the department shall cancel the bond filed by the licensee.

➔Section 86. KRS 247.920 is amended to read as follows:

- (1) Application for an alcohol production exemption certificate shall be filed with the Department of Revenue in such manner and in such form as may be prescribed by regulations issued by the Department of Revenue and shall contain plans and specifications of the structure or structures, including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of producing ethanol for fuel use, and any additional information deemed necessary by the Department of Revenue for the proper administration of KRS 247.910 and this section. The Office of Energy Policy shall provide technical assistance and factual information as requested in writing by the Department of Revenue. If the Department of Revenue finds that the facility qualifies as an alcohol production facility as defined by KRS 247.910, it shall enter a finding and issue a certificate to that effect. The effective date of the certificate shall be the date of issuance of the certificate.
- (2) Before issuing an alcohol production tax exemption certificate, the Department of Revenue shall give notice in writing by mail to the Office of Energy Policy, and shall afford to the applicant and to the Office of Energy Policy an opportunity for a hearing. On like notice and opportunity for a hearing, the Department of Revenue shall on its own initiative revoke the certificate when any of the following appears:
  - (a) The certificate was obtained by fraud or misrepresentation;
  - (b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the alcohol production facilities; or
  - (c) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of alcohol production for fuel use and is being used for a different purpose.
- (3) If the circumstances so require, the Department of Revenue, in lieu of revoking the certificate, may modify it.
- (4) On mailing of notice of the action of the Department of Revenue revoking or modifying a certificate as provided in subsection (5) of this section, the certificate shall cease to be in force or shall remain in force only as modified as the case may require.

- (5) An alcohol production tax exemption certificate, when issued, shall be sent by certified mail to the applicant and the notice of issuance in the form of certified copies thereof shall be sent to the Office of Energy Policy. Notice of an order of the Department of Revenue denying, revoking, or modifying a certificate in the form of certified copies thereof shall be sent by certified mail to the applicant or the holder and shall be sent to the Office of Energy Policy. The applicant or holder and the Office of Energy Policy shall be deemed parties for the purpose of the review afforded by subsection (6) of this section.
- (6) Any party aggrieved by the issuance, refusal to issue, revocation, or modification of an alcohol production tax exemption certificate may appeal from the final ruling of the Department of Revenue to the **Board of Tax Appeals** ~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.
- (7) In the event of the sale, lease, or other transfer of an alcohol production facility, not involving a different location or use, the holder of an alcohol production tax exemption certificate for the facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on the facility. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as of the date of transfer of the certificate. The transferee shall give written notice of the effective date of the transfer, together with a copy of the instrument of transfer to the Office of Energy Policy and the Department of Revenue.
- (8) In the event an alcohol production facility for which an exemption certificate is held ceases to be used for the primary purpose of alcohol production for fuel use or is used for a different purpose other than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of the change to the Office of Energy Policy and to the Department of Revenue.
- (9) The alcohol production facility exemption certificate, upon approval, shall exempt said facilities from taxes outlined in the provisions of KRS 247.910 and this section and included in KRS Chapters 132, 136, 138, and 139. Each exemption certificate shall remain in force for a period of eight (8) years from the date of issuance and at the end of said period shall lapse. Any alcohol production facility previously exempted under the terms of KRS 247.910 and this section shall not be eligible for recertification upon completion of the eight (8) year certificate period.

➔Section 87. KRS 304.47-020 is amended to read as follows:

- (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he or she engages in any of the following, including but not limited to matters relating to workers' compensation:
  - (a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, **Board of Claims** ~~[Kentucky Claims Commission]~~, Special Fund, or any agent thereof:
    1. Any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim; or
    2. Any statement as part of, or in support of, an application for an insurance policy, for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
  - (b) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
  - (c) Knowingly and with intent to defraud or deceive:
    1. Receives money for the purpose of purchasing insurance, and fails to obtain insurance;
    2. Fails to make payment or disposition of money or voucher as defined in KRS 304.17A-750, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;
    3. Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or to the commissioner, any statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:
      - a. The rating of an insurance policy;



- b. The financial condition of an insurer;
  - c. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or
  - d. A document filed with the commissioner; or
4. Engages in any of the following:
- a. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or
  - b. Removal, concealment, alteration, tampering, or destruction of money, records, or any other property or assets of an insurer;
- (d) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, insurance binders, or any other documents that purport to evidence insurance;
- (e) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
- (f) Engages in unauthorized insurance, as set forth in KRS 304.11-030; or
- (g) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.
- (2) A person convicted of a violation of subsection (1) of this section shall be guilty of a Class A misdemeanor, unless the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is:
- (a) Five hundred dollars (\$500) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony;
  - (b) Ten thousand dollars (\$10,000) or more but less than one million dollars (\$1,000,000), in which case it is a Class C felony; or
  - (c) One million dollars (\$1,000,000) or more, in which case it is a Class B felony.
- (3) A person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall be guilty of engaging in organized crime, a Class B felony, if he or she engages in any of the activities set forth in KRS 506.120(1).
- (4) A person convicted of a crime established in this section shall be punished by:
- (a) Imprisonment for a term:
    - 1. Not to exceed the period set forth in KRS 532.090 if the crime is a Class A misdemeanor; or
    - 2. Within the periods set forth in KRS 532.060 if the crime is a Class D, C, or B felony;
  - (b) A fine, per occurrence, of:
    - 1. For a misdemeanor, not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
    - 2. For a felony, not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or
  - (c) Both imprisonment and a fine, as set forth in paragraphs (a) and (b) of this subsection.
- (5) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a crime established in this section may be ordered to make restitution to any victim who suffered a monetary loss due to any actions by that person which resulted in the adjudication of guilt, and to the division for the cost of any investigation. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.
- (6) Any person damaged as a result of a violation of any provision of this section shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

- (7) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (6) of this section.

➔Section 88. KRS 342.1231 is amended to read as follows:

- (1) The funding commission may mail to the assessment payer a notice of any assessment assessed by it. The assessment shall be final if not protested in writing to the funding commission within thirty (30) days from the date of notice. Payment for the assessment, penalty and interest, and expenses shall be received by the funding commission within thirty (30) days from the date the notice becomes final. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the funding commission may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable. The refusal of such extension may be reviewed in the same manner as a protested assessment.
- (2) After a timely protest has been filed, the assessment payer may request a conference with the funding commission. The request shall be granted in writing stating the date and time set for the conference. The assessment payer may appear in person or by representative. Further conferences may be held by mutual agreement.
- (3) After considering the assessment payer's protest, including any matters presented at the final conference, the funding commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the assessment payer. The ruling shall state that it is a final ruling of the funding commission, generally state the issues in controversy, the funding commission's position thereon and set forth the procedure for prosecuting an appeal to the **Board of Claims**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.
- (4) The assessment payer may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the funding commission shall issue such ruling within sixty (60) days or at the next board of directors meeting, whichever is later, from the date the request is received by the funding commission.
- (5) After a final ruling has been issued, the assessment payer may appeal to the **Board of Claims**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.
- (6) The expenses incurred by the funding commission in conducting audits required in this chapter shall be paid by the audited entities in accordance with administrative regulations promulgated by the funding commission.
- (7) Notwithstanding any provision to the contrary, a notice of assessment under subsection (1) of this section shall not be collected unless the notice of assessment is mailed to the assessment payer not later than five (5) years from the due date of the quarterly premium report or the date the amended quarterly premium report is filed, whichever is later. A quarterly premium report shall not be amended later than one (1) year after the due date of the quarterly premium report.
- (8) Assessment payers shall preserve, retain, and provide all documents relevant to quarterly premium reports and subject to audits to the funding commission upon request during the completion of the audit.
- (9)
  - (a) The funding commission may mail the assessment payer notice of a refund amount to be returned to an insured. The insurance carrier shall pay the amount of the refund to the insured within sixty (60) days from the date of notice sent by the funding commission. If, after good-faith efforts, the refund cannot be returned to the insured, the refund amount shall be remitted to the funding commission within thirty (30) days from the last date of attempting the refund.
  - (b) If a refund amount to an insured is unpaid on the date on which it is due, then that amount shall bear a penalty of one and one-half percent (1.5%) per month from that due date. The funding commission shall have the authority to waive part or all of the penalty where failure to pay is shown, to the satisfaction of the funding commission, to be for a reasonable cause.
- (10) "Assessment payer" as used in this section means insurance carrier, self-insured group, and self-insured employer.

➔Section 89. KRS 365.370 is amended to read as follows:

- (1) The department shall promulgate administrative regulations for the enforcement of KRS 365.260 to 365.380 and may from time to time undertake and make or cause to be made one (1) or more cost surveys for the state

or trading area or areas as it defines. When each survey is made by or approved by the department, it may use the cost survey as provided in subsection (2) of KRS 365.320 and subsection (2) of 365.360.

- (2) The department may, upon notice and after hearing, revoke or suspend any license issued under KRS 138.195 and the administrative regulations of the department promulgated thereunder, for failure of any person to comply with any provisions of KRS 365.260 to 365.380 or any administrative regulation adopted thereunder.
- (3) All of the powers vested in the commissioner and Department of Revenue by the provisions of the cigarette tax law shall be available for the enforcement of KRS 365.260 to 365.380.
- (4) Any person aggrieved by any decision, order, or finding of the Department of Revenue, suspending or revoking any license, may appeal to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ pursuant to KRS 49.220.

➔Section 90. KRS 452.505 is amended to read as follows:

The following actions may be brought in the Franklin Circuit Court, or in the Franklin District Court, or in any other Circuit Court or District Court having venue:

- (1) Actions to collect the revenue and all other claims, demands and penalties due the Commonwealth, or to have satisfaction made of judgments in favor of the Commonwealth, except those actions which are prosecuted by an appeal to the **Board of Tax Appeals**~~[Kentucky Claims Commission]~~ under the provisions of KRS 49.220 and 131.110;~~;~~
- (2) Actions against persons required to collect money due the Commonwealth, to pay money into the State Treasury, or to do any other act connected with the payment of money into the State Treasury after it has been collected, and against the sureties, heirs, devisees or representatives of such persons;~~;~~
- (3) Actions to surcharge and correct fee bills, accounts, and settlements, with their debits and credits, and all claims against the Treasury allowed and approved by any court in the Commonwealth to any person;~~;~~
- (4) Actions to recover any fraudulent, erroneous or illegal account, fee bill, charge, credit or claim approved and allowed or paid out of the Treasury to any person; **and**~~;~~
- (5) The defendant in any action brought in Franklin Circuit Court or Franklin District Court under the provisions of subsection (1) of this section for the collection of taxes assessed under KRS Chapter 141 shall at any time prior to the submission for judgment upon proper motion have a change of venue to the county in which he resides or his principal office or place of business is located at no cost to the defendant in Franklin Circuit Court or Franklin District Court.

➔Section 91. KRS 532.162 is amended to read as follows:

- (1) If the criminal garnishment is made upon the convicted person's earnings, the order of garnishment shall be a lien upon the earnings from the date of service on the garnishee until an order discontinuing the lien is entered. A convicted person may challenge the garnishment by filing a challenge to the garnishment with the sentencing court. The challenge shall be heard within ten (10) days of its filing or the nearest court date thereafter. Before the hearing, garnishment shall continue. Any moneys which the court determines were improperly garnished shall be repaid to the garnishee not later than thirty (30) days after the determination.
- (2) The circuit clerk's office shall disburse all collected reimbursement, restitution, and fees to the victim, the **Crime Victims Compensation Board**~~[Kentucky Claims Commission]~~, or the local government, whichever is appropriate. The clerk shall be entitled to collect a fee of two dollars and fifty cents (\$2.50) from each account for which a disbursement is made at the time of disbursement. In the event of challenge to a garnishment, the appropriate clerk's office shall not disburse those sums associated with the challenged garnishment until determination by the sentencing court regarding the propriety of the garnishment.

➔Section 92. KRS 533.030 is amended to read as follows:

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to **ensure**~~[insure]~~ that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
  - (a) Avoid injurious or vicious habits;

- (b) Avoid persons or places of disreputable or harmful character;
  - (c) Work faithfully at suitable employment as far as possible;
  - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
  - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
  - (f) Support his dependents and meet other family responsibilities;
  - (g) Pay the cost of the proceeding as set by the court;
  - (h) Remain within a specified area;
  - (i) Report to the probation officer as directed;
  - (j) Permit the probation officer to visit him at his home or elsewhere;
  - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;
  - (l) Submit to periodic testing for the use of controlled substances or alcohol, if the defendant's record indicates a controlled substance or alcohol problem, and to pay a reasonable fee, as determined by the court, which fee shall not exceed the actual cost of the test and analysis and shall be paid directly to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, as specified by written order of the court, performed under this subsection. For good cause shown, the testing fee may be waived by the court;
  - (m) Use an alcohol monitoring device, as defined in KRS 431.068. All costs associated with the device, including administrative and operating costs, shall be paid by the defendant. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of probation or conditional discharge provided for in this section; or
  - (n) During all or part of the period of probation or conditional discharge, participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.372 and 67.374 under the same terms and conditions as provided in KRS 431.517.
- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or where the victim incurred expenses in relocating for the purpose of the victim's safety or the safety of a member of the victim's household, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Health and Family Services, the **Crime Victims Compensation Board** ~~(Kentucky Claims Commission)~~, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then-prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:
- (a) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
  - (b) The circuit clerk shall assess an additional fee of five percent (5%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall inure to a trust and

agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk or office personnel salaries, or combination thereof;

- (c) When a defendant fails to make restitution ordered to be paid through the circuit clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney, the circuit clerk or court-authorized program shall notify the court; and
  - (d) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.
- (4) When requiring fees for controlled substances or alcohol tests, or other fees and payments authorized by this section or other statute, except restitution, to be paid by the defendant, the court shall not order the payments to be paid through the circuit clerk.
  - (5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
  - (6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

→Section 93. Notwithstanding KRS 12.028(5), the General Assembly hereby confirms Executive Order 2020-708, dated August 31, 2020, to the extent that it is not otherwise confirmed or superseded by this Act, relating to the reorganization of the Public Protection Cabinet, abolishing the Kentucky Claims Commission, and establishing the Office of Claims and Appeals and the Boards attached thereto, namely the Board of Claims, the Board of Tax Appeals, and the Crime Victims Compensation Board.

→Section 94. The initial membership of the Board of Claims, Board of Tax Appeals, and the Crime Victims Compensation Board shall consist of those individuals appointed by the Governor in Executive Order 2020-708, dated August 31, 2020, and the terms of these initial members shall expire on the dates set out in that order.

→Section 95. KRS 11.175 is amended to read as follows:

- (1) Each cabinet secretary on the Governor's Executive Cabinet, established pursuant to KRS 11.065, shall designate a small business ombudsman from among their respective existing cabinet employees.
- (2) The small business ombudsman shall:
  - (a) Respond to inquiries from small businesses on administrative regulations and other regulatory matters; and
  - (b) Provide information regarding the procedure for submitting comments on administrative regulations as provided by KRS 13A.270(1).
- (3) Each cabinet shall provide contact information for the cabinet's small business ombudsman on the cabinet's Web site, including the ombudsman's name, telephone number, mailing address, and e-mail address.
- (4) No later than December 1 of each year, each small business ombudsman shall submit a report to the Commission on Small Business *Innovation and* Advocacy, established pursuant to KRS 11.200, summarizing the number and nature of inquiries that the ombudsman has received from small businesses during the previous twelve (12) months.

→Section 96. KRS 11.200 is amended to read as follows:

- (1) There is created the Commission on Small Business *Innovation and* Advocacy. The commission shall be a separate administrative body of state government within the meaning of KRS 12.010(8).

- (2) It shall be the purpose of the Commission on Small Business *Innovation and* Advocacy to:
- (a) Address matters of small business as it relates to government affairs;
  - (b) Promote a cooperative and constructive relationship between state agencies and the small business community to ensure coordination and implementation of statewide strategies that benefit small business in the Commonwealth;
  - (c) Coordinate and educate the small business community of federal, state, and local government initiatives of value and importance to the small business community;
  - (d) Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector;
  - (e) Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community; and
  - (f) Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.
- (3) The Commission on Small Business *Innovation and* Advocacy shall consist of thirteen (13) members:
- (a) Two (2) members representing each congressional district; and
  - (b) One (1) at-large member.
- (4) All members shall be appointed by the Governor for a term of four (4) years, except that the original appointments shall be staggered so that three (3) appointments shall expire at one (1) year, three (3) appointments shall expire at two (2) years, and three (3) appointments shall expire at three (3) years, and four (4) appointments shall expire at four (4) years from the dates of initial appointment.
- (5) The Governor shall appoint the chair and vice chair of the commission from the appointed membership.
- (6) The commission shall meet quarterly and at other times upon call of the chair or a majority of the commission.
- (7) A quorum shall be a majority of the membership of the commission.
- (8) Members of the commission shall serve without compensation but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
- (9) The *executive director of the Office of Entrepreneurship and Small Business Innovation* ~~commissioner of the Department for Business Development~~ shall be the administrative head and chief executive officer of the commission. The secretary of the Cabinet for Economic Development shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.
- (10) The Commission on Small Business *Innovation and* Advocacy shall be administratively attached to the Office of Entrepreneurship *and Small Business Innovation* within the Cabinet for Economic Development.

➔Section 97. KRS 11.202 is amended to read as follows:

- (1) The duties of the Commission on Small Business *Innovation and* Advocacy shall include ~~(1)~~ 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 *Workforce Investment*~~(Tourism)~~ detailing its work in the prior fiscal year, including ~~but~~ 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 KRS 14.250 may be improved to make the business portal more user friendly for businesses.

➔Section 98. KRS 13A.270 is amended to read as follows:

- (1) (a) In addition to the public comment period required by paragraph (c) of this subsection, following publication in the Administrative Register of the text of an administrative regulation, the administrative body shall, unless authorized to cancel the hearing pursuant to subsection (7) of this section, hold a hearing, open to the public, on the administrative regulation.
- (b) The public hearing shall not be held before the twenty-first day or later than the last workday of the month following the month in which the administrative regulation is published in the Administrative Register.
- (c) The administrative body shall accept written comments regarding the administrative regulation during the comment period. The comment period shall begin on the date the administrative regulation is filed with the regulations compiler and shall run until 11:59 p.m. on the last day of the calendar month following the month in which the administrative regulation was published in the Administrative Register.
- (2) Each administrative regulation shall state:
- (a) The place, time, and date of the scheduled public hearing;
  - (b) The manner in which interested persons shall submit their:
    - 1. Notification of attending the public hearing; and
    - 2. Written comments;
  - (c) That notification of attending the public hearing shall be transmitted to the administrative body no later than five (5) workdays prior to the date of the scheduled public hearing;
  - (d) The deadline for submitting written comments regarding the administrative regulation in accordance with subsection (1)(c) of this section; and
  - (e) The name, position, mailing address, e-mail address, and telephone and facsimile numbers of the person to whom a notification and written comments shall be transmitted.
- (3) (a) A person who wishes to be notified that an administrative body has filed an administrative regulation shall:
- 1. Contact the administrative body by telephone or written letter to request that the administrative body send the information required by paragraph (c) or (d) of this subsection to the person; or

2. Complete an electronic registration form located on a centralized state government Web site developed and maintained by the Commonwealth Office of Technology.
- (b) A registration submitted pursuant to paragraph (a) of this subsection shall:
1. Indicate whether the person wishes to receive notification regarding:
    - a. All administrative regulations promulgated by an administrative body; or
    - b. Each administrative regulation that relates to a specified subject area. The subject areas shall be provided by the administrative bodies and shall be listed on the centralized state government Web site in alphabetical order;
  2. Include a request for the person to provide an e-mail address in order to receive regulatory information electronically;
  3. Be valid for a period of four (4) years from the date the registration is submitted, or until the person submits a written request to be removed from the notification list, whichever occurs first; and
  4. Be transmitted to the promulgating administrative body, if the registration was made through the centralized state government Web site. The collected e-mail addresses shall be used solely for the purposes of this subsection and shall not be sold, transferred, or otherwise made available to third parties, other than the promulgating administrative body.
- (c) A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), shall be e-mailed:
1. To every person who has:
    - a. Registered pursuant to paragraph (a) of this subsection; and
    - b. Provided an e-mail address as part of the registration request;
  2. Within five (5) working days after the date the administrative regulation is filed with the Commission; and
  3. With a request from the administrative body that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation.
- (d) Within five (5) working days after the date the administrative regulation is filed with the Commission, the administrative body shall mail the following information to every person who has registered pursuant to paragraph (a) of this subsection but did not provide an e-mail address:
1. A cover letter from the administrative body requesting that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation;
  2. A copy of the regulatory impact analysis required by KRS 13A.240 completed in detail sufficient to put the individual on notice as to the specific contents of the administrative regulation, including all proposed amendments to the administrative regulation; and
  3. A statement that a copy of the administrative regulation may be obtained from the Commission's Web site, which can be accessed on-line through public libraries or any computer with Internet access. The Commission's Web site address shall be included in the statement.
- (e) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to persons who have registered pursuant to paragraph (a) of this subsection, unless the person requested a copy pursuant to KRS 13A.280(8).
- (4) (a) If small business may be impacted by an administrative regulation, the administrative body shall e-mail a copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1), to the chief executive officer of the Commission on Small Business **Innovation and** Advocacy within one (1) working day after the date the administrative regulation is filed with the Commission.
- (b) The e-mail shall include a request from the administrative body that the Commission on Small Business **Innovation and** Advocacy review the administrative regulation in accordance with KRS 11.202(1)(e)



and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report shall be filed with the regulations compiler.

- (c) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to the Commission on Small Business ***Innovation and*** Advocacy, unless its chief executive officer requested a copy pursuant to KRS 13A.280(8).
- (5) (a) If a local government may be impacted by an administrative regulation, the administrative body shall send, by e-mail if the local government has an e-mail address, a copy of the administrative regulation as filed and all attachments required by KRS 13A.230(1) to each local government in the state within one (1) working day after the date the administrative regulation is filed with the Commission. If the local government does not have an e-mail address, the material shall not be sent.  
(b) The e-mail shall include a request from the administrative body that the local government review the administrative regulation in the same manner as would the Commission on Small Business ***Innovation and*** Advocacy under KRS 11.202(1)(e), and submit its report or comments in accordance with the deadline established in subsection (1)(c) of this section. A copy of the report or comments shall be filed with the regulations compiler.
- (c) An administrative body shall not be required to send a copy of an administrative regulation that was amended after comments in accordance with KRS 13A.280 to a local government, unless its contact person requested a copy pursuant to KRS 13A.280(8).
- (6) Persons desiring to be heard at the hearing shall notify the administrative body in writing as to their desire to appear and testify at the hearing not less than five (5) workdays before the scheduled date of the hearing.
- (7) The administrative body shall immediately notify the regulations compiler by letter if:
  - (a) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) workdays before the scheduled hearing, and it chooses to cancel the public hearing; and
  - (b) No written comments have been received by the close of the last day of the public comment period.
- (8) (a) 1. Upon receipt from interested persons of their intent to attend a public hearing, the administrative body shall notify the regulations compiler by letter that the public hearing shall be held.  
2. If the public hearing is held but no comments are received during the hearing, the administrative body shall notify the regulations compiler by letter that the public hearing was held and that no comments were received.  
(b) Upon receipt of written comments, the administrative body shall notify the regulations compiler by letter that written comments have been received.
- (9) If the notifications required by subsections (7) and (8) of this section are not received by the regulations compiler by close of business on the second workday of the calendar month following the end of the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.
- (10) The notifications required by subsections (7) and (8) of this section shall be made by letter. The letter may be sent by e-mail if the administrative body uses an electronic signature and letterhead for the e-mailed document.
- (11) Every hearing shall be conducted in such a manner as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so, whether or not such person has given the notice contemplated by subsection (6) of this section. No transcript need be taken of the hearing, unless a written request for a transcript is made, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section shall not preclude an administrative body from making a transcript or making a recording if it so desires.
- (12) Nothing in this section shall be construed as requiring a separate hearing on each administrative regulation. Administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings required by this section.

➔Section 99. KRS 13A.280 is amended to read as follows:

- (1) Following the last day of the comment period, the administrative body shall give consideration to all comments received at the public hearing and all written comments received during the comment period, including any report filed by the Commission on Small Business *Innovation and* Advocacy in accordance with KRS 11.202(1)(e) and 13A.270(4), or by a local government in accordance with KRS 11.202(1)(e) and 13A.270(5).
- (2)
  - (a) Except as provided in paragraph (b) of this subsection, the administrative body shall file with the commission on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period the statement of consideration relating to the administrative regulation and, if applicable, the amended after comments version.
  - (b) If the administrative body has received a significant number of public comments, it may extend the time for filing the statement of consideration and, if applicable, the amended after comments version by notifying the regulations compiler in writing on or before 12 noon, eastern time, on the fifteenth day of the calendar month following the end of the public comment period. The administrative body shall file the statement of consideration and, if applicable, the amended after comments version, with the Commission on or before 12 noon, eastern time, no later than the fifteenth day of the second calendar month following the end of the public comment period.
- (3)
  - (a) If the administrative regulation is amended as a result of the hearing or written comments received, the administrative body shall forward the items specified in this paragraph to the regulations compiler by 12 noon, eastern time, on the applicable deadline specified in subsection (2) of this section:
    1. The original and five (5) copies of the administrative regulation indicating any amendments in the original wording resulting from comments received at the public hearing and during the comment period;
    2. The original and five (5) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and
    3. The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.
  - (b) The original and four (4) copies of the amended after comments version, the statement of consideration, and the attachments required by paragraph (a)3. of this subsection shall be stapled in the top left corner. The fifth copy shall not be stapled.
  - (c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the amended after comments version, the statement of consideration, and the required attachments saved as a single document for each amended after comments administrative regulation in an electronic format approved by the regulations compiler.
- (4)
  - (a) If the administrative regulation is not amended as a result of the public hearing, or written comments received, the administrative body shall file the original and five (5) copies of the statement of consideration with the regulations compiler by 12 noon, eastern time, on the deadline established in subsection (2) of this section. The original and four (4) copies of the statement of consideration shall be stapled in the top left corner. The fifth copy of each statement of consideration shall not be stapled.
  - (b) If the statement of consideration covers multiple administrative regulations, as authorized by subsection (6)(g) of this section, the administrative body shall file with the regulations compiler:
    1. The original and five (5) copies of the statement of consideration as required by paragraph (a) of this subsection; and
    2. Two (2) additional unstapled copies of the statement of consideration for each additional administrative regulation included in the group of administrative regulations.
  - (c) At the same time as, or prior to, filing the paper version, the administrative body shall file an electronic version of the statement of consideration saved as a single document for each statement of consideration in an electronic format approved by the regulations compiler.
- (5) If comments are received either at the public hearing or during the public comment period, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee following the month in which the statement of consideration is due.

- (6) The format for the statement of consideration shall be as follows:
- (a) The statement shall be typewritten on white paper, size eight and one-half (8-1/2) by eleven (11) inches. Copies of the statement may be mechanically reproduced;
  - (b) The first page of the statement of consideration shall have a two (2) inch top margin;
  - (c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and comment period and the name of the promulgating administrative body. The heading shall be centered. This shall be followed by the words "Not Amended After Comments" or "Amended After Comments," whichever is applicable;
  - (d) If a hearing has been held or written comments received, the heading is to be followed by:
    1. A statement setting out the date, time and place of the hearing, if the hearing was held;
    2. A list of those persons who attended the hearing or who submitted comments and the organization, agency, or other entity represented, if applicable; and
    3. The name and title of the representative of the promulgating administrative body;
  - (e) Following the general information, the promulgating administrative body shall summarize the comments received at the public hearing and during the comment period and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:
    1. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and
    2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;
  - (f) Following the summary and comments, the promulgating administrative body shall:
    1. Summarize the statement and the action taken by the administrative body as a result of comments received at the public hearing and during the comment period; and
    2. If amended after the comment period, list the changes made to the administrative regulation in the format prescribed by KRS 13A.320(2)(c) and (d); and
  - (g) If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.
- (7) If the administrative regulation is amended pursuant to subsection (3) of this section, the full text of the administrative regulation shall be published in the Administrative Register. The changes made to the administrative regulation shall be typed in bold and made in the format prescribed by KRS 13A.222(2). The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.
- (8) If requested, copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments or who specifically request a copy from the administrative body.
- ➔Section 100. KRS 65.7047 is amended to read as follows:
- (1) Any city or county may establish a local development area pursuant to this section, subject to the following conditions:
- (a) A local development area shall be on previously undeveloped land;
  - (b) No more than one thousand (1,000) acres shall be approved for a local development area in any twelve (12) month period in any county;
  - (c) The establishment or expansion of the local development area shall not cause the assessed value of taxable real property within all local development areas and development areas of the city or county

establishing the local 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 local development areas and development areas shall be valued as of the establishment date; and

- (d) Unless the ordinance establishing a local development area requires an earlier termination date, a local development area shall cease to exist on the termination date.

(2) A city or county shall take the following steps to establish or modify a local development area:

- (a) *The city or county shall engage the services of a qualified independent outside consultant or financial adviser to analyze the data related to the project and the development area and prepare a report. The report shall include the following:*

1. *The estimated approved public infrastructure costs for the project and, if relevant, project costs, financing costs, and costs associated with land preparation, demolition, and clearance;*
2. *The feasibility of the project, taking into account the scope and location of the project;*
3. *The estimated amount of local tax revenues, as applicable, that would be generated by the project over the period, which may be up to forty (40) years, as applicable, from the development area's established date;*
4. *The estimated amount of local tax revenues, as applicable, that would be displaced within the city or county, for the purpose of quantifying economic activity which is being shifted over the same period as that set forth in subparagraph 3. of this paragraph. The projections for displaced activity shall include economic activity that is lost to the local jurisdiction as a result of the project, as well as economic activity that is diverted to the project that formerly took place at existing establishments within the local jurisdiction prior to the commencement date of the project;*
5. *The estimated amount of old revenues that would have been generated in the development area of the project in the absence of the project, computed over the same time period as set forth in subparagraph 3. of this paragraph;*
6. *In the process of estimating the revenues and impacts prescribed in subparagraphs 3. and 4. of this paragraph, the independent outside consultant shall not consider any of the following:*
  - a. *Revenues or economic impacts associated with any projects within the development area where the new project will be located; or*
  - b. *Revenues or economic impacts associated with economic development projects and approved Kentucky Tourism Development Act projects under KRS Chapter 148;*
7. *The relationship of the estimated incremental revenues to the financing needs, including any increment bonds, of the project;*
8. *When estimating the fiscal impact of the project, the consultant shall evaluate the amount of revenue estimated in subparagraph 3. of this paragraph and shall deduct the amounts estimated in subparagraphs 4. and 5. of this paragraph. The resulting difference shall be compared to the estimated incremental revenues to determine the presence or absence of a positive fiscal impact; and*
9. *A determination that the project will not occur if not for the designation of the development area, the granting of incremental revenues by the taxing district or districts, and the granting of the local tax incremental revenues.*

- (b) The city or county shall hold a public hearing to solicit input from the public regarding the local development area. 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 local development area. The notice shall include a summary of the projects proposed for the local development area;

- (c) ~~(b)~~ After the public hearing, the city or county shall adopt an ordinance which shall include the following provisions:

1. A description of the boundaries of the local development area;

2. The establishment date and the termination date;
  3. A name for the local development area for identification purposes;
  4. Approval of any agreements relating to the local development area;
  5. A provision establishing a special fund for the local development area or any project within the local development area;
  6. A requirement that any entity other than the governing body that receives financial assistance under the local development area ordinance, whether in the form of a grant, loan, or loan guarantee, shall make periodic accounting to the governing body;
  7. A provision for periodic analysis and review by the governing body of the development activity in the local development area;
  8. Designation of the agency or agencies responsible for oversight, administration, and implementation of the local development ordinance; ~~and~~
  9. ***The estimated net positive fiscal impact as calculated in paragraph (a)8. of this subsection in the required independent consultant report; and***
  10. Any other provisions, findings, limitations, rules, or procedures regarding the proposed local development area or a project within the local development area and its establishment or maintenance deemed necessary by the city or county; and
- ~~(d)(e)~~ If incremental revenues or other resources are to be pledged from taxing districts other than the city or county establishing the local development area, a local development area agreement shall be executed in accordance with the provisions of subsection (4) of this section.
- (3) Funding for projects in a local development area shall be provided in accordance with KRS 65.7057.
  - (4) A local development area agreement shall be executed among the agencies and taxing districts involved in administering, providing financing, or pledging incremental revenues within the local development area. The local development area agreement shall be adopted by a city or county by ordinance and by any other taxing district or agency by resolution, and shall include but not be limited to the following provisions:
    - (a) Identification of the parties to the local development area agreement and the duties and responsibilities of each entity under the agreement;
    - (b) Specific identification of the tax increments released or pledged by type of tax by each taxing district;
    - (c) The anticipated benefit to be received by each taxing district for the release or pledge, including:
      1. A detailed summary of old revenues collected and projected new revenues for each taxing district on an annual basis for the term of the local development area agreement; and
      2. The maximum amount of incremental revenue to be paid by each taxing district and the maximum number of years the payment will be effective;
    - (d) A detailed description of the local development area;
    - (e) A description of each proposed project, including an estimate of the costs of construction, acquisition, and development;
    - (f) A requirement that pledged incremental revenues will be deposited in a special fund pursuant to KRS 65.7061, including the timing and procedure for depositing incremental revenues and other pledged amounts into the special fund;
    - (g) Terms of default and remedies, provided that no remedy shall permit the withholding by any party to the local development area agreement of any incremental revenues pledged to the special fund if increment bonds are outstanding that are secured by a pledge of those incremental revenues;
    - (h) The commencement date, activation date, and termination date; and
    - (i) Any other provisions not inconsistent with KRS 65.7041 to 65.7083 deemed necessary or appropriate by the parties to the agreement.
  - (5) Any pledge of incremental revenues in a local development area agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the activation date to the termination date set forth in

the local area development agreement, supersede any statute, ordinance, or resolution regarding the application or use of incremental revenues. No ordinance in conflict with a local development area agreement shall be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances or resolutions pledging incremental revenues on a subordinate basis to any existing pledges may be adopted.

➔Section 101. KRS 141.403 is amended to read as follows:

- (1) ***If an eligible company has not yet received preliminary approval on or before June 30, 2021, the eligible company shall not receive final approval by the authority to become an approved company and receive tax credits under Subchapter 26 of KRS Chapter 154. Approved companies and outstanding eligible companies with preliminary approval granted on or before June 30, 2021, shall continue to be governed by Subchapter 26 of KRS Chapter 154 and this section.***
- (2) As used in this section, unless the context requires otherwise:
  - (a) "Approved company" ~~has~~~~[shall have]~~ the same meaning as ~~[set forth]~~ in KRS 154.26-010;
  - (b) "Economic revitalization project" ~~has~~~~[shall have]~~ the same meaning as ~~[set forth]~~ in KRS 154.26-010;
  - (c) ***"Eligible company" has the same meaning as in KRS 154.26-010.*** ~~"Tax credit" means the tax credit allowed in KRS 154.26-090;~~
  - (d) ***"Final approval" has the same meaning as in KRS 154.26-010;***
  - ~~(e)~~~~(d)~~ "Kentucky gross receipts" ~~has the same meaning as~~~~[means Kentucky gross receipts as defined]~~ in KRS 141.0401; and
  - ~~(f)~~~~(e)~~ "Kentucky gross profits" ~~has the same meaning as~~~~[means Kentucky gross profits as defined]~~ in KRS 141.0401
  - (g) ***"Preliminary approval" has the same meaning as in KRS 154.26-010; and***
  - (h) ***"Tax credit" means the tax credit allowed in KRS 154.26-090.***
- ~~(3)~~~~(2)~~ An approved company shall determine the income tax credit as provided in this section.
- ~~(4)~~~~(3)~~ An approved company which is an individual sole proprietorship subject to tax under KRS 141.020 or a corporation or pass-through entity treated as a corporation for federal income tax purposes subject to tax under KRS 141.040 shall:
  - (a)
    1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income or taxable net income, including income from the economic revitalization project;
    2. Compute the limited liability entity tax imposed under KRS 141.0401, including Kentucky gross profits or Kentucky gross receipts from the economic revitalization project; and
    3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.
  - (b)
    1. Compute the tax due at the applicable tax rates as provided by KRS 141.020 or 141.040 on net income or taxable net income, excluding net income attributable to the economic revitalization project;
    2. Using the same method used under subparagraph 2. of paragraph (a) of this subsection, compute the limited liability entity tax imposed under KRS 141.0401, excluding Kentucky gross profits or Kentucky gross receipts from the economic revitalization project; and
    3. Add the amounts computed under subparagraphs 1. and 2. of this paragraph and, if applicable, subtract the credit permitted by KRS 141.0401(3) from that sum. The resulting amount shall be the net tax for purposes of this paragraph.
  - (c) The tax credit shall be the amount by which the net tax computed under paragraph (a)3. of this subsection exceeds the tax computed under paragraph (b)3. of this subsection; however, the credit shall not exceed the limits set forth in KRS 154.26-090.
- ~~(5)~~~~(4)~~ (a) Notwithstanding any other provisions of this chapter, an approved company which is a pass-through entity not subject to the tax imposed by KRS 141.040 or trust not subject to the tax imposed

KRS 141.040 shall be subject to income tax on the net income attributable to an economic revitalization project at the rates provided in KRS 141.020.

- (b) The amount of the tax credit shall be determined as provided in subsection ~~(4)(3)~~ of this section. Upon the annual election of the approved company, in lieu of the tax credit, an amount shall be applied as an estimated tax payment equal to the tax computed in this section. Any estimated tax payment made pursuant to this paragraph shall be in satisfaction of the tax liability of the partners, members, shareholders, or beneficiaries of the pass-through entity or trust, and shall be paid on behalf of the partners, members, shareholders, or beneficiaries.
  - (c) The tax credit or estimated payment shall not exceed the limits set forth in KRS 154.26-090.
  - (d) If the tax computed in this section exceeds the tax credit, the difference shall be paid by the pass-through entity or trust at the times provided by KRS 141.160 for filing the returns.
  - (e) Any estimated tax payment made by the pass-through entity or trust in satisfaction of the tax liability of partners, members, shareholders, or beneficiaries shall not be treated as taxable income subject to Kentucky income tax by the partner, member, shareholder, or beneficiary.
- ~~(6)(5)~~ Notwithstanding any other provisions of this chapter, the net income subject to tax, the tax credit, and the estimated tax payment determined under subsection ~~(5)(4)~~ of this section shall be excluded in determining each partner's, member's, shareholder's, or beneficiary's distributive share of net income or credit of a pass-through entity or trust.
- ~~(7)(6)~~ If the economic revitalization project is a totally separate facility:
- (a) Net income attributable to the project for the purposes of subsections ~~[(3), (4), and (5)]~~, **and (6)** of this section shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility; and
  - (b) Kentucky gross receipts or Kentucky gross profits attributable to the project for purposes of subsection ~~(4)(3)~~ of this section shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility.
- ~~(8)(7)~~ If the economic revitalization project is an expansion to a previously existing facility:
- (a) Net income attributable to the entire facility shall be determined under the separate accounting method reflecting only the gross income, deductions, expenses, gains, and losses allowed under KRS Chapter 141 directly attributable to the facility and overhead expenses apportioned to the facility, and the net income attributable to the economic revitalization project for the purposes of subsections ~~[(3), (4), and (5)]~~, **and (6)** of this section shall be determined by apportioning the separate accounting net income of the entire facility to the economic revitalization project by a formula approved by the department ~~[of Revenue]~~; and
  - (b) Kentucky gross receipts or Kentucky gross profits attributable to the entire facility shall be determined under the separate accounting method reflecting only the Kentucky gross receipts or Kentucky gross profits directly attributable to the facility. Kentucky gross receipts or Kentucky gross profits attributable to the economic revitalization project for purposes of subsection ~~(4)(3)~~ of this section shall be determined by apportioning the separate accounting Kentucky gross receipts or Kentucky gross profits of the entire facility to the economic revitalization project pursuant to a formula approved by the department ~~[of Revenue]~~.
- ~~(9)(8)~~ If an approved company can show to the satisfaction of the department ~~[of Revenue]~~ that the nature of the operations and activities of the approved company are such that it is not practical to use the separate accounting method to determine the net income, Kentucky gross receipts, or Kentucky gross profits from the facility at which the economic revitalization project is located, the approved company shall determine net income, Kentucky gross receipts, or Kentucky gross profits from the economic revitalization project using an alternative method approved by the department ~~[of Revenue]~~.
- ~~(10)(9)~~ The department ~~[of Revenue]~~ may issue administrative regulations and require the filing of forms designed by the department ~~[of Revenue]~~ to reflect the intent of KRS 154.26-010 to 154.26-100 and the allowable income tax credit which an approved company may retain under KRS 154.26-010 to 154.26-100.

➔Section 102. KRS 154.12-204 is amended to read as follows:

As used in KRS 154.12-205 to 154.12-208, unless the context requires otherwise:

- (1) ***"Agribusiness" has the same meaning as in Section 118 of this Act;***
- (2) ***"Alternative fuel production" has the same meaning as in Section 118 of this Act;***
- (3) "Applicant" means ~~a~~ ~~an educational institution,~~ business ~~or~~ industry that has made application for a grant-in-aid or skills training investment credit as authorized by KRS 154.12-205 to 154.12-208;
- ~~(4)(2)~~ "Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the corporation to receive grant-in-aid or skills training investment credits as provided by KRS 154.12-205 to 154.12-208;
- ~~(5)(3)~~ "Approved costs" means ***costs confirmed as eligible by the corporation, including:***
  - (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (b) The cost of supplies and materials used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (c) Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and
  - (d) All other costs of a nature comparable to those described in this subsection;
- ~~(6)(4)~~ "Board" means the board of directors of the Bluegrass State Skills Corporation;
- (7) ***"Carbon dioxide transmission pipeline" has the same meaning as in Section 118 of this Act;***
- (8) ***"Coal severing and processing" has the same meaning as in Section 118 of this Act;***
- ~~(9)(5)~~ "Corporation" means the Bluegrass State Skills Corporation, or BSSC;
- ~~(10)(6)~~ "Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent provider within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level or to adult persons without a high school diploma or its equivalent;
- ~~(11)(7)~~ "Employee" means any person:
  - (a) Who is currently a permanent full-time employee of the qualified company;
  - (b) Who is a resident of Kentucky, as that term is defined in KRS 141.010; and
  - (c) Who is paid the minimum base hourly wage plus employee benefits equal to or greater than fifteen percent (15%) of the minimum base hourly wage. If the qualified company does not provide employee benefits equal to at least fifteen percent (15%) of the minimum base hourly wage, the qualified company may still qualify if it provides the full-time employee total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the minimum base hourly wage through increased hourly wages combined with at least one (1) company-paid employee benefit;
- (12) ***"Energy-efficient alternative fuel production" has the same meaning as in Section 118 of this Act;***
- (13) ***"Gasification production" has the same meaning as in Section 118 of this Act;***
- ~~(14)(8)~~ "Grant-in-aid" means funding that is provided to ~~an educational institution and~~ qualified companies by the BSSC for the development or expansion of a program as provided in this chapter;
- (15) ***"Headquarters" has the same meaning as in Section 118 of this Act;***
- (16) ***"Hospital" has the same meaning as in Section 118 of this Act ;***
- (17) ***"Manufacturing" has the same meaning as in Section 118 of this Act;***
- ~~(18)(9)~~ "Minimum base hourly wage" means the minimum wage amount paid to an employee by a qualified company, which shall not be less than one hundred fifty percent (150%) of the federal minimum wage;



(19) **"Nonretail service or technology" means the same as in Section 118 of this Act;**

~~(20)(10)~~ "Occupational upgrade training" means employee training sponsored by a qualified company that is designed to qualify the employee for a promotional opportunity with the qualified company;

~~(21)(11)~~ "Program" or "program of skills training or education consistent with employment needs" means a coordinated course of instruction which is designed to prepare individuals for employment in a specific trade, occupation, or profession. Such instruction may include:

- (a) Classroom instruction;
- (b) Classroom-related field, shop, factory, office, or laboratory work; and
- (c) Basic skills, entry level training, job upgrading, retraining, and advance training;

~~(22)(12)~~ (a) "Qualified company" means any ~~person,~~ corporation, limited liability company, partnership, limited partnership, sole proprietorship, ~~firm, enterprise, franchise, association, organization, holding company, joint stock company, professional services corporation,~~ **business trust**, or any other legal entity through which business is conducted that ~~has been or is planning to be actively~~ **is planning to be engaged in** one (1) or more of the following activities within the Commonwealth:

1. Manufacturing;
2. Agribusiness;
3. Nonretail service or technology;
4. ~~Headquarter~~ ~~National or regional headquarter~~ operations, regardless of the underlying business activity of the company; ~~or~~
5. **Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production;** ~~Health care;~~
6. **Carbon dioxide transmission pipeline;**
7. **Coal severing and processing; or**
8. **Hospital operations.**

(b) "Qualified company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, ~~mining, coal or mineral processing,~~ the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, accommodation and food services, or public administration services; ~~or~~

~~(c) Other qualified companies may be included if specific funds for grants in aid to retail business and industry are appropriated by the General Assembly;~~

(23) **"Renewable energy production" means the same as in Section 118 of this Act;**

~~(24)(13)~~ "Skills upgrade training" means employee training sponsored by a qualified company that is designed to provide the employee with new skills necessary to enhance productivity, improve performance, or retain employment, including but not limited to technical and interpersonal skills, and training that is designed to enhance computer skills, communication skills, problem solving, reading, writing, or math skills of employees who are unable to function effectively on the job due to deficiencies in these areas, are unable to advance on the job, or who risk displacement because their skill deficiencies inhibit their training potential for new technology;

~~(25)(14)~~ "Skills training investment credit" means the credit against Kentucky income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, as provided in this subchapter; and

~~(26)(15)~~ "Technical assistance" means professional and any other assistance provided by qualified companies to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program as defined herein.

➔Section 103. KRS 154.12-206 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 not limited to the following:

- (1) 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 function and duties;
- (2) To adopt an official seal;
- (3) To sue and be sued in its own name;
- (4) To make contracts and execute all instruments necessary or convenient for the conduct of its business;
- (5) To make, execute, and effectuate all agreements with any federal or state agency or any person, corporation, association, partnership, or other organization or entity necessary to accomplish the purposes of this chapter;
- (6) To procure sufficient insurance coverage against any losses in connection with its property;
- (7) To accept any and all donations, grants, bequests, and devices, conditional or otherwise, of money, property, service, or other things of value which may be received from the United States, or any agency thereof, any governmental agency, an institution, person, firm, or corporation, public and private, to be held, used, or applied solely for the purposes specified in KRS 154.12-204 to 154.12-208. Receipt of each donation or grant shall be detailed in the annual report of the corporation. Such reports shall include the identity of the donor and the nature of the transaction;
- (8) To collect and disseminate to interested individuals, in cooperation with and through any agencies of federal, state, and municipal government, information concerning areas of present and projected employment need, programs of skills training and education consistent therewith, and any other relevant information;
- (9) To provide grants-in-aid to educational institutions and approved companies to encourage and facilitate the formation of comprehensive cooperative relationships between the public and private sectors which secure for such institutions the information, technical assistance, and financial support necessary for the development and significant expansion of programs of skills training and education consistent with employment need;
- (10) To prepare, publish, and distribute, with or without charge as the corporation may determine, such technical studies, reports, bulletins, and other materials as it deems appropriate; **and**
- (11) To organize, conduct, or sponsor special institutes, conferences, demonstrations, and studies to effectuate the purposes of KRS 154.12-204 to 154.12-208; ~~and~~
- ~~(12) To certify or decertify skills training providers, both public and private, including their teachers and instructors as approved providers of skills training services for a grant-in-aid.~~

➔Section 104. KRS 154.12-207 is amended to read as follows:

- (1) The corporation may, subject to appropriation from the General Assembly or from funds made available to the corporation from any other public or private source, provide grants-in-aid to ~~educational institutions, and~~ qualified companies, not in excess of two hundred thousand dollars (\$200,000) per grant-in-aid. Such grants-in-aid shall be used exclusively for programs which are consistent with the provisions of this chapter.
- (2) The corporation may, in accordance with KRS 154.12-204 to 154.12-208, award a skills training investment credit to an approved company. The amount of the skills training investment credit awarded by the corporation shall be an amount **not to exceed** ~~equal to~~ fifty percent (50%) of the amount of approved costs incurred by the approved company in connection with its program of occupational upgrade training or skills upgrade training, the credit amount not to exceed **two thousand** ~~five hundred~~ dollars **(\$2,000)** ~~(\$500)~~ per **trainee** ~~employee~~ and, in the aggregate, not to exceed **two** ~~one~~ hundred thousand dollars **(\$200,000)** ~~(\$100,000)~~ for each approved company per **fiscal year** ~~biennium~~. The corporation shall only approve one (1) application per **fiscal year** ~~biennium~~ for each approved company.
- (3) ~~(a)~~ To apply for a grant-in-aid or a skills training investment credit, a qualified company shall submit an application to the Bluegrass State Skills Corporation before commencing its program of skills upgrade or occupational upgrade training. Each application shall contain information the corporation requires, including but not limited to:
  - ~~(a)~~ A proposal for a program of skills upgrade training, occupational upgrade training, and education;
  - ~~(b)~~ A description of each component of the proposed training program and the number of employee training hours requested; **and**
  - ~~(c)~~ A statement of the total anticipated costs and expenses of the program, including a breakdown of the costs associated with equipment, personnel, facilities, and materials; ~~and~~

4. ~~With respect to educational institutions only, a statement of the technical assistance and financial support for the program received or pledged from a qualified company.~~
- (b) ~~To qualify for a grant-in-aid or a skills training investment credit in which an educational institution will provide training, an educational institution and a qualified company shall submit a joint application to the corporation. To qualify for a grant-in-aid or a skills training investment credit in which a provider other than an educational institution will provide training, the qualified company may independently submit a proposal to the corporation containing the same information as set forth in this subsection].~~
- (4) Approval of the grant-in-aid and skills training investment credit application by the board shall be based upon the following criteria:
- (a) The program must be within the scope of KRS 154.12-204 to 154.12-208;
- (b) Participants in the program must qualify as an employee as defined by KRS 154.12-204;
- (c) The program must involve an area of skills upgrade training, occupational upgrade training, and education which is needed by a qualified company and for which a shortage of qualified individuals exists within the Commonwealth; *and*
- (d) The grant-in-aid and skills training investment credit must be essential to the success of the program as the resources ~~[of the educational institution] are inadequate to attract the technical assistance and financial support necessary from a qualified company~~;
- (e) ~~The educational institution must have obtained a firm commitment from a qualified company for the information, technical assistance, and financial support which, together with the grant-in-aid or skills investment credit, the resources of the applicant, and support from any other source, is sufficient to ensure the success of the program. In addition, the commitment of financial support from an approved company shall be equal to or greater than the amount of the requested grant-in-aid or skills training investment credit; and~~
- (f) ~~The educational institution must have established adequate auditing procedures and reporting methods for the submission of information and data as required by the corporation].~~
- (5) After a review of applications for grant-in-aid and skills training investment credits, the corporation may designate the qualified company as an approved company and approve the maximum amount of grants and skills training investment credits the approved company is eligible to receive. The maximum amount of skills training investment credits approved for all qualified companies by the corporation ~~[for fiscal year 1998-1999 and fiscal year 1999-2000 shall not exceed one million dollars (\$1,000,000) and] shall not exceed two million five hundred thousand dollars (\$2,500,000) for each fiscal year~~~~[thereafter].~~ Skills training investment credits that remain unallocated by the corporation at the end of its fiscal year shall lapse and shall not be carried forward to a new fiscal year.
- (6) The approved company shall complete all programs of skills upgrade training or occupational upgrade training within one (1) year from the date of approval by the corporation and shall certify the completion of these programs to the corporation. Once they are completed and certified and all required documentation is provided and received by the corporation, the corporation shall disburse the grant funds or notify the approved company of the final authorized skills training investment credit.

➔Section 105. KRS 154.12-277 is amended to read as follows:

- (1) There is created in the Cabinet for Economic Development the Office of Entrepreneurship *and Small Business Innovation*. The office shall be headed by an executive director appointed by the secretary pursuant to KRS 154.10-050. The office shall be responsible for various forms of *entrepreneurship and* small business assistance, including but not limited to providing customer service and project management with small and minority businesses, assisting export development, administering the innovation assistance set forth in KRS 154.12-278, introducing entrepreneurs to individual investors and to investment capital firms interested in start-up and early-stage financing, and collecting, summarizing, and disseminating information helpful to small businesses, including information on market research, federal, state, and local minority business programs, government procurement opportunities, and the availability of managerial assistance.
- (2) The office shall include the Commission on Small Business *Innovation and* Advocacy established in KRS 11.200.

➔Section 106. KRS 154.12-278 is amended to read as follows:

- (1) As used in this section, "cluster" and "knowledge-based" shall have the same meaning as in KRS 164.6011.
- (2) The Office of Entrepreneurship *and Small Business Innovation* shall:
  - (a) Implement the Kentucky Innovation and Commercialization Center Program as set forth in KRS 154.12-300 to 154.12-310;
  - (b) Monitor the return on investments and effectiveness of the Kentucky Innovation Act initiatives as set forth in the Strategic Plan for the New Economy and prepare an annual report by November 1 of each year. The report shall be available on the Cabinet for Economic Development Web page as required by KRS 154.12-2035;
  - (c) Oversee the modernization initiative in KRS 154.12-274;
  - (d) Assist the cabinet in the recruitment of research and development companies;
  - (e) Assist the cabinet in the attraction of high-technology research and development centers;
  - (f) Support growth and creation of knowledge-based, innovative companies;
  - (g) Build the infrastructure for innovative businesses and promote networks of technology-driven clusters and research intensive industries;
  - (h) Administer the high-tech construction pool and the high-tech investment pool;
  - (i) Recommend projects to the Kentucky Economic Development Finance Authority for funding through the high-tech construction pool and high-tech investment pool; and
  - (j) Review and approve the annual plan which details the annual allocation of funds from the Science and Technology Funding Program, ~~prior to the Council on Postsecondary Education executing a contract with the science and technology organization to administer science and technology funding programs~~. As used in this paragraph, the Science and Technology Funding Program means the Kentucky *enterprise fund* ~~Enterprise Fund Program~~, the Rural Innovation Program, the Kentucky Commercialization Program, The Regional Technology Corporations/Innovation and Commercialization Center Satellites, ~~and~~ the Experimental Program to Stimulate Competitive Research/Kentucky Science and Engineering Foundation, *Small Business Innovation Research and Small Business Technology Transfer grants, and other government grant programs and funding programs as determined by the executive director of the Office of Entrepreneurship and Small Business Innovation.*
- (3) The high-tech construction pool shall be used for projects with a special emphasis on the creation of high-technology jobs and knowledge-based companies. The executive director, in administering the high-tech construction pool, shall recommend distribution of funds and projects to the Kentucky Economic Development Finance Authority for its approval. The executive director shall recommend any designated amount of pool funds to be set aside for any match requirements. Any funds used for matching purposes may include public and private funds.
- (4) The high-tech investment pool shall be used to build and promote technology-driven industries and research-intensive industries, as well as their related suppliers, with the goal of creating clusters of innovation-driven industries in Kentucky. The executive director, in administering the high-tech investment pool, shall be authorized to recommend funds to be used to support loans and grants, or to secure an equity or related position.
- (5) The Kentucky Economic Development Finance Authority shall *ensure* ~~assure~~ in their approval of funding of projects that the highest priority is given to knowledge-based companies in fulfillment of the purposes and intentions of the purposes of this section.

➔Section 107. KRS 154.12-310 is amended to read as follows:

- (1) The Kentucky Innovation and Commercialization Centers are private-public partnerships, operating as a cohesive statewide infrastructure to support the implementation of key Kentucky Innovation Act initiatives.
- (2) The organization of the ICCs shall *be a statewide network of Kentucky innovative hubs, with the location and services provided for each hub determined by the executive director of the Office of Entrepreneurship and Small Business Innovation* ~~include a central statewide headquarters and up to twelve (12) affiliate centers~~.

- (a) The ***Office of Entrepreneurship and Small Business Innovation shall be the central headquarters for the Kentucky innovative hubs and*** has primary responsibility for the following:
1. Managing and administering the ICC Program;
  2. Establishing uniform program application, protocol, and operating guidelines when appropriate;
  3. Supporting the protocol by creating and funding centralized services to be distributed throughout the network; and
  4. Identifying those issues, opportunities, and challenges that have statewide implications.
- (b) The regional affiliates are responsible for fulfilling the duties as set forth in KRS 154.12-305 relating to the implementation of the region's innovation strategic plan and supporting the implementation of the Kentucky Innovation Act initiatives in the region or subregion;
- (c) The satellites are responsible for generating technology business development in their assigned geographic area, acting as a bridge between individuals and businesses needing critical early state concept and development work and the affiliate centers that can provide this support.

The affiliates and satellites provide a valuable assurance for equal access to the Kentucky Innovation Act initiatives and funding, and provide an opportunity for full participation in rural and remote, as well as metropolitan, areas of the state.

- (3) The ***executive director of the Office of Entrepreneurship and Small Business Innovation*** ~~commissioner~~ shall have all the powers and authority, not explicitly prohibited by statute, necessary and convenient to carry out and effectuate the purposes of KRS 154.12-300 to 154.12-310.
- (4) The ***executive director of the Office of Entrepreneurship and Small Business Innovation*** ~~commissioner~~ may, in effectuating the provisions of KRS 154.12-300 to 154.12-310, contract with a science and technology organization as defined in KRS 164.6011 to administer and manage the ICC Program.

➔Section 108. KRS 154.12-2035 is amended to read as follows:

- (1) The cabinet shall maintain a searchable electronic database on its Web site containing information on the cost and status of the programs listed in subsection (3)(a) of this section. The database shall include all projects approved at any time in the last five (5) years and shall include for each, where applicable, the following information:
- (a) The name of the program, the recipient or participant, the type of project, and its location by county;
  - (b) Total and approved costs of the project or investment, and the amount of incentives or other benefits authorized;
  - (c) For the Kentucky Business Investment Program and the Kentucky Enterprise Initiative Act, the amount of incentives or other benefits actually recovered as self-reported by the recipient;
  - (d) The number of new jobs estimated and, for the Kentucky Business Investment Program, actually created, along with wage information for those jobs;
  - (e) Project status and the date and nature of the most recent activity; and
  - (f) Any other comparable data or information necessary to achieve transparency and accountability for the specified programs.
- (2) In addition to the electronic database required in subsection (1) of this section, the cabinet shall prepare an annual report on the programs listed in subsection (3) of this section and make it available on the Cabinet for Economic Development Web site by November 1 of each year. The report shall include all projects approved in the preceding fiscal year and shall provide for these projects the information specified in subsection (1) of this section plus aggregate data for each program, summary evaluations of program activity and effectiveness, and anything required by statute to be reported for any particular program. The report shall also list all projects that were approved in prior years but active at any time in the preceding fiscal year, although for these projects the report need not provide further data.
- (3) The following programs shall be subject to the reporting requirements of this section:
- (a) The electronic database required in subsection (1) of this section shall include the Bluegrass State Skills Corporation, grants-in-aid and skills training investment credit; Kentucky Business Investment Program; Kentucky Enterprise Initiative Act; Office of Entrepreneurship ***and Small Business***

**Innovation** programs; Incentives for Energy Independence Act; Kentucky Economic Development Finance Authority small business and direct loan programs; Kentucky Industrial Revitalization Act; Kentucky Reinvestment Act; Kentucky Small Business Tax Credit; economic development bonds; Kentucky Industrial Development Act; Kentucky Jobs Development Act; Kentucky Jobs Retention Act; the Kentucky Rural Economic Development Act; and

- (b) The annual report required by subsection (2) of this section shall include all programs listed in paragraph (a) of this subsection plus the Kentucky Investment Fund Act, and tax increment financing, state participation projects.

- (4) The cabinet shall coordinate with any other agency necessary to supply the information required by this section.

➔Section 109. KRS 154.20-230 is amended to read as follows:

As used in KRS 154.20-230 to 154.20-240:

- (1) "Application" means a document submitted by small businesses and investors, on a form supplied by the authority, for the purpose of requesting certification to participate in the program and to apply for a credit;
- (2) "Authority" means the Kentucky Economic Development Finance Authority;
- (3) "Commonwealth" means the Commonwealth of Kentucky;
- (4) "Credit" means the nonrefundable angel investor tax credit established by KRS 141.396 and awarded by the authority pursuant to KRS 154.20-236;
- (5) "Department" means the Department of Revenue;
- (6) "Enhanced incentive counties" has the same meaning as in KRS 154.32-010;
- (7) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (8) "Fee" means a nonrefundable application fee in an amount set by the authority, to be collected by the authority to offset the cost of administering KRS 154.20-230 to 154.20-240;
- (9) "Full-time employee" means a person that is required to work a minimum of thirty-five (35) hours per week and is subject to the tax imposed by KRS 141.020;
- (10) "Knowledge-based" has the same meaning as in KRS 164.6011;
- (11) (a) "Qualified activity" means any knowledge-based activity related to the new economy focus areas of the Office of Entrepreneurship *and Small Business Innovation*, including but not limited to:
  1. Bioscience;
  2. Environmental and energy technology;
  3. Health and human development;
  4. Information technology and communications; and
  5. Materials science and advanced manufacturing.
- (b) A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-230 to 154.20-240, or in violation of any law. *Notwithstanding this paragraph, an entity involved in other technological advances may be deemed to be engaged in qualified activity, as determined by the executive director of the Office of Entrepreneurship and Small Business Innovation;*
- (12) "Qualified investment" means an investment meeting the requirements of KRS 154.20-234 for qualified investments, and certified pursuant to KRS 154.20-236;

- (13) "Qualified investor" means an individual investor meeting the requirements of KRS 154.20-234 for qualified investors, and certified pursuant to KRS 154.20-236; and
- (14) "Qualified small business" means an entity meeting the requirements of KRS 154.20-234 for qualified small businesses, and certified pursuant to KRS 154.20-236.

➔Section 110. KRS 154.20-232 is amended to read as follows:

- (1) KRS 154.20-230 to 154.20-240 shall be known as the "Kentucky Angel Investment Act."
- (2) The purpose of KRS 141.396 and 154.20-230 to 154.20-240 is to encourage capital investment in the Commonwealth by individual investors that will further the establishment or expansion of small businesses, create additional jobs, and foster the development of new products and technologies, by providing tax credits for certain investments in small businesses located in the Commonwealth, operating in the fields of knowledge-based, high-tech, and research and development, and showing a potential for rapid growth.
- (3) To participate in the program created by KRS 141.396 and 154.20-230 to 154.20-240:
- (a) Small businesses and individual investors shall request certification from the authority pursuant to KRS 154.20-236. To be qualified, the small businesses and individual investors shall fulfill the requirements outlined in KRS 154.20-234; ~~and~~
- (b) Once certified, qualified investors ~~may make investments in qualified small businesses, and~~ may apply to the authority for a credit in return for making the investment if that investment qualifies under KRS 154.20-234; *and*
- (c) *Once the authority certifies the qualified investment, the qualified investor may effectuate the investment, pursuant to any and all guidelines issued by the authority.*
- (4) Any qualified investment made in a qualified small business under KRS 154.20-230 to 154.20-240 shall be used by that business, insofar as possible, to leverage additional capital investments from other sources.

➔Section 111. KRS 154.20-234 is amended to read as follows:

- (1) The requirements for small businesses, investors, and investments to be qualified for participation in the Angel Investor Program are as follows:
- (a)~~(1)~~ To be certified as a qualified small business, the business shall demonstrate to the authority that it is an entity which, at the time the small business requests certification:
- 1.~~(a)~~ Has a net worth of ten million dollars (\$10,000,000) or less or net income after federal income taxes for each of the two (2) preceding fiscal years of three million dollars (\$3,000,000) or less;
- 2.~~(b)~~ Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a qualified investment by a qualified investor;
- 3.~~(c)~~ Has no more than one hundred (100) full-time employees;
- 4.~~(d)~~ Has more than fifty percent (50%) of its assets, operations, and employees located in the Commonwealth; and
- 5.~~(e)~~ Has at no time received an aggregate amount of qualified investments that has allowed qualified investors to receive more than one million dollars (\$1,000,000) in angel investor credits;
- (b)~~(2)~~ To be certified as a qualified investor, an individual investor shall demonstrate to the authority that he or she:
- 1.~~(a)~~ Is an individual natural person *who may utilize a single-member limited liability company to make the investment as long as the individual natural person is the owner and the limited liability company is a disregarded entity*;
- 2.~~(b)~~ Qualifies as an accredited investor pursuant to Regulation D of the United States Securities and Exchange Commission, 17 C.F.R. sec. 230.501, in effect as of the date the individual investor requests certification;
- 3.~~(c)~~ Does not hold in excess of twenty percent (20%) ownership interest in, and is not employed by, the qualified small business prior to making the qualified investment in that qualified small business;

~~4.(d)~~ Is not closely related to an individual who holds in excess of twenty percent (20%) ownership interest in, or who is employed by, the qualified small business prior to making the qualified investment in that qualified small business. For purposes of this ~~subparagraph~~~~(paragraph)~~, "closely related" means any of the following in relation to the owner or owners or spouse of the owner or owners:

- ~~a.(1)~~ Parents or grandparents;
- ~~b.(2)~~ Children or their spouses; or
- ~~c.(3)~~ Siblings or their spouses; and

~~5.(e)~~ Seeks a financial return from the investment made in the qualified small business; *and*

~~(c)(3)~~ To be certified as a qualified investment, the investment shall:

- ~~1.(a)~~ Be a cash investment of at least ten thousand dollars (\$10,000), in a qualified small business by a qualified investor; and
- ~~2.(b)~~ Be offered and executed in compliance with applicable state and federal securities laws and regulations.~~(and)~~

(2) ***In consideration for the qualified investment, the qualified investor shall receive an equity interest, or a near equity interest, such as a simple agreement for future equity, or "SAFE agreement", or a convertible debt instrument in the qualified small business.***

~~(3)(4)~~ The authority may establish additional requirements and guidelines for the efficient implementation and administration of the Kentucky Angel Investment Act and to carry out its purposes.

→Section 112. KRS 154.20-254 is amended to read as follows:

As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:

- (1) "Affiliate" means any person or entity who directly or indirectly, through one (1) or more intermediaries, controls or is controlled by or is under common control with another person or entity;
- (2) "Agreement" means an investment fund agreement entered into pursuant to KRS 154.20-255(5) by the authority and an investment fund manager on behalf of the investment fund, the investment fund manager, and any investor in the investment fund;
- (3) "Amended application" means a document submitted by an investment fund manager, in a form acceptable to the authority and on behalf of an investment fund, for the purpose of increasing the aggregate amount of available tax credits;
- (4) "Applicant" means any person or entity who has not received approval from the authority as an investment fund manager, but who has submitted or will submit an application to the authority for approval as an investment fund manager;
- (5) "Authority" means the Kentucky Economic Development Finance Authority or its designee;
- (6) "Cash contribution" means an investment of money by an investor in an investment fund under the terms of KRS 154.20-250 to 154.20-284;
- (7) "Committed cash contribution" means a legally binding agreement by an investor to make a cash contribution in an amount set forth in a written agreement between an investor and an investment fund;
- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Credit" means a nonrefundable credit for investors against state tax liability allocated and granted by the authority pursuant to KRS 154.20-258 for qualified investments made by approved investment funds;
- (10) "Entity" means any corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (11) "Financial institution" means "financial institution" as defined in KRS 136.500(10) and includes savings and loan associations, savings banks, and similar institutions subject to the taxes imposed by KRS 136.290, 136.300, or 136.310;



- (12) "Insurance company" means any insurance company subject to the taxes imposed by KRS 136.320, 136.330, or 304.3-270;
- (13) "Investment fund" means any entity that is organized by an investment fund manager in compliance with applicable state and federal securities laws and regulations, and is approved by the authority to make qualified investments pursuant to KRS 154.20-256;
- (14) "Investment fund manager" means any person or entity that has been approved by the authority to manage one (1) or more investment funds authorized under the provisions of KRS 154.20-250 to 154.20-284 and is in compliance with all applicable federal and state regulations;
- (15) "Investor" means any person or entity, including financial institutions and insurance companies, that is subject to state tax liability and that makes a cash contribution or a committed cash contribution to an investment fund in accordance with the provisions of KRS 154.20-250 to 154.20-284 and has not been convicted of violating any of Kentucky's tax laws within the past ten (10) years;
- (16) **"Knowledge-based" has the same meaning as in Section 131 of this Act;**
- (17) "Nonprofit entity" means an investor that is exempt from federal income tax under Section 501(c) of the Internal Revenue Code of 1986, as amended;
- ~~(18)(17)~~ "Qualified activity" **has the same meaning as in Section 109 of this Act**~~means any industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, agricultural enterprise, or agribusiness activity. A "qualified activity" does not include any activity principally engaged in by financial institutions, commercial development companies, credit companies, financial or investment advisors, brokerage or financial firms, other investment funds or investment fund managers, charitable and religious institutions, oil and gas exploration companies, insurance companies, residential housing developers, retail establishments, or any activity that the authority determines in its discretion to be against the public interest, against the purposes of KRS 154.20-250 to 154.20-284, or in violation of any law;~~
- ~~(19)(18)~~ "Qualified investment" means an investment of **at least ten thousand dollars (\$10,000)**~~money~~ in a small business by an investment fund, in compliance with applicable state and federal securities laws and regulations, seeking a financial return based upon that consideration. In consideration for the qualified investment, the investment fund shall receive an equity interest in the small business, such as a general or limited partnership interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached; and
- ~~(20)(19)~~ "Small business" means any entity which at the time a qualified investment is made by an investment fund:
- (a) 1. Has a net worth of five million dollars (\$5,000,000) or less or net income after federal income taxes for each of the two (2) preceding fiscal years of three million dollars (\$3,000,000) or less; or
  2. Is a knowledge-based business, as shall be prescribed by the commissioner of the Department of Commercialization and Innovation, and has a net worth of ten million dollars (\$10,000,000) or less;
  - (b) Is actively and principally engaged in a qualified activity within the Commonwealth, or will be actively and principally engaged in a qualified activity within the Commonwealth after the receipt of a qualified investment by an investment fund;
  - (c) Has no more than one hundred (100) employees; and
  - (d) Has more than fifty percent (50%) of its assets, operations, and employees located in Kentucky.

➔Section 113. KRS 154.20-255 is amended to read as follows:

- (1) (a) The total amount of credits available to any single investment fund awarded credits under KRS 154.20-250 to 154.20-284 shall not exceed, in aggregate:~~;~~
  1. **For any calendar year beginning prior to January 1, 2022**, eight million dollars (\$8,000,000) for all investors and all taxable years; **and**
  2. **In any calendar year beginning on or after January 1, 2022**, one million dollars (\$1,000,000).

- (b) ~~The total tax credits available for all investors in all investment funds awarded under KRS 154.20-250 to 154.20-284, and all qualified investors awarded under KRS 154.20-230 to 154.20-240, shall not exceed a total of forty million dollars (\$40,000,000) for all years prior to December 31, 2020.~~
- (c) The total credit available for all investors in all investment funds awarded under KRS 154.20-250 to 154.20-284 shall not exceed a total of three million dollars (\$3,000,000) in any calendar year beginning on or after January 1, 2021.†
- (d) ~~The authority shall not grant preliminary or final approval for applications received for the Kentucky Investment Fund Act on or after January 1, 2019, but may resume approving applications received on or after January 1, 2021.‡~~
- (2) A person or entity seeking to be approved as an investment fund manager for the operation of one (1) or more investment funds shall make written application to the authority pursuant to KRS 154.20-256, in addition to complying with applicable state and federal securities laws and regulations.
- (3) Prior to the granting of any tax credits to investors of an investment fund, the committed cash contributions to an investment fund shall be not less than five hundred thousand dollars (\$500,000).
- (4) (a) An investment fund shall have no less than four (4) investors, and no investor or investment fund manager, including their *closely related* ~~immediate~~ family members ~~, as defined in KRS 164.6011(6)~~, and affiliates may own or have a capital interest in more than forty percent (40%) of the investment fund's capitalization.
- (b) *As used in this subsection, "closely related" means any of the following in relation to the investor, the investor's spouse, the fund manager, or the fund manager's spouse:*
1. *Parents or grandparents;*
  2. *Children or their spouses; or*
  3. *Siblings or their spouses.*
- (5) Subsequent to approval of the investment fund and the investment fund manager, the authority and the investment fund manager, on behalf of itself and any investors in the investment fund, shall enter into an agreement with respect to the investment fund. The terms and provisions of each agreement shall be determined by negotiations between the authority and the investment fund manager. The effective date of the agreement shall be the date of approval of the investment fund and the investment fund manager by the authority. If an investment fund manager fails to comply with any of the obligations of the agreement, the authority may, at its option, do any one (1) or more of the following:
- (a) Suspend the availability of the credits;
  - (b) Pursue any remedy provided under the agreement, including termination of the agreement; or
  - (c) Pursue any other remedy at law to which it may be entitled.
- (6) Any investor shall be entitled to a tax credit as a result of its investment in an investment fund as provided in KRS 154.20-258.
- (7) Total qualified investments made by an investment fund, including initial and subsequent investments made by an investment fund, in any single small business using approved qualified investments, shall not exceed thirty percent (30%) of the committed cash contributions to the investment fund. This restriction shall not apply to investments of money by the investment fund that are not qualified investments.
- (8) The provisions of this section shall not prohibit an investment fund from investing in a business that is not a small business, including a business that is located outside of the Commonwealth; however, such investments shall not be eligible for the tax credit set forth in KRS 154.20-258.
- ➔Section 114. KRS 154.20-256 is amended to read as follows:
- (1) The approval of investment funds and investment fund managers shall be made pursuant to an application to the authority submitted by a proposed fund manager on behalf of a proposed investment fund and shall include:
- (a) The name, address, and Social Security number or employer identification number, as applicable, of the investment fund manager and the investment fund;

- (b) The applicant's business plan, including the minimum and maximum amount of cash contributions to be solicited for the investment fund, and strategy for operation of the proposed investment fund;
  - (c) The amount of credits the investment fund seeks for making qualified investments;
  - (d) The applicant fund manager's relevant experience and demonstrated ability to manage the proposed investment fund;
  - (e) The location and account number of a bank account that has been established for use by the investment fund;
  - (f) The exemption or registration provision that is being relied upon or intended to be relied upon by both the investment fund and the investment fund manager to permit this offering of securities and the activity of the investment fund manager in relation to the offering, in compliance with applicable state and federal securities laws and regulations;
  - (g) A representation that the investment fund and the investment fund manager are and shall remain in compliance with applicable state and federal securities regulations; and
  - (h) Any additional information the authority deems necessary.
- (2) The applicant shall include copies of the following documents as attachments to the application:
- (a) The disclosure documents used in connection with the offering and investment in the investment fund;
  - (b) The disclosure documents provided to each investor which state that:
    1. The investor has certain rights, responsibilities, and liabilities pursuant to KRS 154.20-250 to 154.20-284;
    2. The Commonwealth shall be immune from liability for any losses or damages investors, investment funds, or investment fund managers may incur pursuant to KRS 154.20-279;
    3. No tax credit shall be available under the provisions of KRS 154.20-250 to 154.20-284 until the investment fund and the investment fund manager have complied with applicable state and federal securities laws and regulations and have been approved by the authority, and an agreement has been executed, and the terms of that agreement have been disclosed in writing to each investor; and
    4. Investors shall lose all rights to any unused credits allocated to an investment fund that does not make a qualified investment within one (1) year of the date of the agreement with the authority or within any one (1) year period thereafter through the end of the term of the agreement.

An applicant soliciting cash contributions for the initial capitalization of an investment fund, or an investment fund manager soliciting additional cash contributions for an approved investment fund, shall disclose in advance and in writing to each potential investor those items described in this subsection in addition to any other items required by law or by agreement.

- (3) The authority shall have, in addition to its other powers provided in this chapter and as otherwise provided by law, all powers and authority, not explicitly prohibited by statute, that are necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of KRS 154.20-250 to 154.20-284, including but not limited to power to:
- (a) Require consultation, advisory, and legal fees and other expenses the authority deems necessary or incident to the preparation, adoption, implementation, modification, or enforcement of the terms of any agreement or other document, or otherwise necessary or incident to any transaction;
  - (b) Require the investment fund manager to pay these fees and expenses directly to the person providing such consultation, advisory, legal, or other services on behalf of the authority; and
  - (c) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

Any payments made by an investment fund manager pursuant to this subsection may be passed on to the investment fund manager's investment fund.

- (4) An investment fund's stated purpose shall be primarily to encourage and assist in the creation, development, or expansion of small businesses located in Kentucky.

- (5) The criteria considered by the authority for the approval of investment fund managers and the maximum amount of credits allocated to the investors of an investment fund shall include but not be limited to:
- (a) Compliance by those persons with applicable state and federal securities laws and regulations;
  - (b) A review of the application;
  - (c) The investment strategy for the investment fund;
  - (d) The relevant experience of the applicant fund manager or, if the applicant fund manager is an entity, the applicant's management;
  - (e) The applicant's demonstrated ability to manage the investment fund; and
  - (f) The amount of credits requested by the investment fund and the total amount of credits which may be granted to investors under KRS 154.20-258.
- (6) Following the making of a qualified investment, the investment fund manager shall within **eighty (80)**~~sixty (60)~~ days file a disclosure form with the authority detailing the following information:
- (a) The name and address of the small business in which the qualified investment was made;
  - (b) The amount of the qualified investment; and
  - (c) The name, address, and Social Security number or employer identification number, as may be applicable, of each investor and the amount of credit allocated to each investor by virtue of the investor's proportional ownership interest in the qualified investment.
- (7) An investment fund manager and its affiliates may operate no more than three (3) separate investment funds pursuant to separate applications submitted to and approved by the authority, provided the investment fund manager is in compliance with any applicable state and federal securities laws and regulations as evidenced by a written statement to the authority by an investment fund manager to that effect.
- (8) An investment fund manager seeking to expand a previously approved investment fund shall submit to the authority an amended application in a form acceptable to the authority.
- (9) An investment fund shall lose all unused credits that are available to its investors if the investment fund does not make a qualified investment within one (1) year of the date of the agreement or within any one (1) year period thereafter through the end of the term of the agreement.
- (10) The contents of the information form required under subsections (1), (2), and (6) of this section shall be treated by the authority and by the Department of Revenue as confidential and shall not be considered public records under KRS 61.870 to 61.884.
- (11) The authority, in consultation with the Department of Revenue, may establish additional procedures and standards, as it deems necessary for the approval of investment funds and investment fund managers, and for the allocation and granting of investment tax credits by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.

➔Section 115. KRS 154.20-258 is amended to read as follows:

- (1) (a) ***For qualified investments made prior to January 1, 2022***, an investor shall be entitled to a nonrefundable credit equal to forty percent (40%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority. The aggregate tax credit available to any investor shall not exceed forty percent (40%) of the cash contribution made by the investor to its investment fund.
- (b) ***For qualified investments made on or after January 1, 2022, an investor shall be entitled to a nonrefundable credit not to exceed twenty-five percent (25%) of the investor's proportional ownership share of all qualified investments made by its investment fund and verified by the authority.***
- (c) The credit may be applied against:
- 1.~~(a)~~ Both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205;
  - 2.~~(b)~~ The insurance taxes imposed by KRS 136.320, 136.330, and 304.3-270; and
  - 3.~~(c)~~ The taxes on financial institutions imposed by KRS 136.300, 136.310, and 136.505.

- (2) The tax credit amount that may be claimed by an investor in any tax year shall not exceed fifty percent (50%) of the initial aggregate credit amount approved by the authority for the investment fund which would be proportionally available to the investor. An investor may first claim the credit granted in subsection (1) of this section in the year following the year in which the credit is granted.
- (3) If the credit amount that may be claimed in any tax year, as determined under subsections (1) and (2) of this section, exceeds the investor's combined tax liabilities against which the credit may be claimed for that year, the investor may carry the excess tax credit forward until the tax credit is used, but the carry-forward of any excess tax credit shall not increase the fifty percent (50%) limitation established by subsection (2) of this section. Any tax credits not used within fifteen (15) years of the approval by the authority of the aggregate tax credit amount available to the investor shall be lost.
- (4) The tax credits allowed by this section shall not apply to any liability an investor may have for interest, penalties, past due taxes, or any other additions to the investor's tax liability. The holder of the tax credit shall assume any and all liabilities and responsibilities of the credit.
- (5) The tax credits allowed by this section are not transferable, except that:
- (a) A nonprofit entity may transfer, for some or no consideration, any or all of the credits it receives under this section and any related benefits, rights, responsibilities, and liabilities. Within thirty (30) days of the date of any transfer of credits pursuant to this subsection, the nonprofit entity shall notify the authority and the Department of Revenue of:
    1. The name, address, and Social Security number or employer identification number, as may be applicable, of the party to which the nonprofit entity transferred its credits;
    2. The amount of credits transferred; and
    3. Any additional information the authority or the Department of Revenue deems necessary.
  - (b) If an investor is an entity and is a party to a merger, acquisition, consolidation, dissolution, liquidation, or similar corporate reorganization, the tax credits shall pass through to the investor's successor.
  - (c) If an individual investor dies, the tax credits shall pass to the investor's estate or beneficiaries in a manner consistent with the transfer of ownership of the investor's interest in the investment fund.
- (6) The tax credit amount that may be claimed by an investor shall reflect only the investor's participation in qualified investments properly reported to the authority by the investment fund manager. No tax credit authorized by this section shall become effective until the Department of Revenue receives notification from the authority that includes:
- (a) A statement that a qualified investment has been made that is in compliance with KRS 154.20-250 to 154.20-284 and all applicable regulations; and
  - (b) A list of each investor in the investment fund that owns a portion of the small business in which a qualified investment has been made by virtue of an investment in the investment fund, and each investor's amount of credit granted to the investor for each qualified investment.

The authority shall, within sixty (60) days of approval of credits, notify the Department of Revenue of the information required pursuant to this subsection and notify each investor of the amount of credits granted to that investor, and the year the credits may first be claimed.

- (7) After the date on which investors in an investment fund have cumulatively received an amount of credits equal to the amount of credits allocated to the investment fund by the authority, no investor shall receive additional credits by virtue of its investment in that investment fund unless the investment fund's allocation of credits is increased by the authority pursuant to an amended application.}
- ~~(8) The maximum amount of credits to be authorized by the authority shall be three million dollars (\$3,000,000) for each of fiscal years 2002-03 and 2003-04.]~~

➔Section 116. KRS 154.20-277 is amended to read as follows:

- (1) ~~[Each investment fund manager shall cause the books and records of the investment fund to be audited on an annual basis by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. The audit shall address the financial condition of the investment fund and compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.]~~ Each year the **annual financial statements and annual reports of the investment fund shall be** ~~[audit report shall be completed and~~

~~certified by the independent certified public accountant and~~ delivered to the authority within ninety (90) days after the end of the investment fund's fiscal year.

- (2) The authority and the Department of Revenue, individually or collectively, may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, employees, or investors of an investment fund regarding the affairs and business of the investment fund. The authority and the Department of Revenue, individually or collectively, may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may be reported to the Franklin Circuit Court, which shall enforce the subpoena or subpoena duces tecum according to the rules of civil or criminal procedure, as applicable.
- (3) In addition to the audits required by this section, the authority or the Department of Revenue may audit one (1) or more investment funds or investment fund managers in any year on a random basis or for cause. The authority or the Department of Revenue may also audit, for cause, any small business in which an investment fund has made a qualified investment. Nothing in this section shall be construed to prohibit the Department of Revenue from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the Department of Revenue determines to be appropriate.
- (4) If any audit conducted pursuant to this section discloses that an investment fund or investment fund manager is not in compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284, the authority and the Department of Revenue may consult with one another with respect to this noncompliance and the Department of Revenue may exercise any of its powers to protect the Commonwealth's interest and to enforce the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.
- (5) The authority may give an investment fund manager written notice of any noncompliance with the provisions of KRS 154.20-250 to 154.20-284 and specify a period of time the investment fund manager shall have to cure any noncompliance. Failure to cure any such noncompliance within the period of time specified by the authority may result in further action by the authority pursuant to this section.
- (6) Nothing in this section shall be construed to prohibit the Department of Financial Institutions, Division of Securities, or any other securities regulatory organization or body with jurisdiction over the activity of an investment fund or the investment fund manager from conducting any examination or investigation relating to the securities activities of the investment fund or investment fund manager. If any examination or investigation conducted pursuant to any securities laws or regulations discloses that an investment fund or investment fund manager is not in compliance with any provision of any applicable securities laws or regulations, the appropriate securities regulator may take whatever action it deems appropriate in accordance with such securities laws and regulations to respond to the noncompliance, notwithstanding any action the authority or the Department of Revenue may or may not take with respect to the noncompliance.

➔Section 117. KRS 154.31-010 is amended to read as follows:

As used in this subchapter:

- (1) "Agreement" means an agreement entered into pursuant to KRS 154.31-030 between the authority and an approved company;
- (2) "Alternative fuel production" *has the same meaning as in Section 118 of this Act*~~{means a Kentucky operation that primarily produces for sale alternative transportation fuels. The alternative fuel production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels.}~~
- ~~(3) "Alternative transportation fuels" has the same meaning as in KRS 152.715;~~
- ~~(3)(4)~~ "Approved company" means an eligible company that has received approval from the authority for a sales and use tax incentive under this subchapter;
- ~~(4)(5)~~ "Approved recovery amount" means the maximum sales and use tax incentive recoverable by an approved company as established in the agreement;
- ~~(5)(6)~~ "Authority" means the Kentucky Economic Development Finance Authority;
- ~~(7) "Biomass resources" has the same meaning as in KRS 152.715;~~
- ~~(6)(8)~~ "Carbon dioxide transmission pipeline" *has the same meaning as in Section 118 of this Act*~~{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 the point of sale, storage, or other carbon management applications];~~

(7) **"Coal severing and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;**

~~(8)(9)~~ "Department" means the Department of Revenue;

~~(9)(10)~~ "Economic development project" means:

- (a) 1. The acquisition or construction of a new facility; or
2. The expansion or rehabilitation of an existing facility; or
- (b) The installation and equipping of a facility;

by an eligible company at a specific site in the Commonwealth to be used in an activity conducted by the approved company;

~~(10)(11)~~ "Electronic processing" means the use of technology having electronic, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, now in existence or later developed to perform a service or technology activity;

~~(11)(12)~~ (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or other legal entity **with a proposed economic development project** that is primarily engaged in **or planning to be engaged in one (1) or more of the following activities within the Commonwealth:**

1. Manufacturing;
2. **Nonretail** service or technology activities;
3. Agribusiness;
4. Headquarters operations;
5. Alternative fuel, gasification, energy-efficient alternative fuel or renewable energy production;
6. Carbon dioxide transmission pipelines;
7. **Coal severing and processing;**
8. **Hospital operations;** or
9. In operating or developing a tourism attraction.

(b) "Eligible company" does not include any company whose primary activity **to be conducted within the Commonwealth** is **forestry, fishing, the provision of utilities, construction, wholesale trade, retail trade**~~(sales)~~, **real estate, rental and leasing, educational services, food services, or public administration services;**

~~(12)(13)~~ "Eligible expenses" means the amount expended for:

- (a) Building and construction materials permanently incorporated as an improvement to real property as part of an economic development project; or
- (b) Equipment used for research and development or electronic processing at an economic development project;

if the Kentucky sales and use tax imposed by KRS Chapter 139 is paid on the purchase of the materials or equipment at the time of purchase;

~~(13)(14)~~ "Energy-efficient alternative fuel production" **has the same meaning as in Section 118 of this Act**~~(means a Kentucky operation that produces energy-efficient alternative fuels for sale;~~

~~(15)~~ "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];

- (14)(16) (a) "Equipment" means tangible personal property which is subject to depreciation under Sections 167 and 168 of the Internal Revenue Code, including assets which are expensed under Section 179 of the Internal Revenue Code, and that is used in the operation of a business.
- (b) "Equipment" does not include any tangible personal property used to maintain, restore, mend, or repair machinery or equipment, consumable operating supplies, office supplies, or maintenance supplies;
- (15)(17) "Gasification process" *has the same meaning as in Section 118 of this Act*~~means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;~~
- ~~(18) "Gasification production" means a Kentucky operation that primarily produces for sale:~~
- ~~(a) Alternative transportation fuels;~~
- ~~(b) Synthetic natural gas;~~
- ~~(c) Chemicals;~~
- ~~(d) Chemical feedstocks; or~~
- ~~(e) Liquid fuels;~~
- ~~from coal, waste coal, coal processing waste, or biomass resources, through a gasification process. The gasification production may produce electricity as a by product if the primary function of the operations remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels];~~
- (16)(19) "Headquarters" means the principal office where the principal executives of the entity are located and from which other personnel, branches, affiliates, offices, or entities are controlled;
- (17) *"Hospital" has the same meaning as in Section 118 of this Act;*
- (18)(20) (a) "Manufacturing" *has the same meaning as in Section 118 of this Act*~~means to make, assemble, process, produce, or perform any activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities.~~
- ~~(b) "Manufacturing" does not include any activity involving the performance of work classified by the divisions, including successor divisions, of mining in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication];~~
- (19) *"Nonretail service and technology" has the same meaning as in Section 118 of this Act;*
- (20)(21) "Project term" means the time for which an agreement shall be in effect. The project term shall be established in the agreement and shall not exceed seven (7) years;
- (21)(22) "Renewable energy production" *has the same meaning as in Section 118 of this Act*~~means a Kentucky operation that utilizes wind power, biomass resources, landfill methane gas, hydropower, solar power, or other similar renewable resources to generate electricity for sale to unrelated entities]; and~~
- (22)(23) (a) "Research and development" means experimental or laboratory activity that has as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products, or the development or improvement of methods for producing products.
- (b) "Research and development" does not include testing or inspection of materials or products for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities, or research in connection with literary, historical, or similar projects];
- ~~(24) "Service or technology" means any nonretail activity using technology or providing a service, including but not limited to:~~
- ~~(a) Administration and processing activities;~~
- ~~(b) Research and development;~~
- ~~(c) Telephone or Internet sales or services;~~



~~(d) Distribution or fulfillment of orders;~~

~~(e) Data processing; and~~

~~(f) Similar activities;~~

~~provided to customer or affiliate entities primarily outside the Commonwealth and designed to serve a multistate, national, or international market; and~~

~~(25) "Synthetic natural gas" has the same meaning as in KRS 152.715].~~

→Section 118. KRS 154.32-010 is amended to read as follows:

(1) "Activation date" means the date established in the tax incentive agreement that is within two (2) years of final approval;

~~(2) ["Advance disbursement" means the disbursement of incentives prior to the activation date;~~

~~(3) ]"Affiliate" means the following:~~

(a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;

(b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;

(c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;

(d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:

1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:

a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and

b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

(e) A grantor and a fiduciary of any trust;

(f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(g) A fiduciary of a trust and a beneficiary of that trust;

(h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(k) A corporation, a partnership, or a limited partnership if the same persons own:

1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and

2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
  - (l) A corporation and a limited liability company if the same persons own:
    1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
    2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
  - (m) A partnership or limited partnership and a limited liability company if the same persons own:
    1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
    2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
  - (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended;
  - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended; or
  - (p) Two (2) or more limited liability companies, if the same persons own more than fifty percent (50%) of the capital interest or are entitled to more than fifty percent (50%) of the capital profits in the limited liability companies;
- ~~(3)~~~~(4)~~ "Agribusiness" means the processing of raw agricultural products, including but not limited to timber and industrial hemp, or the performance of value-added functions with regard to raw agricultural products;
- ~~(4)~~~~(5)~~ "Alternative fuel production" means a Kentucky operation that primarily produces alternative transportation fuels for sale. The alternative fuel production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels;
- ~~(5)~~~~(6)~~ "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- ~~(6)~~~~(7)~~ "Approved company" means an eligible company that has received final approval to receive incentives under this subchapter;
- ~~(7)~~~~(8)~~ "Approved costs" means the amount of eligible costs approved by the authority at final approval;
- ~~(8)~~~~(9)~~ "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- ~~(9)~~~~(10)~~ "Biomass resources" has the same meaning as in KRS 152.715;
- ~~(10)~~~~(11)~~ "Capital lease" means a lease classified as a capital lease by the Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976, as amended;
- ~~(11)~~~~(12)~~ "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 the point of sale, storage, or other carbon management applications;
- (12) "Coal severing and processing" means activities resulting in the eligible company being subject to the tax imposed by KRS Chapter 143;**
- (13) "Commonwealth" means the Commonwealth of Kentucky;
- (14) "Confirmed approved costs" means:
- (a) For owned economic development projects, the documented eligible costs incurred on or before the activation date; or
  - (b) For leased economic development projects:
    1. The documented eligible costs incurred on or before the activation date; and

2. Estimated rent to be incurred by the approved company throughout the term of the tax incentive agreement.

For both owned and leased economic development projects, "confirmed approved costs" may be less than approved costs, but shall not be more than approved costs;

(15) "Department" means the Department of Revenue;

(16) "Economic development project" means:

- (a) The acquisition, leasing, or construction of a new facility;
- (b) The acquisition, leasing, rehabilitation, or expansion of an existing facility; or
- (c) The installation and equipping of a facility;

by an eligible company. "Economic development project" does not include any economic development project that will result in the replacement of facilities existing in the Commonwealth, except as provided in KRS 154.32-060;

(17) (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity with a proposed economic development project that is engaged in or is planning to be engaged in one (1) or more of the following activities within the Commonwealth:

1. Manufacturing;
2. Agribusiness;
3. Nonretail service or technology;
4. Headquarters operations, regardless of the underlying business activity of the company;
5. Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production;{  
or}
6. Carbon dioxide transmission pipeline;
7. ***Coal severing and processing; or***
8. ***Hospital operations.***

(b) "Eligible company" does not include companies where the primary activity to be conducted within the Commonwealth is forestry, fishing, ~~mining, coal or mineral processing,~~ the provision of utilities, construction, wholesale trade, retail trade, real estate, rental and leasing, educational services, accommodation and food services, or public administration services;

(18) "Eligible costs" means:

(a) For owned economic development projects:

1. Start-up costs;
2. Nonrecurring obligations incurred for labor and nonrecurring payments to contractors, subcontractors, builders, and materialmen in connection with the economic development project;
3. The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
4. The cost of contract bonds and of insurance of all kinds that may be required or necessary for completion of an economic development project which is not paid by a contractor or otherwise provided for;
5. All costs of architectural and engineering services, including test borings, surveys, estimated plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required for construction of the economic development project;
6. All costs which are required to be paid under the terms of any contract for the economic development project;

7. All costs incurred for construction activities, including site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; construction and installation of railroad spurs as needed to connect the economic development project to existing railways; or similar activities as the authority may determine necessary for construction of the economic development project; and
  8. All other costs of a nature comparable to those described above; and
- (b) For leased economic development projects:
1. Start-up costs;
  2. Building/leasehold improvements; and
  3. Fifty percent (50%) of the estimated annual rent for each year of the tax incentive agreement.

Notwithstanding any other provision of this subsection, for economic development projects that are not in enhanced incentive counties, the cost of equipment eligible for recovery as an eligible cost shall not exceed twenty thousand dollars (\$20,000) for each new full-time job created as of the activation date;

- (19) "Employee benefits" means payments by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (20) "Energy-efficient alternative fuel production" means a Kentucky operation that produces for sale energy-efficient alternative fuels;
- (21) "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;
- (22) "Enhanced incentive counties" means counties certified by the authority pursuant to KRS 154.32-050;
- (23) "Final approval" means the action taken by the authority authorizing the eligible company to receive incentives under this subchapter;
- (24) (a) "Full-time job" means a job held by a person who:
1. ~~(a)~~ ***Is required to work a minimum of thirty-five (35) hours per week; and***
  2. ***a. Is ~~[a Kentucky resident]~~ subject to the Kentucky individual income tax imposed by KRS 141.020; ~~or [and]~~***
    - b. Works remotely away from the economic development project if the job meets all of the following conditions:***
      - i. Is held by a Kentucky resident;***
      - ii. Was created as a result of the economic development project; and***
      - iii. The payroll of this job is expensed to the economic development project;***
  - (b) ***"Full-time job" does not include a job held by a resident of any state with a reciprocal agreement between the Commonwealth and the other state as described in KRS 141.070 ~~[is required to work a minimum of thirty-five (35) hours per week];~~***
- (25) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (26) "Gasification production" means a Kentucky operation that primarily produces for sale:
- (a) Alternative transportation fuels;
  - (b) Synthetic natural gas;
  - (c) Chemicals;
  - (d) Chemical feedstocks; or

- (e) Liquid fuels;  
 from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. The gasification production may produce electricity as a by-product if the primary function of the operations remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;
- (27) "Headquarters" means the principal office where the principal executives of the entity are located and from which other personnel, branches, affiliates, offices, or entities are controlled;
- (28) ***"Hospital" means a facility licensed by the Cabinet for Health and Family Services under KRS Chapter 216B for the operation of a hospital and the basic services provided by a hospital;***
- ~~(29)(28)~~ "Incentives" means the incentives available under this subchapter, as listed in KRS 154.32-020(3);
- ~~(30)(29)~~ "Job target" means the annual average number of new full-time jobs that the approved company commits to create and maintain at the economic development project, which shall not be less than ten (10) new full-time jobs;
- ~~(31)(30)~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- ~~(32)(31)~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- ~~(33)(32)~~ "Lease agreement" means an agreement between an approved company and an unrelated entity conveying the right to use a facility, the terms of which reflect an arms' length transaction. "Lease agreement" does not include a capital lease;
- ~~(34)(33)~~ "Leased project" means an economic development project site occupied by an approved company pursuant to a lease agreement;
- ~~{(34) "Loan agreement" means the agreement between the authority and a preliminarily approved company establishing the terms and conditions of an advance disbursement;}~~
- (35) "Manufacturing" means any activity involving:
- (a) ~~the~~ Processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to the processing, assembling, or production of property, together with the storage, warehousing, distribution, and related office facilities;  
***or***
- (b) ***Production of vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment;***
- ~~(36) [{"Wage target" means the average total hourly compensation amount, including the minimum wage and employee benefits, that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall not be less than:~~
- ~~(a) One hundred twenty five percent (125%) of the federal minimum wage in enhanced incentive counties;~~  
~~or~~
- ~~(b) One hundred fifty percent (150%) of the federal minimum wage in all other counties;~~
- ~~(37)~~ (a) "Nonretail service or technology" means any activity where service or technology is provided predominantly outside the Commonwealth and designed to serve a multistate, national, or international market.
- (b) "Nonretail service or technology" includes but is not limited to call centers, centralized administrative or processing centers, telephone or Internet sales order or processing centers, distribution or fulfillment centers, data processing centers, research and development facilities, and other similar activities;
- ~~(37)(38)~~ "Owned project" means an economic development project owned in fee simple by the approved company or an affiliate, or possessed by the approved company or an affiliate pursuant to a capital lease;
- (38) ***"Personal protective equipment" means protective clothing, helmets, gloves, face shields, goggles, face masks, respirators, and other equipment designed to protect the user from injury or the spread of infection or illness;***
- (39) "Preliminary approval" means the action taken by the authority preliminarily approving an eligible company for incentives under this subchapter;

- (40) "Renewable energy production" means a Kentucky operation that utilizes wind power, biomass resources, landfill methane gas, hydropower, solar power, or other similar renewable resources to generate electricity for sale to unrelated entities;
- (41) "Rent" means the actual annual rent or fee paid by an approved company under a lease agreement;
- (42) "Start-up costs" means nonrecurring costs incurred to furnish and equip a facility for an economic development project, including costs incurred for:
- (a) Computers, furnishings, office equipment, manufacturing equipment, and fixtures;
  - (b) The relocation of out-of-state equipment; and
  - (c) Cost of fixed telecommunications equipment;
- as certified to the authority in accordance with KRS 154.32-030;
- (43) "Synthetic natural gas" means the same thing as in KRS 152.715;
- (44) "Tax incentive agreement" means the agreement entered into pursuant to KRS 154.32-040 between the authority and an approved company;
- (45) "Term" means the period of time for which a tax incentive agreement may be in effect, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project not located in any other county; ~~and~~
- (46) ***"Vital medications" means any drug or biologic used to prevent or treat a serious life-threatening disease or medical condition for which there is no other available source with sufficient supply of that drug or biologic or alternative drug or biologic;***
- ~~(47)~~(46) "Wage" means the per hour earnings of a full-time employee, including wages, tips, overtime, bonuses, and commissions, as reflected on the employee's federal form W-2 wage and tax statement, but excludes employee benefits; **and**
- (48) ***"Wage target" means the average total hourly compensation amount, including the minimum wage and employee benefits, that the approved company commits to meet for all new full-time jobs created and maintained as a result of the economic development project, which shall not be less than:***
- (a) ***One hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties; or***
  - (b) ***One hundred fifty percent (150%) of the federal minimum wage in all other counties.***

➔Section 119. KRS 154.32-020 is amended to read as follows:

- (1) The purposes of this subchapter are:
- (a) To provide incentives for eligible companies and to encourage the location or expansion of manufacturing facilities, agribusiness operations, nonretail service or technology facilities, headquarters operations, alternative fuel production facilities, gasification production facilities, energy-efficient alternative fuel production facilities, renewable energy production facilities, ~~and~~ carbon dioxide transmission pipelines, ***coal severing and processing, and hospital operations*** in the Commonwealth to advance the public purposes of:
    1. Creation of new jobs that, but for the incentives offered by the authority, would not exist within the Commonwealth;
    2. Creation of new sources of tax revenues for the support of public services provided by the Commonwealth; ~~and~~
    3. Improvement in the quality of life for Kentucky citizens through the creation of sustainable jobs with higher salaries; and
    4. ***Providing an economic stimulus to bolster in-state production of vital medications and personal protective equipment; and***
  - (b) To provide enhanced incentives for companies that locate in enhanced incentive counties in recognition of the depressed economic conditions in those counties and the increased need for the growth and development caused by the depressed economic conditions.

- (2) To qualify for the incentives provided by subsection (3) of this section, an approved company shall:
- (a) Incur eligible costs of at least one hundred thousand dollars (\$100,000);
  - (b) Create at least ten (10) new full-time jobs and maintain an annual average number of at least ten (10) new full-time jobs; and
  - (c)
    1. Pay at least ninety percent (90%) of all new full-time employees whose jobs were created as a result of the economic development project a minimum wage of at least one hundred twenty-five percent (125%) of the federal minimum wage in enhanced incentive counties, and one hundred fifty percent (150%) of the federal minimum wage in other counties throughout the term of the economic development project; and
    2. Provide employee benefits for all new full-time jobs equal to at least fifteen percent (15%) of the minimum wage requirement established by subparagraph 1. of this paragraph. If the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the minimum wage requirement established by subparagraph 1. of this paragraph, the eligible company may still qualify for incentives if it provides the full-time employees hired as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the minimum wage requirement established in subparagraph 1. of this paragraph through increased hourly wages combined with employee benefits; **or**
  - (d) ***Produce vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment.***
- (3) The incentives available under this subchapter are as follows:
- (a) Tax credits of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040 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 economic development project, as set forth in KRS 141.415 and 154.32-070;
  - (b) Authorization for the approved company to impose a wage assessment against the gross wages of each new employee subject to the Kentucky income tax as provided in KRS 154.32-090; and
  - (c) Notwithstanding any provision of law to the contrary, for any economic development project with an eligible investment of more than two hundred million dollars (\$200,000,000), the authority may authorize approval to the economic development project based upon terms and incentives applicable to economic development project locating in an enhanced incentive county.
- (4) The General Assembly hereby finds and declares that the authority granted in this subchapter and the purposes accomplished hereby are proper governmental and public purposes for which public moneys may be expended, and that the inducement of the location of economic development projects within the Commonwealth is of paramount importance to the economic well-being of the Commonwealth.

➔Section 120. KRS 154.32-040 is amended to read as follows:

The authority, upon final approval of a company, may enter into a tax incentive agreement with the approved company. The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The terms of the tax incentive agreement shall include but not be limited to the following provisions:

- (1) The maximum approved costs that may be recovered over the term of the tax incentive agreement and the annual maximum for approved costs;
- (2) That the approved company shall provide the authority with all documentation requested in a manner acceptable to the authority;
- (3) Identification of the contribution of the local government to the economic development project, if any;
- (4) The activation date, which shall be within two (2) years of final approval;
- (5) That the approved company shall implement the activation date by notifying the authority;
- (6) That the approved company shall provide documentation satisfactory to the authority within the time frames required by the authority that it has met the minimum employment, minimum investment, and minimum wage requirements, including employee benefits, established by KRS 154.32-020;

- (7) That failure of the approved company to meet any of the minimum job, minimum investment, or minimum wage requirements, including employee benefits, established by KRS 154.32-020, on the activation date shall result in cancellation of the tax incentive agreement;
- (8) The term of the agreement, which shall not exceed fifteen (15) years for an economic development project located in an enhanced incentive county, or ten (10) years for an economic development project located in another county;
- (9) That, if confirmed approved costs are less than the maximum approved costs included in the tax incentive agreement, the confirmed approved costs shall become the maximum amount that may be recovered by the approved company;
- (10) If the economic development project is a leased project, that future rent payments that are included in eligible costs shall be included as confirmed approved costs upon submission of a valid lease agreement executed after preliminary approval;
- (11) Establishment of a job target and minimum wage target, including employee benefits;
- (12) A requirement that the job target and minimum wage target, including employee benefits, be measured:
  - (a) On the activation date, against the actual new full-time jobs created and the average wages, including employee benefits, paid for those jobs; and
  - (b) Annually during each year of the agreement, against the annual average of the new full-time jobs and the average wages paid for those jobs, including employee benefits;
- (13) A provision requiring the approved company to notify the authority immediately if the approved company sells or otherwise transfers or disposes of the land on which an economic development project is located, if a lease relating to the economic development project is terminated or lapses, or if the approved company ceases or fundamentally alters operations at the economic development project;
- (14) A provision detailing the reductions in incentives that will occur pursuant to KRS 154.32-030(4) if an approved company fails to meet its job target or minimum wage target, including employee benefits;
- (15) ~~If the tax incentive agreement includes an advance disbursement, incorporation of the provisions of the loan agreement or inclusion of the loan agreement as an attachment to the tax incentive agreement;~~
- ~~(16)~~ That the agreement may be assigned by the approved company upon the adoption of a resolution by the authority to that effect;
- ~~(16)~~~~(17)~~ That the approved company shall make available to the authority all of its records pertaining to the economic development project, including but not limited to payroll records, records relating to eligible costs, and any other records pertaining to the economic development project that the authority may require;
- ~~(17)~~~~(18)~~ That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the tax incentive agreement;
- ~~(18)~~~~(19)~~ That, if an approved company fails to comply with its obligations under the tax incentive agreement other than the jobs target or minimum wage target, the authority may take any or all of the following actions:
  - (a) Suspend the incentives available to the approved company;
  - (b) Terminate the incentives available to the approved company; or
  - (c) Pursue any other remedy set forth in the tax incentive agreement or to which it may be entitled by law; and
- ~~(19)~~~~(20)~~ Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.

➔Section 121. KRS 154.32-060 is amended to read as follows:

- (1) The authority shall not approve an economic development project that otherwise meets the requirements of this subchapter if the economic development project will result in the replacement of facilities existing in the state, except as provided in this section.
- (2) The authority may approve an economic development project that:
  - (a) Rehabilitates an existing facility used for *activities of an eligible company* ~~[manufacturing, agribusiness, or nonretail service or technology, or as a national or regional corporate headquarters]~~, if:



1. The facility has not been in operation for a period of ninety (90) or more consecutive days; or
  2.
    - a. The current occupant of the facility has advertised a notice of closure; and
    - b. The eligible company proposing the economic development project is not an affiliate of the current occupant of the facility; or
  3.
    - a. The facility is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction; and
    - b. The title to the facility prior to the sale is not vested in the eligible company or an affiliate of the eligible company; *or*
  4. ***The existing facility is rehabilitated to enable a business to produce vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment;***
- (b) Replaces an existing ***facility of an eligible company*** [~~manufacturing, agribusiness, nonretail service or technology, or national or regional corporate headquarters facility~~] if:
1.
    - a. Title to the facility:
      - i. Is held by exercise of the power of eminent domain; or
      - ii. May be taken pursuant to a nonappealable judgment granting authority to exercise the power of eminent domain; and
    - b. Normal operations at the facility cannot be resumed within twelve (12) months; or
  2. The facility has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
  3. ***The existing facility is replaced to enable a business to produce vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment; or***
- (c) Replaces an existing facility located in the same county if the existing facility cannot be expanded due to the unavailability of real estate at or adjacent to the facility to be replaced. Any economic development project satisfying the requirements of this paragraph shall be eligible for incentives under this subchapter only to the extent of the expansion. No incentives shall be available for the equivalent of the facility to be replaced or rehabilitated.

- (3) The authority shall not approve an economic development project under this section which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.

➔Section 122. KRS 154.34-010 is amended to read as follows:

As used in this subchapter:

- (1) ***"Affiliate" has the same meaning as in Section 118 of this Act;***
- (2) ***"Agribusiness" has the same meaning as in Section 118 of this Act;***
- (3) ***"Alternative fuel production" has the same meaning as in Section 118 of this Act;***
- (4) "Approved company" means an eligible company approved ***under Section 123 of this Act*** for a reinvestment project;
- (5) ~~(2)~~ "Approved costs" means the ***eligible*** [~~sum of the:~~  
  - (a) ~~Eligible~~] equipment and related costs [~~;~~ and  
 (b) ~~Eligible skills upgrade training costs;~~~~—~~] approved by the authority that may be recovered by an approved company through the incentives authorized by this subchapter;
- (6) ~~(3)~~ "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (7) ***"Capital lease" has the same meaning as in Section 118 of this Act;***
- (8) ***"Carbon dioxide transmission pipeline" has the same meaning as in Section 118 of this Act;***

(9) ***"Coal severing and processing" means activities resulting in an eligible company being subject to the tax imposed by KRS Chapter 143;***

~~(10)(4)~~ "Commonwealth" means the Commonwealth of Kentucky;

~~(11)(5)~~ "Department" means the Department of Revenue;

~~(12)(6)~~ (a) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity:

1. ***Employing or intending to employ a minimum of twenty-five (25) persons on a full-time bases; and***

2. ***Engaged in or planning to engage in one (1) or more of the following activities:***

a. ***Headquarter operations;***

b. ~~Engaged in~~ ***Manufacturing;***

c. ***Agribusiness;***

d. ***Nonretail service or technology;***

e. ***Coal severing and processing;***

f. ***Alternative fuel, gasification, energy-efficient alternative fuel, or renewable energy production;***

g. ***Carbon dioxide transmission pipeline operations; or***

h. ***Hospital operations;***

at ~~the same~~<sup>a</sup> facility located and operating within the Commonwealth on a permanent basis for a reasonable period of time preceding the request for approval of a reinvestment project by the authority, ***including facilities where operations have been temporarily suspended and which meet the standards under Section 123 of this Act and related administrative regulations promulgated by the authority.***~~;~~

(b) ***"Eligible company" does not include any company for which the primary activity to be conducted within the Commonwealth is:***

1. ***Forestry;***

2. ***Fishing;***

3. ***The provision of utilities;***

4. ***Construction;***

5. ***Wholesale trade;***

6. ***Retail trade;***

7. ***Real estate;***

8. ***Rental and leasing;***

9. ***Educational services;***

10. ***Accommodation and food services; or***

11. ***Public administration services;***

~~(13)(7)~~ (a) "Eligible equipment and related costs" means:

1. Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project;

2. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;

3. All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project;
  4. All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, rehabilitation, and installation of a reinvestment project;
  5. All costs required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities paid for by the approved company; and
  6. All other costs of a nature comparable to those described in this paragraph.
- (b) "Eligible equipment and related costs" does not include costs related to the replacement or repair of existing machinery or equipment resulting from normal wear and usage of the machinery *or equipment*;
- ~~{(8) "Eligible skills upgrade training costs" means costs incurred by an approved company in connection with an occupational training program for full-time employees specifically related to training or retraining employees as part of the reinvestment project, including the following:~~
- ~~(a) Fees or salaries paid to instructors, whether those instructors are employees of the approved company, contractors, or consultants;~~
  - ~~(b) Administrative fees paid to educational institutions;~~
  - ~~(c) Amounts paid for supplies, materials, and equipment used exclusively for the occupational training program;~~
  - ~~(d) Amounts paid to lease a training facility if sufficient training space is not available at the approved company or at an educational institution;~~
  - ~~(e) Amounts paid to employees as wages for attending the occupational training program;~~
  - ~~(f) Amounts paid for travel expenses for employees; and~~
  - ~~(g) All other costs of a nature comparable to those described in this subsection;]~~
- (14) *"Energy-efficient alternative fuel production" has the same meaning as in Section 118 of this Act;*
- (15) *"Enhanced incentive counties" has the same meaning as in Section 118 of this Act;*
- ~~(16){(9)}~~ "Equipment" means manufacturing machinery *equipment, computers, furnishings, fixtures, and other assets* installed by the approved company as part of the reinvestment project;
- ~~(17){(10)}~~ "Final approval" means the action taken by the authority designating a preliminarily approved eligible company as an approved company *to receive incentives under this subchapter*;
- ~~(18){(11)}~~ "Full-time *employee*" means a *person who*:
- (a) *Is required to work a* minimum of thirty-five (35) hours per week; *or*
  - (b) *Works remotely away from the reinvestment project if all the following conditions are met:*
    1. *Is a Kentucky resident;*
    2. *Whose job was created or retained as a result of the reinvestment project; and*
    3. *Whose payroll is expensed to the reinvestment project;*
- (19) *"Gasification production" has the same meaning as in Section 118 of this Act;*
- (20) *"Headquarters" has the same meaning as in Section 118 of this Act;*
- (21) *"Hospital" has the same meaning as in Section 118 of this Act;*
- (22) *"Incentives" means the Kentucky tax credit as prescribed in this subchapter;*
- ~~(23){(12)}~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;
- ~~(24){(13)}~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;
- (25) *"Leased project" has the same meaning as in Section 118 of this Act;*

- (26)~~(14)~~ "Manufacturing" **has the same meaning as in Section 118 of this Act** ~~[means any activity involving the processing, assembling, or production of any property, including activities that result in a change in the condition of the property. "Manufacturing" includes any activity or function related to the manufacturing activity, including storage, warehousing, distribution, and related office facilities];~~
- (27) **"Nonretail service or technology" has the same meaning as in Section 118 of this Act;**
- (28) **"Personal protective equipment" has the same meaning as in Section 118 of this Act;**
- (29)~~(15)~~ "Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company;
- (30)~~(16)~~ "Reinvestment agreement" means the agreement entered into pursuant to KRS 154.34-080 between the authority and an approved company with respect to a reinvestment project; ~~and~~
- (31)~~(17)~~ "Reinvestment project" means:
- (a) A reinvestment in the ~~[physical plant of a manufacturing ]~~ **facility of an eligible company** ~~], and in the full-time employees of an eligible company [a manufacturing facility,] through the~~
    1. ~~The~~ acquisition, construction, and installation of new equipment and, with respect thereto, the construction, rehabilitation, and installation of improvements to facilities necessary to house the new equipment, including surveys; installation of utilities, including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; or off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located; ~~and~~
    2. ~~The development of an occupational training program to train or retrain the full-time employees of the company to support the reinvestment in the manufacturing facility, if applicable, for the purpose of improving the economic and operational situation of a company; and~~
  - (b) The expenditure of at least **one million dollars (\$1,000,000) in eligible equipment and related costs for leased projects and at least two million five hundred thousand dollars (\$2,500,000) in eligible equipment and related costs for all other reinvestment projects; and**
  - (c) **A reinvestment in a facility in order to allow for the production of vital medications, personal protective equipment, or equipment necessary to produce personal protective equipment;**
- (32) **"Renewable energy production" has the same meaning as in Section 118 of this Act; and**
- (33) **"Vital medications" has the same meaning as in Section 118 of this Act.**

➔Section 123. KRS 154.34-070 is amended to read as follows:

- (1) The application and approval process under this subchapter shall be as follows:
- (a) An eligible company with a proposed reinvestment project may submit an application to the authority. The application shall include the information required by subsection (4) of this section;
  - (b) Upon review of the application and any additional information submitted, the authority may, by resolution, give preliminary approval to a reinvestment project and authorize the negotiation and execution of a memorandum of agreement. The memorandum of agreement shall establish the minimum job retention requirements and maximum total approved cost for the reinvestment project, shall only allow the recovery of costs incurred after preliminary approval, and may include any other terms as agreed to by the parties to the agreement. Upon preliminary approval, the preliminarily approved company may undertake the project in accordance with the memorandum of agreement;
  - (c) The preliminarily approved company shall submit any documentation required by the authority upon request of the authority;
  - (d) The preliminarily approved company shall have up to three (3) years from the date of preliminary approval to **complete the reinvestment project and** obtain final approval. Upon the earlier of completion of the project or the passage of three (3) years from the date of preliminary approval, the preliminarily approved company shall submit documentation required by the authority, and the authority shall confirm that the minimum investment and job retention requirements established by the memorandum of agreement have been met. Upon review and confirmation of the documentation, the authority may, by resolution, give final approval to the preliminarily approved company and authorize the execution of a reinvestment agreement between the authority and the approved company pursuant to KRS 154.34-080. As part of the reinvestment agreement, the approved costs shall be finally determined,

not to exceed the maximum approved costs as determined at preliminary approval, and the approved company shall be eligible to receive incentives in accordance with the provisions of the reinvestment agreement;

- (e) The authority shall monitor the reinvestment agreement at least annually, and the approved company shall submit all documentation necessary for the authority to monitor the agreement. The authority shall, based on the documentation provided, confirm that the approved company is in continued compliance with the provisions of the reinvestment agreement and, therefore, eligible for incentives; and
  - (f) Upon final approval, the authority shall notify the department that an approved company is eligible for incentives and shall provide the department with the information necessary to monitor the use of **incentives**~~credits~~ by the approved company. If, at any time during the term of the reinvestment agreement, an approved company becomes ineligible for incentives, the authority shall notify the department, and the department shall discontinue the availability of **incentives**~~credits~~ for the approved company.
- (2) The authority may establish standards for preliminary and final approval of eligible companies and their projects through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A.
  - (3) The criteria for preliminary and final approval of eligible companies and reinvestment projects shall include but not be limited to the need for the project, the eligible equipment and other costs ~~and eligible skills upgrade training costs~~ to be expended by the eligible company, and the number of jobs created or **preserved**~~retained~~ as a result of the project.
  - (4) The application shall include:
    - (a) **The name of the applicant and identification of any affiliates who will have some relation to the reinvestment project;**
    - (b) A description of the condition of the existing facility, including but not limited to the status of the physical plant **or office space**, the financial situation of the company, and the efficiency and productivity of the facility;
    - ~~(c)(b)~~ A description of the proposed reinvestment project, including anticipated sources of funding, the total anticipated equipment and related costs and skills upgrade training costs, the impact of the proposed reinvestment project on full-time employment at the facility, and an explanation of why reinvestment in the facility and its full-time employees is necessary;
    - (d) **The number of existing full-time jobs at the site of the reinvestment project on the date of the application and a description and breakdown of the relevant affiliated employers;**
    - ~~(e)(c)~~ A timeline for the proposed reinvestment project;
    - ~~(f)(d)~~ A description of the other alternatives that are available to the eligible company, if incentives are not provided;
    - ~~(g)(e)~~ The amount of incentives sought, and an explanation of why the requested incentives are needed;
    - ~~(h)(f)~~ A certification from the company that the reinvestment project would not be economically feasible for the company, but for the incentives available under this subchapter;
    - ~~(i)(g)~~ Payment of any applicable application fees required by the authority; and
    - ~~(j)(h)~~ Any additional information relating to the proposed reinvestment project that the authority may require.
  - (5) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.

➔Section 124. KRS 154.34-080 is amended to read as follows:

The authority, upon final approval of a company, may enter into a reinvestment agreement with the approved company. The terms and conditions of the reinvestment agreement shall be negotiated between the authority and the approved company. The terms of the reinvestment agreement shall include but not be limited to the following provisions:

- (1) That the authority may employ an independent consultant or utilize technical resources to verify the cost of the project, and that the approved company shall reimburse the authority for the cost of a consultant or other technical resources employed by the authority;
- (2) The maximum approved costs that may be recovered, **and that the amount of incentives allowed in any year shall not exceed twenty percent (20%) of the total amount of the approved costs;**
- (3) A set employment retention goal, which shall be at least eighty-five percent (85%) of the number of full-time employees employed at the facility on the date the company receives preliminary approval;
- (4) That approval of the company is not a guarantee of incentives and that eligibility for incentives shall be contingent on the approved company meeting the requirements established by the reinvestment agreement and this subchapter;
- (5) The term of the reinvestment agreement, which shall not be longer than the earlier of:
  - (a) The date on which the approved company has received incentives equal to the approved costs of its reinvestment project; or
  - (b) Ten (10) years from the date of final approval granted by the authority;
- (6) That the authority may reduce the incentives, suspend the incentives, or terminate the agreement if the approved company fails to comply with provisions of the reinvestment agreement;
- (7) That both the authority and the department shall have the right to pursue any remedy provided under this reinvestment agreement and any other remedy at law to which it may be entitled;
- (8) That the approved company shall make available to the department and the authority all of its records pertaining to the reinvestment project, including but not limited to payroll records, records relating to the expenditure of eligible equipment and related costs, ~~eligible skills upgrade training costs,~~ and approved costs, and any other records pertaining to the project as the authority or the department may require;
- (9) That the authority may share information with the department for the purposes of monitoring and enforcing the terms of the reinvestment agreement;
- (10) That the agreement shall not be transferred or assigned by the approved company without the expressed written consent of the authority; and
- (11) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the reinvestment agreement.

➔Section 125. KRS 154.34-090 is amended to read as follows:

By October 1 of each year, the department ~~of Revenue of the Commonwealth~~ shall certify to the authority, in the form of an annual report, aggregate tax credits claimed on tax returns filed during the fiscal year ending June 30 of that year by approved companies with respect to their reinvestment projects under this subchapter and KRS 141.415 and shall certify to the authority, within ninety (90) days from the date an approved company has filed its state tax return, when an approved company has taken **incentives** ~~inducements~~ equal to its approved costs.

➔Section 126. KRS 154.34-110 is amended to read as follows:

- (1) The purpose of this subchapter is to provide a means for the Commonwealth to promote job retention by providing incentives for existing businesses to reinvest in existing ~~manufacturing~~ operations in Kentucky **for eligible companies.**
- (2) (a) To qualify for the incentives provided in this subchapter, an approved company shall:
  1. Incur eligible equipment and related costs of at least **one million dollars (\$1,000,000) for leased projects and at least two million five hundred thousand dollars (\$2,500,000) for all other reinvestment projects;**
  2. Agree to maintain a full-time employment base of at least eighty-five percent (85%) at the facility on the date of preliminary approval; and
  3. Not have been awarded incentives under Subchapter 26 of this chapter for a period of at least five (5) years prior to applying for incentives under this subchapter.
- (b) An approved company meeting the expenditure and employment retention requirements established by this subsection shall be eligible to recover up to fifty percent (50%) of the amount expended for eligible

equipment and related costs~~], and up to one hundred percent (100%) of job skills upgrade training costs].~~ The actual amount that an approved company may recover shall be negotiated with the authority, and may be less than the maximum amount for which the approved company is eligible.

- (3) An approved company shall be eligible for ***incentives under this subchapter as follows***: tax incentives of up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.020 or 141.040 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 154.34-120.
- (4) The General Assembly finds and declares that:
  - (a) The general welfare and material well-being of the citizens of the Commonwealth depend in large measure upon the reinvestment and development of existing industry in the Commonwealth;
  - (b) It is in the best interest of the Commonwealth to induce reinvestment in existing ~~[- manufacturing]~~ facilities ***of eligible companies*** within the Commonwealth in order to advance the public purposes of relieving unemployment by preserving jobs that may be lost if not for the incentives to be offered by the authority to approved companies, and by preserving and creating sources of tax revenues for the support of public services provided by the Commonwealth; and
  - (c) The authority prescribed by this subchapter and the purposes to be accomplished under this subchapter are proper governmental and public purposes for which public moneys may be expended.
- (5) ***On or before November 1, 2021, and each November 1 thereafter, the authority shall submit an overview report to the Interim Joint Committee on Appropriations and Revenue and the Governor on the success or failure of each completed project in order to determine the effectiveness of the program. The report shall include but not be limited to the following information:***
  - (a) ***The number of applications receiving preliminary approval during the fiscal year;***
  - (b) ***The number of final approvals issued during the fiscal year;***
  - (c) ***The total amount of eligible equipment and other costs projected by the approved company at preliminary approval;***
  - (d) ***The total amount of eligible equipment and other costs actually incurred by the approved company at final approval;***
  - (e) ***The total number of full time jobs required to be preserved or retained as a result of the reinvestment project;***
  - (f) ***The total actual number of full-time jobs reported by the reinvestment project as being preserved or retained on an annual basis;***
  - (g) ***The maximum approved costs that may be recovered by the approved companies for the reinvestment projects; and***
  - (h) ***The location of the reinvestment projects receiving preliminary and final approval during the fiscal year.***

➔Section 127. KRS 154.35-010 is amended to read as follows:

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

- (1) "Beneficiary of an economic incentive package" means any entity for which any assessment, incentive, inducement, or tax credit is issued or awarded pursuant to KRS 154.22-010 to 154.22-070, KRS 154.24-010 to 154.24-150, KRS 154.26-015 to 154.26-100, and KRS 154.28-010 to 154.28-090;
- (2) "Board" means the governance board of the Kentucky Science and Technology Council, Inc.;
- (3) "Cabinet" means the Cabinet for Economic Development;
- (4) "Center" means either or both of the following as the context requires:
  - (a) "Basic research centers" which means centers under contract with the University of Kentucky and the University of Louisville; and
  - (b) "Applied research centers" which means centers for applied research and technologies development;

- (5) "Commonwealth" means the Commonwealth of Kentucky;
- (6) "Council" means the Kentucky Science and Technology Council, Inc.;
- (7) "Fund" means the Kentucky Research and Development Infrastructure fund created and established pursuant to KRS 154.35-040;
- (8) "Infrastructure" means the Kentucky Research and Development Infrastructure;
- (9) "Contracting university" means any of the following that contract with the council to operate a center: the University of Kentucky, the University of Louisville, Eastern Kentucky University, Western Kentucky University, Morehead State University, Northern Kentucky University, Murray State University, and Kentucky State University;~~and~~
- (10) **"Personal protective equipment" has the same meaning as in Section 118 of this Act;**
- (11) "Secretary" means the secretary of the Cabinet for Economic Development; **and**
- (12) **"Vital medications" has the same meaning as in Section 118 of this Act.**

➔Section 128. KRS 154.60-010 is amended to read as follows:

As used in this subchapter:

- (1) "Authority" means the Kentucky Economic Development Finance Authority;
- (2) (a) "Average hourly wage" means the per-hour wage earned by a full-time employee, including wages, tips, overtime, bonuses, and commissions, as reflected on the employee's federal form W-2 wage and tax statement.
- (b) "Average hourly wage" does not include employee benefits as defined in KRS 154.32-010, including health insurance and reimbursements;
- (3) "Base employment" means:
  - (a) For the first application for which credits are approved, the number of full-time employees employed on the day prior to the work start date of the new employee filling the earliest eligible position identified on the application;
  - (b) For subsequent applications, the number of full-time employees employed on the day prior to the work start date of the new employee filling the earliest eligible position identified on the initial approved application plus each eligible position for which a credit has been approved; and
  - (c) For applications from businesses involved in mergers, acquisitions, or federal tax identification number changes, base employment may be adjusted by the Cabinet for Economic Development;
- (4) "Eligible position" means each position that:
  - (a) Is filled by a full-time employee and that increases the total employment of the small business above its base employment; and
  - (b) Carries an average hourly wage of no less than one hundred fifty percent (150%) of the federal minimum wage;
- (5) "Full-time employee" means a person employed by a small business for at least an average of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;
- (6) "Qualifying equipment or technology" means equipment or technology that has been approved by the Office of Entrepreneurship **and Small Business Innovation**; and
- (7) "Small business" means any business entity organized for profit that has been approved by the Office of Entrepreneurship **and Small Business Innovation**, including a sole proprietorship, partnership, limited partnership, corporation, limited liability company, joint venture, association, or cooperative, that has fifty (50) or fewer employees working more than thirty-five (35) hours per week, whether within or outside the Commonwealth, at the time it applies.

➔Section 129. KRS 154.60-020 is amended to read as follows:

- (1) The authority shall develop a Small Business Development Credit Program in consultation with the Office of Entrepreneurship **and Small Business Innovation** to assist new or existing small businesses operating in the



Commonwealth. The nonrefundable credit shall be allowed against the taxes imposed by KRS 141.020 or 141.040, and 141.0401. The ordering of credits shall be as provided in KRS 141.0205.

- (2) The authority shall determine the terms, conditions, and requirements for application for the credit, in consultation with the Office of Entrepreneurship *and Small Business Innovation*, subject to the provisions of subsection (3) of this section. The application shall contain identification information about the number of eligible positions created and filled, a calculation of the base employment of the small business, verification of investment of five thousand dollars (\$5,000) or more in qualifying equipment or technology, and other information the authority may specify to determine eligibility for the credit.
- (3)
  - (a) The maximum amount of credits that may be committed in each fiscal year by the authority and shared between the small business tax credit program and the Selling Farmer Tax Credit Program shall be capped at three million dollars (\$3,000,000).
  - (b) In order to be eligible to receive final approval for a credit, a small business shall, within the twenty-four (24) month period immediately preceding the application submission date:
    1. Create and fill one (1) or more eligible positions over the base employment; and
    2. Invest five thousand dollars (\$5,000) or more in qualifying equipment or technology.
  - (c) Each eligible position that is created and filled shall be maintained for twelve (12) months. If a full-time employee filling a newly created eligible position ceases to be employed by the small business for any reason, that employee shall be replaced within forty-five (45) days in order for the eligible position to maintain its eligible status, in addition to meeting all other applicable requirements.
  - (d) The small business shall submit all information necessary for the authority to determine credit eligibility for each year, and the amount of credit for which the small business is eligible.
  - (e) The maximum amount of credit for each small business for each year shall not exceed twenty-five thousand dollars (\$25,000).
  - (f) The credit shall be claimed on the tax return for the year during which the credit was approved. Unused credits may be carried forward for up to five (5) years.

→SECTION 130. A NEW SECTION OF SUBCHAPTER 26 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

*If an eligible company has not received preliminary approval on or before June 30, 2021, the eligible company shall not receive final approval by the authority to become an approved company under this subchapter. Outstanding eligible companies with preliminary or final approval granted on or before June 30, 2021, shall continue to be governed by this subchapter and Section 101 of this Act.*

→Section 131. KRS 164.6011 is amended to read as follows:

As used in KRS 164.6011 to ~~164.6029~~~~[164.6044]~~, unless the context indicates otherwise:

- (1) "Applied research" means those research activities occurring at universities and in private enterprises that have potential commercial application;
- (2) "*Cabinet*" means the *Cabinet for Economic Development*;
- (3) "*Closely related family members*" means any of the following in relation to an employee or their spouse:
  - (a) *Parents or grandparents*;
  - (b) *Children or their spouses*; or
  - (c) *Siblings or their spouses*;
- (4) "Cluster" means a geographically bound concentration of similar, related, or complementary businesses with active channels for business transactions, communications, and dialogue, that share specialized infrastructure, labor markets, and services, and that are faced with common opportunities and threats;
- (5)~~(3)~~ "Commonwealth" means the Commonwealth of Kentucky;
- ~~(4)~~ "~~Council~~" means the ~~Council on Postsecondary Education~~;

- (6) ~~(5)~~ "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, person, group, or other entity ~~engaged in nonretail commerce, agribusiness, trade, or manufacturing;~~
- (6) ~~"Immediate family members" means:~~
- (a) ~~Spouse and parents-in-law;~~
- (b) ~~Parents and grandparents;~~
- (c) ~~Children and their spouses; and~~
- (d) ~~Siblings and their spouses;~~
- (7) "Kentucky-based company" means a business with its principal place of business in Kentucky or no less than fifty percent (50%) of its property and payroll located in Kentucky;
- (8) "Knowledge-based" means driven by knowledge, innovation, and speed;
- (9) "Medium-size company" means a business with fifty-one (51) to one hundred fifty (150) employees;
- (10) "Qualified company" means an eligible company that may be granted a funding voucher or award pending certification;
- (11) "Science and technology organization" means an independent, nonprofit or quasi-governmental organization, with a statewide mission, that has a demonstrated history of managing complicated programs in the areas of entrepreneurial innovation, science, and technology advancement;
- (12) "Seed funding" means financing that is provided for early-stage development, refinement, and commercialization of a product, process, or innovation through continuing applied research, advancing the patent process, determining commercial and market potential, or moving research toward development of a prototype; and
- (13) "Small company" means a firm with fifty (50) or fewer employees.

➔Section 132. KRS 164.6013 is amended to read as follows:

The General Assembly finds that the general welfare and material well-being of the citizens of the Commonwealth depend on immediate action to develop a strong, entrepreneurial economy, characterized by knowledge, innovation, and speed and that it is in the best interest of the Commonwealth to promote research, innovation, and high-technology enterprises that utilize the higher-order skills of an educated workforce. The provisions in KRS 164.6011 to ~~164.6029~~~~[164.6044]~~, 154.12-274, 154.12-278, ~~and KRS ]154.12-300 to 154.12-310, and 154.12-320~~ shall be liberally construed and applied to advance public purposes.

➔Section 133. KRS 164.6017 is amended to read as follows:

- (1) The ~~cabinet~~~~[Council on Postsecondary Education]~~ shall have all the powers and authority, not explicitly prohibited by statute, necessary and convenient to carry out and effectuate the purposes of KRS 164.6019 to ~~164.6029~~~~[164.6044]~~, including but not limited to:
- (a) Entering into contracts or agreements necessary or incidental to the performance of its duties, functions, and responsibilities; and
- (b) Soliciting, borrowing, accepting, receiving, and expending funds from any public or private source, including but not limited to general fund appropriations of the Commonwealth, grants, or contributions of money, property, labor, or other things of value to be used to carry out the programs' operations, functions, and responsibilities; and
- (c) Notwithstanding the provisions in paragraph (a) of this subsection, the ~~executive director~~~~[commissioner]~~ of the ~~Office~~~~[Department]~~ of ~~Entrepreneurship and Small Business Innovation~~~~[Commercialization and Innovation]~~ shall approve the contracts issued by the ~~cabinet~~~~[Council on Postsecondary Education]~~ regarding the structure of programs and funding levels in those programs administered by a science and technology organization and created in KRS 154.12-320, ~~164.6021, 164.6029, and 164.6037].~~
- (2) The ~~cabinet~~~~[council]~~ may expend money in the funds created in KRS 164.6019 ~~and~~~~[,]~~ 164.6027, ~~and~~~~[,]~~ ~~164.6035~~ for reasonable administrative expenses directly incurred in carrying out the requirements of KRS 164.6019 to ~~164.6029~~~~[164.6044]~~. It is the intent of the General Assembly that the funds created in KRS 164.6019 ~~and~~~~[,]~~ 164.6027, ~~and~~~~[,]~~ ~~164.6035~~ be used, to the fullest extent possible, to directly fund project costs.

It is also the intent of the General Assembly that the first priority of expenditures of any excess revenues generated from the funds created in KRS 164.6019~~[,] and 164.6027[, and 164.6035]~~ is to replenish general fund appropriations for those same purposes.

- (3) The ~~*cabinet*~~~~[council]~~ shall contract with a science and technology organization to administer the programs created in KRS 164.6021~~[,] and 164.6029[, and 164.6037]~~. The ~~*cabinet*~~~~[council]~~ shall ***work with the science and technology organization to adopt best practices for state investment funds, and shall oversee and approve the application criteria, the process for submission of an application, the types of equity investments permitted, the amount of investments that should be made in each fiscal year, the category or categories of investments that shall be made consistent with the cabinet's strategic plans,*** and the structure and type of outside expertise or peer review used in the application review process ~~for~~~~[in]~~ the programs created in KRS 164.6021~~[,] and 164.6029[, and 164.6037]~~.
- (4) No member of the ~~*cabinet*~~~~[council]~~ or the science and technology organization or other administering entity, or their employees or outside experts or their ~~*closely related*~~~~[immediate]~~ family members, shall directly or indirectly financially benefit in any award, contract, or agreement under the programs.
- (5) The ~~*cabinet*~~~~[council]~~ shall submit an annual report prior to ~~*November 1*~~~~[October 15]~~ to the Governor and the General Assembly detailing its work related to the programs created in KRS 164.6021~~[,] and 164.6029[, and 164.6037]~~. The annual report shall ~~*indicate*~~~~[be coordinated with the monitoring report by the Department of Commercialization and Innovation indicating]~~ progress made through investments, and shall include but not be limited to reporting on the progress made in achieving each program's purposes, qualitative and quantitative information concerning the applications received, projects approved and undertaken, companies served, and funding amounts invested in each project or program, as appropriate, and findings and recommendations to increase each program's effectiveness in achieving its purposes.
- (6) All records related to the administration of the programs created in KRS 164.6021 ~~and~~~~[,] 164.6029[, and 164.6037]~~ shall be deemed property of the ~~*cabinet*~~~~[council]~~ and shall be deemed open records and subject to public inspection under KRS 61.870 to 61.884. Any research that involves or is a patent, trade secret, or other legally protectable interest shall be exempt from inspection until such time as the intellectual property rights have been fully protected.

➔Section 134. KRS 164.6019 is amended to read as follows:

- (1) There is established and created ***a trust and agency account***~~[in the State Treasury a fund]~~ entitled the "Kentucky enterprise fund" for the purpose of enabling small or medium-size, Kentucky-based companies to undertake feasibility, concept development, research and development, or commercialization work~~[ in partnership with colleges and universities in the Commonwealth]~~.
- (2) The *Kentucky enterprise* fund may receive ***moneys from***~~[state appropriations, gifts, grants, federal funds, revolving funds, and]~~ any ~~[other funds both ]~~public ~~or~~~~[and]~~ private ***source, including but not limited to general*** ~~[ Moneys deposited in the ]~~fund ~~[shall be disbursed by the State Treasurer upon the warrant]~~ ***appropriations of the Commonwealth, grants, or contributions*** ~~[secretary ]~~of ***money, property, labor, or other things of value to be used to carry out the fund's operations, functions, and responsibilities, and to otherwise make investments***~~[the Finance and Administration Cabinet]~~.
- (3) ***The Kentucky enterprise fund shall also receive moneys transferred from the Kentucky Rural Innovation Fund under Section 137 of this Act and the Kentucky Commercialization Fund under Section 138 of this Act.***
- (4) Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be ~~deemed a trust and agency account and~~ made available solely for the purposes and benefits of the Kentucky enterprise fund~~[ Program]~~.

➔Section 135. KRS 164.6021 is amended to read as follows:

- (1) ***The Cabinet for Economic Development shall manage*** ~~[There is created and established in]~~ the~~[ Council on Postsecondary Education a]~~ Kentucky enterprise fund~~[ Program]~~ to provide capital to small and medium-size, Kentucky-based companies to undertake feasibility, concept development, research and development, or commercialization work~~[ in partnership with colleges and universities in the Commonwealth]~~.
- (2) The purpose of the Kentucky enterprise fund~~[ Program]~~ is to:

- (a) Accelerate knowledge transfer and technological innovation, improve economic competitiveness, and spur economic growth in Kentucky-based companies;
  - (b) Support feasibility, concept development, research and development, or commercialization activities that have clear potential to lead to commercially successful products, processes, or services within a reasonable period of time;
  - (c) Stimulate growth-oriented enterprises within the Commonwealth;
  - (d) Encourage partnerships and collaborative projects between private enterprises, Kentucky's colleges and universities, and research organizations;
  - (e) Promote research and development and commercialization activities that are market-oriented; and
  - (f) Support small and medium-sized companies.
- (3) The Kentucky enterprise fund~~[-Program]~~ shall *be used*~~[make financial assistance available]~~ to *fund* qualified companies in accordance with this section as follows:
- (a) Grants of up to ~~fifty~~~~[thirty]~~ thousand dollars ~~(\$50,000)~~~~[\$30,000]~~ for companies exploring the feasibility of technology commercialization *or projects related to feasibility studies, such as incubator and accelerator programs*;
  - (b) Funding of up to two hundred fifty thousand dollars (\$250,000) for companies in the concept development phase of technology commercialization;
  - (c) Funding of up to five hundred thousand dollars (\$500,000) for companies *advancing and promoting the program goals, as outlined in subsection (2) of this section*~~[in post-initialization but before full commercialization]~~; and
  - (d) *For new investments made on or after July 1, 2021, no qualified company can receive a total investment from the fund in excess of up to five hundred thousand dollars (\$500,000)*~~[Funding of up to seven hundred fifty thousand dollars (\$750,000) for companies with high growth potential and a clear path to commercialization]~~.
- (4) *Beginning July 1, 2021, the cabinet shall allocate at least twenty percent (20%) of the annual allotment of funds for the Kentucky enterprise fund to qualified companies located in rural or enhanced incentive counties, as certified under KRS 154.32-050, and at least twenty percent (20%) of the annual allotment of funds to qualified companies located in Opportunity Zones, as designated by the Commonwealth and certified by the Secretary of the United States Treasury*~~[Notwithstanding any other provision of law to the contrary, if the science and technology organization determines that, despite all best efforts, it is not practicable for a qualified company to partner with a college or university on a project for which all other requirements are met, then the requirement to partner with a college or university may be waived]~~.
- (5) *For all funding totaling more than thirty thousand dollars (\$30,000), the science and technology organization or any entity designated by the executive director of the Office of Entrepreneurship and Small Business Innovation shall receive an equity interest in the qualified company, such as a general or limited partnership interest, limited liability company interest, common or preferred stock with or without voting rights and without regard to seniority position, forms of subordinate or convertible unsecured debt, or both, with warrants, rights, or other means of equity conversion attached, a near equity interest such as a simple agreements for future equity or "SAFE agreements", or other convertible debt instruments that are determined to qualify as an adequate investment interest by the executive director of the Office of Entrepreneurship and Small Business Innovation.*

➔Section 136. KRS 164.6023 is amended to read as follows:

- (1) The science and technology organization shall have the authority, *upon approval by the cabinet*, to review applications, qualify companies, and certify qualified companies *to receive funding from*~~[under]~~ the Kentucky enterprise fund~~[-Program]~~.
- (2) The science and technology organization shall develop application criteria and an application process subject to the following limitations. The proposed project shall be likely to:
  - (a) Produce a measurable result and be technically sound;
  - (b) Lead to innovative technology or new knowledge;
  - (c) Lead to commercially successful products, processes, or services within a reasonable period of time; or

- (d) Show significant potential for stimulating economic growth and a reasonable probability to enhance employment opportunities within the Commonwealth.
- (3) The applicant shall provide to the science and technology organization an application that shall include but not be limited to the following information:
- (a) Verification that the applicant is an eligible company that meets the definition of a Kentucky-based company and medium-size company or small company;
  - (b) A technology description and plan that is sufficient for outside expert review;
  - (c) A detailed financial analysis that includes the commitment of resources by the applicant and others;
  - (d) Sufficient detail concerning proposed project partners, type and amount of work to be performed **and financing to be contributed** by each partner, and expected product or service with estimated costs to be reflected in the negotiated contract or agreement; and
  - (e) A statement of the economic development potential of the project.
- (4) The science and technology organization shall conduct an independent review with the use of outside experts to evaluate each application. Following the application review, the science and technology organization shall make a determination of the application and may determine that the applicant is a qualified company as defined in KRS 164.6011.
- (5) Upon a qualified company's presentation of a legal agreement or contract meeting the conditions under subsection (6) of this section, the science and technology organization shall present the qualified company, the project ~~partners/partner~~, if any, and the college or university in the Commonwealth, if any, with a certification authorizing funding.
- (6) Prior to receiving certification authorizing funding from the science and technology organization, the qualified company shall:
- (a) Negotiate an agreement and funding contract with a college or university in the Commonwealth, **if any**, and with a project partner, if any, that is satisfactory to the science and technology organization, to undertake the commercialization work; and
  - (b) Provide assurance to the science and technology organization that the college or university and the qualified company have negotiated the ownership and disposition of patents, royalties, all other intellectual property rights, and equity or related position relating to the contract between the qualifying company and the college or university;
- unless the requirement to partner with a college or university is **recommended to be waived by the science and technology organization**~~[waived under KRS 164.6021(4)]~~.
- (7) Prior to certifying a qualified company, the science and technology organization may negotiate with the qualified company the ownership and disposition of patents, royalties, all other intellectual property rights, and an equity, **near equity such as a simple agreement for future agreement or "SAFE agreement", convertible debt, or similar investment format that is approved by the executive director of the Office of Entrepreneurship and Small Business Innovation**~~[or related position]~~ on behalf of the Kentucky enterprise fund for the sole purpose of reinvesting and sustaining a revolving fund to carry out the provisions of KRS 164.6021 and 164.6023.
- (8) The science and technology organization, upon approval by the ~~cabinet~~**council**, shall set forth guidelines as to when and how all areas of the state will be notified about the program's availability and a program schedule, including but not limited to the following:
- (a) A review cycle including:
    1. A deadline for submission of applications at least biannually; and
    2. A deadline for reviewing applications of no more than one hundred twenty (120) days after the application submission deadline; and
  - (b) A deadline, from the date an applicant is determined to be a qualified company, by which certification shall be made. If certification is not made by that deadline the funding voucher award is made void.

➔Section 137. KRS 164.6027 is amended to read as follows:

*On July 1, 2021, the Kentucky rural innovation fund shall cease making any further investments and shall be suspended. All funds, investments, unallocated or unencumbered balances, rights, contractual rights and obligations, and earned income retained by the Kentucky rural innovation fund as of June 30, 2021, shall be transferred to the Kentucky enterprise fund and allocated and invested pursuant to the Kentucky enterprise fund's statutory mandate as provided in Sections 134, 135, and 136 of this Act. To the extent any costs are incurred in the transfer of such interests, those costs may be paid from the funds or from the general fund appropriation to the cabinet, as determined by the cabinet.* ~~There is established and created in the State Treasury a fund entitled the "Kentucky Rural Innovation Fund" for the purpose of enabling small, rural Kentucky based firms to undertake research and development, and entrepreneurial innovation work in partnership with postsecondary institutions in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Rural Innovation Program.~~

➔Section 138. KRS 164.6035 is amended to read as follows:

- (1) There is established and created in the State Treasury a fund entitled the "Kentucky commercialization fund" to provide seed funding for the development and commercialization of promising technologies at and emerging from colleges and universities in the Commonwealth. The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse, and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Kentucky Commercialization Fund Program.
- (2) ***The Kentucky commercialization fund shall be closed on July 1, 2021. All moneys remaining in the fund shall be deposited in the Kentucky enterprise fund created in Section 134 of this Act and shall be used for the purposes established under that section.***

➔Section 139. KRS 218A.172 is amended to read as follows:

- (1) Administrative regulations promulgated under KRS 218A.205(3) shall require that, prior to the initial prescribing or dispensing of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to a human patient, a practitioner shall:
  - (a) Obtain a medical history and conduct a physical or mental health examination of the patient, as appropriate to the patient's medical complaint, and document the information in the patient's medical record;
  - (b) Query the electronic monitoring system established in KRS 218A.202 for all available data on the patient for the twelve (12) month period immediately preceding the patient encounter and appropriately utilize that data in the evaluation and treatment of the patient;
  - (c) Make a written plan stating the objectives of the treatment and further diagnostic examinations required;
  - (d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and
  - (e) Obtain written consent for the treatment.
- (2) (a) Administrative regulations promulgated under KRS 218A.205(3) shall require that a practitioner prescribing or dispensing additional amounts of Schedule II controlled substances or Schedule III controlled substances containing hydrocodone for the same medical complaint and related symptoms shall:
  1. Review, at reasonable intervals based on the patient's individual circumstances and course of treatment, the plan of care;
  2. Provide to the patient any new information about the treatment; and
  3. Modify or terminate the treatment as appropriate.

- (b) If the course of treatment extends beyond three (3) months, the administrative regulations shall also require that the practitioner:
  - 1. Query the electronic monitoring system established in KRS 218A.202 no less than once every three (3) months for all available data on the patient for the twelve (12) month period immediately preceding the query; and
  - 2. Review that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.
- (3) Administrative regulations promulgated under KRS 218A.205(3) shall require that, for each patient for whom a practitioner prescribes any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, the practitioner shall keep accurate, readily accessible, and complete medical records which include, as appropriate:
  - (a) Medical history and physical or mental health examination;
  - (b) Diagnostic, therapeutic, and laboratory results;
  - (c) Evaluations and consultations;
  - (d) Treatment objectives;
  - (e) Discussion of risk, benefits, and limitations of treatments;
  - (f) Treatments;
  - (g) Medications, including date, type, dosage, and quantity prescribed or dispensed;
  - (h) Instructions and agreements; and
  - (i) Periodic reviews of the patient's file.
- (4) Administrative regulations promulgated under KRS 218A.205(3) may exempt, in whole or in part, compliance with the mandatory diagnostic, treatment, review, and other protocols and standards established in this section for:
  - (a) A licensee prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure or the delivery and the medication usage does not extend beyond the fourteen (14) days;
  - (b) A licensee prescribing or administering a controlled substance necessary to treat a patient in an emergency situation;
  - (c) A licensed pharmacist or other person licensed by the Kentucky Board of Pharmacy to dispense drugs or a licensed pharmacy;
  - (d) A licensee prescribing or dispensing a controlled substance:
    - 1. For administration in a hospital or long-term-care facility if the hospital or long-term-care facility with an institutional account, or a practitioner in those hospitals or facilities where no institutional account exists, queries the electronic monitoring system established in KRS 218A.202 for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;
    - 2. As part of the patient's hospice or end-of-life treatment;
    - 3. For the treatment of pain associated with cancer or with the treatment of cancer;
    - 4. In a single dose to relieve the anxiety, pain, or discomfort experienced by a patient submitting to a diagnostic test or procedure;
    - 5. Within seven (7) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing:
      - a. Is done as a substitute for the initial prescribing or dispensing;
      - b. Cancels any refills for the initial prescription; and

- c. Requires the patient to dispose of any remaining unconsumed medication;
- 6. Within ninety (90) days of an initial prescribing or dispensing under subsection (1) of this section if the prescribing or dispensing is done by another practitioner in the same practice or in an existing coverage arrangement, if done for the same patient for the same medical condition; or
- 7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections, where the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;
- (e) The prescribing of a Schedule III, IV, or V controlled substance by a licensed optometrist to a patient in accordance with the provisions of KRS 320.240; or
- (f) The prescribing of a three (3) day supply of a Schedule III controlled substance following the performance of oral surgery by a dentist licensed pursuant to KRS Chapter 313.
- (5) (a) A state licensing board promulgating administrative regulations under KRS 218A.205(3) may promulgate an administrative regulation authorizing exemptions supplemental or in addition to those specified in subsection (4) of this section. Prior to exercising this authority, the board shall:
  - 1. Notify the Kentucky Office of Drug Control Policy that it is considering a proposal to promulgate an administrative regulation authorizing exemptions supplemental or in addition to those specified in subsection (4) of this section and invite the office to participate in the board meeting at which the proposal will be considered;
  - 2. Make a factual finding based on expert testimony as well as evidence or research submitted to the board that the exemption demonstrates a low risk of diversion or abuse and is supported by the dictates of good medical practice; and
  - 3. Submit a report to the Governor and the Legislative Research Commission of its actions, including a detailed explanation of the factual and policy basis underlying the board's action. A copy of this report shall be provided to the regulations compiler.
- (b) Within one (1) working day of promulgating an administrative regulation authorizing an exemption under this section, the promulgating board shall e-mail to the Kentucky Office of Drug Control Policy:
  - 1. A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230(1); and
  - 2. A request from the board that the office review the administrative regulation in the same manner as would the Commission on Small Business *Innovation and* Advocacy under KRS 11.202(1)(e), and submit its report or comments in accordance with the deadline established in KRS 13A.270(1)(c). A copy of the report or comments shall be filed with the regulations compiler.

➔Section 140. KRS 141.396 is amended to read as follows:

- (1) As used in this section:
  - (a) "Authority" has the same meaning as in KRS 154.20-230;
  - (b) "Qualified investor" has the same meaning as in KRS 154.20-230;
  - (c) "Qualified small business" has the same meaning as in KRS 154.20-230; and
  - (d) "Taxpayer" means an individual subject to the tax imposed by KRS 141.020, who has either:
    - 1. Received a credit from the authority pursuant to KRS 154.20-236; or
    - 2. Received a credit through a valid transfer allowed under this section from a qualified investor that was originally awarded the credit.
- (2) For taxable years beginning on or after January 1, 2015, there is hereby created the angel investor tax credit. The credit shall be nonrefundable, and shall apply against the tax imposed by KRS 141.020. The ordering of the credit shall be as provided in KRS 141.0205.
- (3) A qualified investor may seek a credit by applying to the authority pursuant to KRS 154.20-236.



- (4) The maximum amount of credit that may be claimed by a taxpayer in any taxable year shall not exceed fifty percent (50%) of the total amount of credit awarded or transferred to the taxpayer.
- (5) Any amount of credit that a taxpayer is unable to utilize during a taxable year may be carried forward for use in a succeeding taxable year for a period not to exceed fifteen (15) years. Any amount of credit not used within fifteen (15) years shall be lost. No amount of credit may be carried back by any taxpayer.
- (6) The credit shall not apply to any liability a taxpayer may have for interest, penalties, past due taxes, or any other additions to the taxpayer's tax liability. The holder of the credit shall assume any and all liabilities and responsibilities of the credit.
- (7) A credit may be transferred by a qualified investor to any individual taxpayer. A qualified investor making a transfer shall give written notice to the department and shall provide any other information required by the department, in the manner prescribed by the department. Any transferred credit shall be subject to the original timeframes and requirements established by this section and KRS 154.20-230 to 154.20-240 as if held by the qualified investor.
- (8) To receive the credit, a taxpayer shall claim the credit on his or her return in the manner prescribed by the department.
- (9) The department shall recapture any portion, or the full amount, of a credit upon notification from the authority that a recapture is required pursuant to KRS 154.20-240.
- (10) In order for the General Assembly to evaluate the fulfillment of the purposes stated in KRS 154.20-232, the department and the Cabinet for Economic Development shall work jointly to submit the following information to the Interim Joint Committee on Appropriations and Revenue on or before May 1, 2019, *and each May 1 thereafter*, related to each taxable year that an angel investor credit is claimed on a return:
  - (a) The number of qualified small businesses certified by the authority;
  - (b) The demographics of each qualified small business, including:
    1. The net worth of the qualified small business;
    2. The qualified activity the qualified small business is actively and principally engaged in within the Commonwealth;
    3. The number of employees of the qualified small business;
    4. The location of the assets, operations, and employees of the qualified small business; and
    5. The aggregate amount of qualified investments received by the qualified small business;
  - (c) A list detailing each qualified investor certified by the authority, the amount of investment made by each qualified investor, the date each qualified investment is made by the qualified investor, and the amount of tax credit awarded each investor;
  - (d) By taxable year, the amount of tax credit claimed by each investor and the amount of credit available to be claimed in future taxable years;
  - (e) The number of qualified small businesses that are active, inactive, or closed that have received qualified investments;
  - (f) The number of qualified small businesses that have established a location in the Commonwealth and the number that have expanded operations, the number and location of each new job created, a description of each development of new products and technologies in the Commonwealth, and the field of operation for that growth, including knowledge-based, high-tech, or research and development; and
  - (g) The total amount of tax credit awarded for each fiscal year.
- (11) If either the department or the Cabinet for Economic Development does not currently have the data to fulfill the reporting requirement of subsection (10) of this section, the department and the cabinet shall work jointly to obtain the data in an expedient manner to provide the report on or before the May 1, 2019, report date.

➔Section 141. The following KRS sections are repealed:

164.6031 Authority of the science and technology organization to review applications, grant awards to qualifying companies, and certify qualified companies.

164.6033 Limitations upon project funding in the Kentucky Rural Innovation Program.

164.6037 Kentucky Commercialization Fund Program -- Purposes.

164.6039 The science and technology organization to review, evaluate, and recommend proposal applications submitted by universities and report to council -- Council's power to approve program fund awards.

164.6041 Limitations upon project funding in the Kentucky Commercialization Fund Program.

**Signed by Governor April 5, 2021.**

## CHAPTER 186

### ( SB 215 )

AN ACT relating to transportation.

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

➔Section 1. KRS 174.020 is amended to read as follows:

- (1) The Transportation Cabinet shall consist of the following major organizational units:
  - (a) The Office of the Secretary, which shall include, but not be limited to:
    1. The secretary to be appointed by the Governor under KRS 12.255; and
    2. The deputy secretary appointed under KRS 12.040;
  - (b) The Department of Highways, headed by a commissioner, appointed by the Governor under KRS 12.040;
  - (c) The Department of Vehicle Regulation, headed by a commissioner, appointed by the Governor under KRS 12.040. The Motor Vehicle Commission established in KRS 190.058 shall be attached to the Department of Vehicle Regulation for administrative purposes;
  - (d) The Department of Rural and Municipal Aid, headed by a commissioner appointed by the Governor under KRS 12.040;
  - (e) The Department of Aviation, headed by a commissioner appointed by the Governor under KRS 12.040. The Kentucky Airport Zoning Commission established by KRS 183.861 shall be attached to the Department of Aviation for administrative purposes;
  - (f) The Office of Support Services, headed by an executive director appointed under KRS 12.040;
  - (g) The Office of Transportation Delivery, headed by an executive director appointed under KRS 12.040;
  - (h) The Office of Audits, headed by an executive director appointed under KRS 12.040;
  - (i) The Office of Human Resource Management, headed by an executive director appointed under KRS 12.040;
  - (j) The Office of Information Technology, headed by an executive director appointed under KRS 12.040;
  - (k) The Office of Legal Services, headed by an executive director appointed under KRS 12.040;
  - (l) The following offices, which shall be attached to the Office of the Secretary:
    1. The Office of Public Affairs, headed by an executive director appointed under KRS 12.040;
    2. The Office of Budget and Fiscal Management, headed by an executive director appointed under KRS 12.040;
    3. The Office for Civil Rights and Small Business Development, headed by an executive director appointed under KRS 12.040;~~[-and]~~
    4. The Office of Inspector General, headed by an executive director appointed under KRS 12.040;  
*and*

5. *The Secretary's Office of Safety, headed by an executive director appointed under KRS 12.040;*

- (m) The following offices, which shall be attached to the Department of Highways:
1. The Office of Project Development, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for project development;
  2. The Office of Project Delivery and Preservation, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for project delivery and preservation;
  3. The Office of Highway Safety, headed by an executive director appointed under KRS 12.040; and
  4. Highway District Offices One through Twelve, each district office to be headed by an executive director, also known as the chief district engineer, appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322; and
- (n) The following offices, which shall be attached to the Department of Rural and Municipal Aid:
1. Office of Local Programs, headed by an executive director appointed under KRS 12.040; and
  2. Office of Rural and Secondary Roads, headed by an executive director appointed under KRS 12.040.
- (2) The position of director in the Division of Environmental Analysis is a policy-making position under KRS 18A.175.

➔Section 2. KRS 12.020 is amended to read as follows:

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

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

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

## II. Program cabinets headed by appointed officers:

- (1) Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Department of Public Advocacy.
- (2) Education and Workforce Development Cabinet:
  - (a) Office of the Secretary.
    1. Governor's Scholars Program.
    2. Governor's School for Entrepreneurs Program.
    3. Office of the Kentucky Workforce Innovation Board.
    4. Foundation for Adult Education.
    5. Early Childhood Advisory Council.
  - (b) Office of Legal and Legislative Services.
    1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Administrative Services.
    1. Division of Human Resources.
    2. Division of Operations and Support Services.
    3. Division of Fiscal Management.
  - (e) Office of Technology Services.
  - (f) Office of Educational Programs.
  - (g) Office of the Kentucky Center for Statistics.
  - (h) Board of the Kentucky Center for Statistics.
  - (i) Board of Directors for the Center for School Safety.
  - (j) Department of Education.
    1. Kentucky Board of Education.
    2. Kentucky Technical Education Personnel Board.
  - (k) Department for Libraries and Archives.
  - (l) Department of Workforce Investment.

1. Office of Vocational Rehabilitation.
  - a. Division of Kentucky Business Enterprise.
  - b. Division of the Carl D. Perkins Vocational Training Center.
  - c. Division of Blind Services.
  - d. Division of Field Services.
  - e. Statewide Council for Vocational Rehabilitation.
2. Office of Unemployment Insurance.
3. Office of Employer and Apprenticeship Services.
  - a. Division of Apprenticeship.
4. Office of Career Development.
5. Office of Adult Education.
6. Unemployment Insurance Commission.
7. Kentucky Apprenticeship Council.
- (m) Foundation for Workforce Development.
- (n) Kentucky Workforce Investment Board.
- (o) Education Professional Standards Board.
  1. Division of Educator Preparation.
  2. Division of Certification.
  3. Division of Professional Learning and Assessment.
  4. Division of Legal Services.
- (p) Kentucky Commission on the Deaf and Hard of Hearing.
- (q) Kentucky Educational Television.
- (r) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
  - (a) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of Legal Services.
      - a. Legal Division I.
      - b. Legal Division II.
    3. Office of Administrative Hearings.
    4. Office of Communication.
    5. Mine Safety Review Commission.
    6. Office of Kentucky Nature Preserves.
    7. Kentucky Public Service Commission.
  - (b) Department for Environmental Protection.
    1. Office of the Commissioner.
    2. Division for Air Quality.
    3. Division of Water.
    4. Division of Environmental Program Support.

5. Division of Waste Management.
6. Division of Enforcement.
7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
  1. Office of the Commissioner.
  2. Division of Mine Permits.
  3. Division of Mine Reclamation and Enforcement.
  4. Division of Abandoned Mine Lands.
  5. Division of Oil and Gas.
  6. Division of Mine Safety.
  7. Division of Forestry.
  8. Division of Conservation.
  9. Office of the Reclamation Guaranty Fund.
- (d) Office of Energy Policy.
  1. Division of Energy Assistance.
- (e) Office of Administrative Services.
  1. Division of Human Resources Management.
  2. Division of Financial Management.
  3. Division of Information Services.
- (4) Public Protection Cabinet.
  - (a) Office of the Secretary.
    1. Office of Communications and Public Outreach.
    2. Office of Legal Services.
      - a. Insurance Legal Division.
      - b. Charitable Gaming Legal Division.
      - c. Alcoholic Beverage Control Legal Division.
      - d. Housing, Buildings and Construction Legal Division.
      - e. Financial Institutions Legal Division.
      - f. Professional Licensing Legal Division.
    3. Office of Administrative Hearings.
    4. Office of Administrative Services.
      - a. Division of Human Resources.
      - b. Division of Fiscal Responsibility.
  - (b) Kentucky Claims Commission.
  - (c) Kentucky Boxing and Wrestling Commission.
  - (d) Kentucky Horse Racing Commission.
    1. Office of Executive Director.
      - a. Division of Pari-mutuel Wagering and Compliance.
      - b. Division of Stewards.

- c. Division of Licensing.
    - d. Division of Enforcement.
    - e. Division of Incentives and Development.
    - f. Division of Veterinary Services.
  - (e) Department of Alcoholic Beverage Control.
    - 1. Division of Distilled Spirits.
    - 2. Division of Malt Beverages.
    - 3. Division of Enforcement.
  - (f) Department of Charitable Gaming.
    - 1. Division of Licensing and Compliance.
    - 2. Division of Enforcement.
  - (g) Department of Financial Institutions.
    - 1. Division of Depository Institutions.
    - 2. Division of Non-Depository Institutions.
    - 3. Division of Securities.
  - (h) Department of Housing, Buildings and Construction.
    - 1. Division of Fire Prevention.
    - 2. Division of Plumbing.
    - 3. Division of Heating, Ventilation, and Air Conditioning.
    - 4. Division of Building Code Enforcement.
  - (i) Department of Insurance.
    - 1. Division of Insurance Product Regulation.
    - 2. Division of Administrative Services.
    - 3. Division of Financial Standards and Examination.
    - 4. Division of Agent Licensing.
    - 5. Division of Insurance Fraud Investigation.
    - 6. Division of Consumer Protection.
  - (j) Department of Professional Licensing.
    - 1. Real Estate Authority.
- (5) Labor Cabinet.
- (a) Office of the Secretary.
    - 1. Office of General Counsel.
      - a. Workplace Standards Legal Division.
      - b. Workers' Claims Legal Division.
    - 2. Office of Administrative Services.
      - a. Division of Human Resources Management.
      - b. Division of Fiscal Management.
      - c. Division of Professional Development and Organizational Management.
      - d. Division of Information Technology and Support Services.

3. Office of Inspector General.
  - (b) Department of Workplace Standards.
    1. Division of Occupational Safety and Health Compliance.
    2. Division of Occupational Safety and Health Education and Training.
    3. Division of Wages and Hours.
  - (c) Department of Workers' Claims.
    1. Division of Workers' Compensation Funds.
    2. Office of Administrative Law Judges.
    3. Division of Claims Processing.
    4. Division of Security and Compliance.
    5. Division of Information Services.
    6. Division of Specialist and Medical Services.
    7. Workers' Compensation Board.
  - (d) Workers' Compensation Funding Commission.
  - (e) Occupational Safety and Health Standards Board.
  - (f) State Labor Relations Board.
  - (g) Employers' Mutual Insurance Authority.
  - (h) Kentucky Occupational Safety and Health Review Commission.
  - (i) Workers' Compensation Nominating Committee.
- (6) Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Project Development.
    2. Office of Project Delivery and Preservation.
    3. Office of Highway Safety.
    4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    1. Office of Local Programs.
    2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    1. Office of Public Affairs.
    2. Office for Civil Rights and Small Business Development.
    3. Office of Budget and Fiscal Management.
    4. Office of Inspector General.
    5. ***Secretary's Office of Safety.***
  - (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.



- (i) Office of Human Resource Management.
  - (j) Office of Information Technology.
  - (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
- (a) Office of the Secretary.
    - 1. Office of Legal Services.
    - 2. Department for Business Development.
    - 3. Department for Financial Services.
      - a. Kentucky Economic Development Finance Authority.
      - b. Finance and Personnel Division.
      - c. IT and Resource Management Division.
      - d. Compliance Division.
      - e. Incentive Administration Division.
      - f. Bluegrass State Skills Corporation.
    - 4. Office of Marketing and Public Affairs.
      - a. Communications Division.
      - b. Graphics Design Division.
    - 5. Office of Workforce, Community Development, and Research.
    - 6. Office of Entrepreneurship.
      - a. Commission on Small Business Advocacy.
- (8) Cabinet for Health and Family Services:
- (a) Office of the Secretary.
    - 1. Office of the Ombudsman and Administrative Review.
    - 2. Office of Public Affairs.
    - 3. Office of Legal Services.
    - 4. Office of Inspector General.
    - 5. Office of Human Resource Management.
    - 6. Office of Finance and Budget.
    - 7. Office of Legislative and Regulatory Affairs.
    - 8. Office of Administrative Services.
    - 9. Office of Application Technology Services.
  - (b) Department for Public Health.
  - (c) Department for Medicaid Services.
  - (d) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (e) Department for Aging and Independent Living.
  - (f) Department for Community Based Services.
  - (g) Department for Income Support.
  - (h) Department for Family Resource Centers and Volunteer Services.
  - (i) Office for Children with Special Health Care Needs.

- (j) Office of Health Data and Analytics.
- (9) Finance and Administration Cabinet:
  - (a) Office of the Secretary.
  - (b) Office of the Inspector General.
  - (c) Office of Legislative and Intergovernmental Affairs.
  - (d) Office of General Counsel.
  - (e) Office of the Controller.
  - (f) Office of Administrative Services.
  - (g) Office of Policy and Audit.
  - (h) Department for Facilities and Support Services.
  - (i) Department of Revenue.
  - (j) Commonwealth Office of Technology.
  - (k) State Property and Buildings Commission.
  - (l) Office of Equal Employment Opportunity and Contract Compliance.
  - (m) Kentucky Employees Retirement Systems.
  - (n) Commonwealth Credit Union.
  - (o) State Investment Commission.
  - (p) Kentucky Housing Corporation.
  - (q) Kentucky Local Correctional Facilities Construction Authority.
  - (r) Kentucky Turnpike Authority.
  - (s) Historic Properties Advisory Commission.
  - (t) Kentucky Tobacco Settlement Trust Corporation.
  - (u) Kentucky Higher Education Assistance Authority.
  - (v) Kentucky River Authority.
  - (w) Kentucky Teachers' Retirement System Board of Trustees.
  - (x) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
  - (a) Kentucky Department of Tourism.
    - 1. Division of Tourism Services.
    - 2. Division of Marketing and Administration.
    - 3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - 1. Division of Information Technology.
    - 2. Division of Human Resources.
    - 3. Division of Financial Operations.
    - 4. Division of Facilities Management.
    - 5. Division of Facilities Maintenance.
    - 6. Division of Customer Services.
    - 7. Division of Recreation.

8. Division of Golf Courses.
  9. Division of Food Services.
  10. Division of Rangers.
  11. Division of Resort Parks.
  12. Division of Recreational Parks and Historic Sites.
- (c) Department of Fish and Wildlife Resources.
1. Division of Law Enforcement.
  2. Division of Administrative Services.
  3. Division of Engineering, Infrastructure, and Technology.
  4. Division of Fisheries.
  5. Division of Information and Education.
  6. Division of Wildlife.
  7. Division of Marketing.
- (d) Kentucky Horse Park.
1. Division of Support Services.
  2. Division of Buildings and Grounds.
  3. Division of Operational Services.
- (e) Kentucky State Fair Board.
1. Office of Administrative and Information Technology Services.
  2. Office of Human Resources and Access Control.
  3. Division of Expositions.
  4. Division of Kentucky Exposition Center Operations.
  5. Division of Kentucky International Convention Center.
  6. Division of Public Relations and Media.
  7. Division of Venue Services.
  8. Division of Personnel Management and Staff Development.
  9. Division of Sales.
  10. Division of Security and Traffic Control.
  11. Division of Information Technology.
  12. Division of the Louisville Arena.
  13. Division of Fiscal and Contract Management.
  14. Division of Access Control.
- (f) Office of the Secretary.
1. Office of Finance.
  2. Office of Government Relations and Administration.
  3. Office of Film and Tourism Development.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.

- (j) Office of Arts and Cultural Heritage.
  - (k) Kentucky African-American Heritage Commission.
  - (l) Kentucky Foundation for the Arts.
  - (m) Kentucky Humanities Council.
  - (n) Kentucky Heritage Council.
  - (o) Kentucky Arts Council.
  - (p) Kentucky Historical Society.
    - 1. Division of Museums.
    - 2. Division of Oral History and Educational Outreach.
    - 3. Division of Research and Publications.
    - 4. Division of Administration.
  - (q) Kentucky Center for the Arts.
    - 1. Division of Governor's School for the Arts.
  - (r) Kentucky Artisans Center at Berea.
  - (s) Northern Kentucky Convention Center.
  - (t) Eastern Kentucky Exposition Center.
- (11) Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department of Human Resources Administration.
  - (c) Office of Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Office of Administrative Services.
  - (f) Office of Legal Services.
  - (g) Governmental Services Center.
  - (h) Department of Employee Insurance.
  - (i) Office of Diversity, Equality, and Training.
  - (j) Office of Public Affairs.

III. Other departments headed by appointed officers:

- (1) Council on Postsecondary Education.
- (2) Department of Military Affairs.
- (3) Department for Local Government.
- (4) Kentucky Commission on Human Rights.
- (5) Kentucky Commission on Women.
- (6) Department of Veterans' Affairs.
- (7) Kentucky Commission on Military Affairs.
- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.
- (10) Kentucky Communications Network Authority.

➔Section 3. KRS 189.390 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Business district" means the territory contiguous to and including a highway if, within six hundred (600) feet along the highway, there are buildings in use for business or industrial purposes that occupy three hundred (300) feet of frontage on one (1) side or three hundred (300) feet collectively on both sides of the highway;
  - (b) "Residential district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred (300) feet or more is improved with residences or residences and buildings in use for business; and
  - (c) "State highway" means a highway or street maintained by the Kentucky Department of Highways.
- (2) An operator of a vehicle upon a highway shall not drive at a greater speed than is reasonable and prudent, having regard for the traffic and for the condition and use of the highway.
- (3) The speed limit for motor vehicles on state highways shall be as follows, unless conditions exist that require lower speed for compliance with subsection (2) of this section, or the secretary of the Transportation Cabinet establishes a different speed limit in accordance with subsection (4) of this section:
  - (a) Sixty-five (65) miles per hour on interstate highways and parkways;
  - (b) Fifty-five (55) miles per hour on all other state highways; and
  - (c) Thirty-five (35) miles per hour in a business or residential district.
- (4) (a) If the secretary of transportation determines, upon the basis of an engineering and traffic investigation, that any speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, or upon any part of a state highway, the secretary of transportation may establish by official order a reasonable and safe speed limit at the location. The secretary shall not increase any speed limit established by subsection (3) of this section in excess of sixty-five (65) miles per hour, except that, notwithstanding the provisions of subsection (3)(a) of this section, the secretary may increase the speed limit on any of the following segments of highway to seventy (70) miles per hour:
  1. Interstate 24 (entire length);
  2. Interstate 64 from Interstate 264 to the West Virginia state line;
  3. Interstate 65 from Interstate 264 to the Tennessee state line;
  4. Interstate 69 (entire length);
  5. Interstate 71 from Interstate 264 to Interstate 275;
  6. Interstate 75 from the Tennessee state line to Interstate 275;
  7. Interstate 165 (entire length);
  8. The Audubon Parkway (entire length);
  9. The Julian M. Carroll Purchase Parkway (entire length);
  10. The Bert T. Combs Mountain Parkway (entire length);
  11. The Bert T. Combs Mountain Parkway Extension (entire length);
  12. The Edward T. Breathitt Pennyrile Parkway (entire length);
  13. The Wendell H. Ford Western Kentucky Parkway (entire length);
  14. The Louie B. Nunn Cumberland *Expressway*~~[Parkway]~~ (entire length);
  15. The Martha Layne Collins Bluegrass Parkway (entire length); and
  16. The William H. Natcher Parkway (entire length).
- (b) In a highway work zone, the Transportation Cabinet may temporarily reduce established speed limits without an engineering or traffic investigation. A speed limit established under this paragraph shall become effective when and where posted. The Transportation Cabinet shall post signs notifying the traveling public of the temporary highway work zone maximum speed limit. Nothing in this paragraph shall be construed to prevent the Transportation Cabinet from using moveable or portable speed limit signs in highway work zones.

- (5) (a) A city or a county may by ordinance establish speed limits within its own jurisdiction, except as provided in paragraph (b) of this subsection.
- (b) The alteration of speed limits on state highways within a city or a county shall not be effective until the alteration has been approved by the secretary of transportation. The secretary shall not approve any alteration that could increase any speed limit established by subsection (3)(b) or (c) of this section in excess of fifty-five (55) miles per hour.
- (c) If a county determines, upon the basis of an engineering and traffic investigation and study, that it is unsafe to park motor vehicles on or along any highway, other than a state highway, within the unincorporated areas of the county, or that in any business district the congestion of traffic justifies a reasonable limitation on the length of time any one (1) motor vehicle is permitted to park in such district so as to reduce the congestion, the fiscal court may by ordinance establish "no parking" areas on the highway, or limit the length of time any motor vehicle may be parked in any business district.
- (6) The speed limit for motor vehicles in an off-street parking facility offered for public use, whether publicly or privately owned, shall be fifteen (15) miles per hour.
- (7) A person shall not drive a motor vehicle at a speed that will impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.
- (8) In every charge for a violation of any speed limit specified in this section, the warrant or citation shall specify the speed at which the defendant is alleged to have driven, and the lawful speed limit applicable at the location where the violation is charged to have occurred.

➔Section 4. The Transportation Cabinet is directed to change the name of the "Louie B. Nunn Cumberland Parkway" in its entirety to the "Louie B. Nunn Cumberland Expressway" and shall, within 30 days of the effective date of this Act:

- (1) Make appropriate changes to official highway lists, electronic maps, Web sites, and databases to denote the name change; and
- (2) Take any necessary steps to ensure that:
- (a) Appropriate signs and highway markers denoting this name change are installed whenever new signage is required due to sign damage or in the course of ordinary sign maintenance; and
- (b) Physical maps produced by the Transportation Cabinet reflect this name change at the time of their next publication.

➔Section 5. The General Assembly confirms Executive Order 2020-1027, regarding the reorganization of the Transportation Cabinet, to the extent it is not otherwise confirmed by this Act.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

*After the effective date of this Act and until July 1, 2024:*

(1) *As used in this section:*

- (a) *"Local government" means a city, county, charter county government, urban-county government, consolidated local government, or unified local government that is located within the boundaries of a regional authority, or the Kentucky Mountain Regional Recreation Authority established under KRS 148.0222, acting on behalf of a local government that is part of the authority;*
- (b) *"Off-highway vehicle" or "OHV" means a motorized vehicle that:*
1. *Is designed to be primarily used for recreational purposes;*
  2. *Has a maximum speed that is greater than thirty-five (35) miles per hour;*
  3. *Is equipped with the following:*
    - a. *Four (4) to six (6) highway or nonhighway tires;*
    - b. *A steering wheel or steering mechanism;*
    - c. *Brakes;*
    - d. *Headlamps;*
    - e. *Tail lamps;*

- f. *Brake lights;*
  - g. *One (1) red reflex reflector on each side as far to the rear as practicable and one (1) red reflex reflector on the rear;*
  - h. *A working muffler;*
  - i. *A parking brake;*
  - j. *A spark arrestor; and*
  - k. *For multi-passenger vehicles, an exterior mirror mounted on the driver's side of the vehicle, either an interior mirror or an exterior mirror mounted on the passenger's side of the vehicle, and for each designated seating position, a seatbelt assembly that conforms to the federal motor vehicle safety standard provided in 49 C.F.R. sec. 571.209; and*
- (c) *"Regional authority" means:*
- 1. *The Kentucky Mountain Regional Recreation Authority established in KRS 148.0222; and*
  - 2. *Any other authority established in Kentucky Revised Statutes, prior to the effective date of this Act, that oversees lands in two (2) or more contiguous counties, on which there is a system of recreational trails, including streams, rivers, and other waterways, and appurtenant facilities, including trailhead centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, and other facilities in Kentucky and designated by the regional authority.*
- (2) (a) *The legislative body of a local government that is currently or formerly located within the boundaries of a regional authority, or which currently operates a public OHV trail system, may establish a pilot program, by ordinance, to authorize and regulate the operation of an OHV on any public roadway or any section of city or county roadway for which it bears responsibility.*
- (b) *Prior to enacting an OHV ordinance under paragraph (a) of this subsection, the legislative body of a local government shall notify the public of its plans to allow OHV use on roadways under its jurisdiction. Public notice under this paragraph shall:*
- 1. *Notify the public of the time, subject, and location of the public meeting and shall be posted in both a local newspaper, if any, and a newspaper of general circulation in the county;*
  - 2. *Include a list and map of all roadways and connecting trails that the local government intends to designate for OHV use; and*
  - 3. *Be placed on the Web site of the local government.*
- (c) *A local government may petition the Transportation Cabinet to include, in an OHV ordinance adopted under paragraph (a) of this subsection, state-maintained roadways or sections of state-maintained roadways located within the local government's jurisdictional boundaries. The local government shall submit the following to the Transportation Cabinet for approval:*
- 1. *The minutes from the public meeting or meetings held prior to adoption of an OHV ordinance under this subsection;*
  - 2. *A list and map of all roadways and connecting trails that the local government intends to designate for OHV use;*
  - 3. *An enforcement plan to ensure that all OHVs operating on roadways under this section meet all of the requirements established under this section, including verification of required insurance coverage;*
  - 4. *A plan to notify the public and OHV users of the operation of OHVs on state and local roadways within the boundaries of the local government;*
  - 5. *A safety plan for OHV roadway use; and*
  - 6. *Any other requirements established by the Transportation Cabinet under subsection (16) of this section.*

- (d) *The Transportation Cabinet shall, within ninety (90) days of receipt of a petition and all information required in paragraph (c) of this subsection, respond to the local government with approval or denial of the request submitted.*
        - (e) *Any OHV ordinance adopted under this section shall be adopted at a public meeting.*
- (3) *A fully controlled access highway shall not be designated for OHV use under this section.*
- (4) *A local government that has enacted an OHV ordinance under this section shall notify the Transportation Cabinet of any collision involving an OHV that occurred on any roadway approved for OHV use under this section.*
- (5) *A person may operate an OHV on a public roadway pursuant to subsection (2) of this section if the:*
  - (a) *Operator is eighteen (18) years of age or older;*
  - (b) *Operator has a valid operator's license in his or her possession;*
  - (c) *OHV is insured by the owner or operator, for the payment of tort liabilities in the same form and amounts as set forth in KRS 304.39-110 for motorcycles;*
  - (d) *Proof of insurance is inside the OHV at all times of operation on a public roadway; and*
  - (e) *OHV is equipped with all safety equipment required under this section.*
- (6) *Any person operating an OHV on a public roadway under this section shall be subject to the same traffic regulations of this chapter as a motor vehicle, including KRS 189.520 prohibiting the operation of a vehicle that is not a motor vehicle, while under the influence of intoxicants or substances which may impair driving.*
- (7) *A person shall not operate an OHV under this section on any public roadway:*
  - (a) *Between one (1) hour after sunset and one (1) hour before sunrise, unless the person can demonstrate cause for driving, including but not limited to emergencies; or*
  - (b) *While carrying passengers on a trailer or any other towed unit.*
- (8) *Any passenger of an OHV that is under the age of sixteen (16) shall be required to wear a helmet that meets the national standards prescribed by the United States Department of Transportation.*
- (9) *An operator and any passengers shall wear eye protection when operating or riding an OHV that is not equipped with a windshield.*
- (10)
  - (a) *The Transportation Cabinet shall be responsible for the cost, placement, and maintenance of signage denoting state highways that have been authorized for OHV use under this section.*
  - (b) *The local government shall be responsible for the cost, placement, and maintenance of signage denoting local roadways that have been designated for OHV use under this section.*
  - (c) *The local government shall be responsible for monthly inspection of state and local OHV signage.*
- (11) *An OHV operating on a public roadway designated by a local government under subsection (2) of this section is not considered to be a motor vehicle and shall be exempt from:*
  - (a) *Vehicle registration requirements of KRS 186.050; and*
  - (b) *Emissions compliance certificates pursuant to KRS 224.20-720.*
- (12) *A local government may adopt more stringent local ordinances governing OHV safety equipment and operation than specified in this section.*
- (13) *If deemed in the interest of public safety, the Transportation Cabinet may:*
  - (a) *Prohibit the operation of an OHV on any public roadway designated under subsection (2) of this section that crosses a state-maintained roadway; or*
  - (b) *Rescind approval given under subsection (2)(d) of this section.*
- (14) *This section shall not apply to:*
  - (a) *An OHV operated on any private or public recreational trail or area;*
  - (b) *An OHV operating under the exemptions for highway use under Section 7 of this Act; or*



- (c) *A publicly owned and operated OHV used for wildlife management, law enforcement, emergency services, or other governmental purposes.*
- (15) *Nothing in this section shall be interpreted or construed to require an insurance company to provide OHV insurance coverage.*
- (16) *The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to implement this section, including but not limited to:*
  - (a) *Prescribing of any forms or applications needed;*
  - (b) *Establishing criteria for OHV ordinances;*
  - (c) *Establishing OHV enforcement requirements;*
  - (d) *Establishing criteria for rescinding approval pursuant to subsection (13) of this section;*
  - (e) *Establishing OHV safety requirements;*
  - (f) *Establishing OHV safety equipment verification protocol; and*
  - (g) *Establishing OHV safety plan requirements.*

➔Section 7. KRS 189.515 is amended to read as follows:

- (1) As used in this section, "federal all-terrain vehicle standards" means the all-terrain vehicle standards set forth by the American National Standards Institute/Specialty Vehicle Institute of America and incorporated by reference in 16 C.F.R. sec. 1420.3, to the extent those standards are applicable.
- (2) Except for vehicles authorized to operate on a public highway as of July 15, 1998, and except as provided in subsection (7) of this section, a person shall not operate an all-terrain vehicle upon any public highway or roadway or upon the right-of-way of any public highway or roadway.
- (3) A person shall not operate an all-terrain vehicle on private property without the consent of the landowner, tenant, or individual responsible for the property.
- (4) A person shall not operate an all-terrain vehicle on public property unless the governmental agency responsible for the property has approved the use of all-terrain vehicles.
- (5) Except for vehicles authorized to operate on a public highway, a person sixteen (16) years of age or older operating an all-terrain vehicle on public property shall wear approved protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times that the vehicle is in motion. The approved headgear requirement shall not apply when the operator of any all-terrain vehicle is engaged in:
  - (a) Farm or agriculture related activities;
  - (b) Mining or mining exploration activities;
  - (c) Logging activities;
  - (d) Any other business, commercial, or industrial activity;
  - (e) Use of that vehicle on private property; or
  - (f) The crossing of a public roadway with a posted speed limit of fifty-five (55) miles per hour or less. The crossing of a public roadway outlined in this paragraph shall be in compliance with subsection (7)(a) of this section.
- (6)
  - (a) A parent or legal guardian of a minor who is under the age of six (6) shall not knowingly allow that person to operate an all-terrain vehicle.
  - (b) A person under the age of sixteen (16) years shall not operate an all-terrain vehicle except under direct parental supervision.
  - (c) A person under the age of sixteen (16) years, when operating or riding as a passenger on an all-terrain vehicle, shall wear approved protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times that the vehicle is in motion.
  - (d) A parent or guardian of a minor who is under the age of sixteen (16), or who does not possess an instruction permit, an intermediate license, or an operator's license, shall not knowingly allow that person to carry a passenger while operating an all-terrain vehicle.

- (e) A parent or guardian of a minor under the age of sixteen (16) shall not knowingly allow that person to operate an all-terrain vehicle in violation of the age restriction warning label affixed by the manufacturer as required by the federal all-terrain vehicle standards.
- (7) (a) ***Except for off-highway vehicles described in Section 6 of this Act***, a person may operate an all-terrain vehicle on any two (2) lane public highway in order to cross the highway. In crossing the highway under this paragraph, the operator shall cross the highway at as close to a ninety (90) degree angle as is practical and safe, and shall not travel on the highway for more than two-tenths (2/10) of a mile.
- (b) A person may operate an all-terrain vehicle on any two (2) lane public highway, if the operator is engaged in farm or agricultural related activities, construction, road maintenance, or snow removal.
- (c) The Transportation Cabinet may designate, and a city or county government may designate, those public highways, segments of public highways, and adjoining rights-of-way of public highways under its jurisdiction where all-terrain vehicles that are prohibited may be operated.
- (d) A person operating an all-terrain vehicle on a public highway under this subsection shall possess a valid operator's license.
- (e) A person operating an all-terrain vehicle on a public highway under this subsection shall comply with all applicable traffic regulations.
- (f) A person shall not operate an all-terrain vehicle under this subsection unless the all-terrain vehicle has at least one (1) headlight and two (2) taillights, which shall be illuminated at all times the vehicle is in operation.
- (g) A person operating an all-terrain vehicle under this subsection shall restrict the operation to daylight hours, except when engaged in snow removal or emergency road maintenance.
- (h) It shall be unlawful for a person to remove from an all-terrain vehicle the manufacturer age restriction warning label required by the federal all-terrain vehicle standards.

➔Section 8. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsection (1) or (4) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.285, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, KRS 189.450 to 189.458, KRS 189.4595 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.590, except subsection (1)(b) or (6)(b) of KRS 189.580, KRS 189.345, subsection (6) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1)(a) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both, unless the accident involved death or serious physical injury and the person knew or should have known of the death or serious physical injury, in which case the person shall be guilty of a Class D felony. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.
- (2) (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, 189.270, or 189.2713 shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents (\$0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars (\$100) and shall not be more than five hundred dollars (\$500).
- (b) Any person who violates the provisions of KRS 189.271 and is operating on a route designated on the permit shall be fined one hundred dollars (\$100); otherwise, the penalties in paragraph (a) of this subsection shall apply.
- (c) Any person who violates any provision of subsection (2) or (3) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.2713, 189.280, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (d) 1. Any person who violates the provisions of KRS 177.985 while operating on a route designated in KRS 177.986 shall be fined one hundred dollars (\$100).

2. Any person who operates a vehicle with a permit under KRS 177.985 in excess of eighty thousand (80,000) pounds while operating on a route not designated in KRS 177.986 shall be fined one thousand dollars (\$1,000).
- (e) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
- (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (9) (a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (b) Any person who violates KRS 189.530(2) shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (3) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.

- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
  - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
  - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who operates a bicycle in violation of the administrative regulations promulgated pursuant to KRS 189.287 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3)(a) shall be fined fifty dollars (\$50). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.
- (25) Any person who violates the provisions of KRS 189.125(3)(b) shall not be issued a uniform citation, but shall instead receive a courtesy warning up until July 1, 2009. For a violation on or after July 1, 2009, the person shall be fined thirty dollars (\$30). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, a fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs. A person who has not been previously charged with a violation of KRS 189.125(3)(b) may elect to acquire a booster seat meeting the requirements of KRS 189.125. Upon presentation of sufficient proof of the acquisition, the charge shall be dismissed and no fees or costs shall be imposed.
- (26) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.
- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.020 and 534.060.
- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
  - (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
  - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

- (29) A person who violates the provisions of subsection (2) or (3) of KRS 189.459 shall be fined two hundred fifty dollars (\$250). The fines and costs for a violation of subsection (2) or (3) of KRS 189.459 shall be collected and disposed of in accordance with KRS 24A.180. Once deposited into the State Treasury, ninety percent (90%) of the fine collected under this subsection shall immediately be forwarded to the personal care assistance program under KRS 205.900 to 205.920. Ten percent (10%) of the fine collected under this subsection shall annually be returned to the county where the violation occurred and distributed equally to all law enforcement agencies within the county.
- (30) Any person who violates KRS 189.292 or 189.294 shall be fined twenty-five dollars (\$25) for the first offense and fifty dollars (\$50) for each subsequent offense.
- (31) *Any person who violates subsection (5) or (7)(b) of Section 6 of this Act shall be subject to a fine of two hundred fifty dollars (\$250). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.*

→Section 9. Sections 6 to 8 of this Act are a part of a pilot program and shall sunset on July 1, 2024.

→Section 10. Notwithstanding any provision of law to the contrary, with respect to any violations on or after March 1, 2021, the Transportation Cabinet shall suspend imposition and collection of fines and penalties on a coal haul truck operator for coal haul truck weight exceedance violations under KRS 189.271(9) on roads not currently listed in the Transportation Cabinet's Certified Transportation Plan if the operator:

Meets the requirements of this section, with exception of hauling an oversize load on a road not listed in the Certified Transportation Plan;

Meets all other applicable state and federal license and permit requirements to haul coal in Kentucky; and

Has given notice to the Transportation Cabinet by applying to bond the road under KRS 189.271.

The suspension on collection of fines and penalties shall terminate upon a final determination on the bond by the cabinet, and any violations that would be imposed during that period shall not remain enforceable unless the bond is denied. The provisions of this section shall expire thirty (30) days after the effective date of this Act.

→Section 11. The Transportation Cabinet shall designate the United States Route 27 Bypass in Jessamine County as the "Bernard T. Moynahan Memorial Highway," and shall, within 30 days of the effective date of this Act, erect the appropriate signage. This designation shall supersede the designation contained in 2020 Ky. Acts ch. 116, sec. 43.

**Signed by Governor April 5, 2021.**

## CHAPTER 187

( HB 163 )

AN ACT relating to teacher certification.

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

→Section 1. KRS 161.030 is amended to read as follows:

- (1) Notwithstanding the age of the pupil, the certification of all teachers and other school personnel, in public schools only, is vested in the Education Professional Standards Board. When so certified, teachers and other school personnel shall not be required to have licensure, certification, or other forms of approval from any other state agency for the performance of their respective assignments within the common schools, except as provided for by law. All certificates authorized under KRS 161.010 to 161.126 shall be issued in accordance with the administrative regulations of the Education Professional Standards Board. After July 15, 1994, all certificate applications and other data collection instruments of the board shall include a request for voluntary information about the applicant's ethnic background. This information shall be available to help local school districts locate minority candidates. A person who holds a certificate prior to this requirement may request that ethnic information be added to his or her file. Nothing in this section shall preclude the right of an individual in a nonpublic school from seeking voluntary certification by the Education Professional Standards Board.

- (2) Certificates shall be issued upon written application and in accordance with statutes and regulations in effect at the time of application to persons who have completed, at colleges, universities, or local school district programs approved by the Education Professional Standards Board for the preparation of teachers and other school personnel, the curricula prescribed by the administrative regulations of the Education Professional Standards Board.
- (3)
  - (a) Certification of all new teachers and teachers seeking additional certification shall require the successful completion of appropriate assessments prior to certification. The assessments shall be selected by the Education Professional Standards Board and shall measure knowledge in the specific teaching field of the applicant, including content of the field and teaching of that content. The Education Professional Standards Board shall determine the minimum acceptable level of achievement on each assessment. The assessments shall measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky. Upon successful completion of the assessments and the approved teacher preparation program, a certificate valid for one (1) year shall be issued.
  - (b) If an applicant for teacher certification has completed the approved teacher preparation program and has taken but failed to successfully complete the appropriate assessments selected by the Education Professional Standards Board, a conditional certificate may be issued for a period not to exceed one (1) year, if the employing school district, in collaboration with the teacher education institution, agrees to provide technical assistance and mentoring support to the conditionally certified teacher. The teacher shall retake the assessments during the validity period of the conditional certificate. The conditional certificate shall not be reissued. Upon successful completion of the required assessments, a certificate valid for one (1) year shall be issued and the teacher shall be eligible to participate in the internship program as provided in subsection (5) of this section. The teacher shall not be eligible to participate in the internship program while teaching on the conditional certificate. The Education Professional Standards Board shall promulgate administrative regulations to establish the standards and procedures for issuance of the conditional certificate.
  - (c) If an out-of-state teacher with less than two (2) years' experience comes to Kentucky after the deadline for taking the assessments, a temporary certificate may be issued for a period up to six (6) months provided the local board cannot fill the vacant position with a certified teacher. The teacher shall take the assessments if they are administered during the period of the temporary certificate. The certificate shall be extended for the remainder of the year if the teacher successfully completes the assessments. If the teacher fails the assessments, the temporary certificate shall be valid only for the current semester.
- (4) A reasonable fee to be paid by the teacher and directly related to the actual cost of the administration of the assessments shall be established by the Education Professional Standards Board. Provisions shall be made for persons having less than minimum levels of performance on any assessment to repeat that assessment, and candidates shall be informed of their strengths and weaknesses in the specific performance areas. The Education Professional Standards Board shall provide for confidentiality of the individual assessment scores. Scores shall be available only to the candidate and to the education officials who are responsible for determining whether established certification standards have been met. Scores shall be used only in the assessment for certification of new teachers and of out-of-state teachers with less than two (2) years of teaching experience who are seeking initial certification in Kentucky.
- (5) Except as provided in subsection (3)(b) of this section, all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. The teacher shall be a full-time employee or shall have an annual contract and serve on at least a half-time basis and shall have supervision, assistance, and assessment during the one (1) year internship. The internship may be served in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association. Successful completion shall be determined by a majority vote of the beginning teacher committee. The internship period shall be counted as experience for the purpose of continuing contract status, retirement eligibility, and benefits for single salary experience increments. Upon successful completion of the beginning teacher program, the one (1) year initial teaching certificate shall be extended for the remainder of the usual duration period established for that particular certificate by Education Professional Standards Board administrative regulations.
- (6) The beginning teacher committee shall be composed of three (3) persons who have successfully completed special training in the supervision and assessment of the performance of beginning teachers as provided in subsection (8) of this section, except as provided in paragraph (g) of this subsection. The committee shall

consist of a resource teacher, the school principal of the school where the internship is served, and a teacher educator appointed by a state-approved teacher training institution.

- (a) If more than two (2) teacher interns are employed in the same school, the principal's responsibility may be shared with an assistant principal who holds certification as a principal.
  - (b) In unusual situations, the Education Professional Standards Board may permit the assistant principal to serve in lieu of the principal on a beginning teacher committee.
  - (c) If the teacher training institution is unable to provide a member, the district superintendent shall appoint an instructional supervisor from the school district.
  - (d) If the intern is teaching in a regionally or nationally accredited nonpublic school without a principal, the person filling the principal member position may have other appropriate qualifications as required by administrative regulations promulgated by the Education Professional Standards Board.
  - (e) If the teacher training institution is unable to provide a member to serve on the beginning teacher committee in a nonpublic school, the chief officer of the school shall appoint an instructional supervisor or a teacher with like qualifications and responsibilities to serve on the beginning teacher committee in lieu of the teacher educator.
  - (f) The resource teacher shall be appointed by the Education Professional Standards Board with recommendations from the local school district from a pool of qualified resource teachers, and, any statutes to the contrary notwithstanding and to the extent of available appropriations, shall be entitled to be paid a reasonable stipend by the Education Professional Standards Board for work done outside normal working hours. In the case of a resource teacher in a nonpublic school, payment shall be made directly to the resource teacher by the Education Professional Standards Board. Priority shall be given to resource teachers in the following order, except as provided in paragraph (g) of this subsection:
    1. Teachers with the same certification in the same school;
    2. Teachers with the same certification in the same district;
    3. Teachers in the same school;
    4. Teachers in the same district; and
    5. Teachers in an adjacent school district.
  - (g)
    1. The resource teacher for an individual pursuing initial certification as a baccalaureate level teacher of exceptional children/communication disorders shall be a master's level teacher of exceptional children/communication disorders, if one is available.
    2. If a master's level teacher of exceptional children/communication disorders is not available, the Education Professional Standards Board may allow a licensed speech-language pathologist to serve on the beginning teacher committee in lieu of a resource teacher.
  - (h) The committee shall meet with the beginning teacher a minimum of three (3) times per year for evaluation and recommendation with all committee members present. In addition, each member of the committee shall observe the beginning teacher in the classroom a minimum of three (3) times per year. If the teacher's first year performance is judged by the committee to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time if the teacher is employed by a school district.
- (7) The resource teacher shall spend a minimum of seventy (70) hours working with the beginning teacher. Twenty (20) of these hours shall be in the classroom setting, and fifty (50) of these hours shall be in consultation other than class time or attending assessment meetings. The resource teacher shall have completed at least four (4) years of successful teaching experience as attested to by his or her immediate supervisor or by having achieved tenure and be able to show evidence of continuing professional development by having achieved a master's degree or its equivalent or the accumulation of two thousand (2,000) hours of continuing professional activities.
- (8) By contract with teacher education institutions in the Commonwealth, the Education Professional Standards Board shall provide special training for persons who will be serving on the beginning teacher committees. Completion of special training shall be evidenced by successfully passing the assessments as prescribed by the Education Professional Standards Board. A principal hired after July 15, 1996, shall be required to complete the beginning teacher committee training program within one (1) year after his or her appointment.

- (9) If an applicant establishes eligibility for a one (1) year certificate under the provisions of subsection (3)(a) of this section, but does not become employed on the basis needed to satisfy the one (1) year internship requirement, the applicant shall be eligible for the issuance of a certificate for substitute teaching as provided by the administrative regulations of the Education Professional Standards Board. The applicant shall remain eligible for the one (1) year certificate, as provided in subsection (3)(a) of this section, and for the opportunity to serve the internship for a period of five (5) years after establishing eligibility. If the internship is not completed within the five (5) year period, the applicant must reestablish eligibility by repeating and passing the assessment program in effect for new teachers at that time or by completing a minimum of six (6) graduate hours toward completion of a graduate program required by administrative regulations promulgated by the Education Professional Standards Board. The option for renewal through completion of graduate hours shall be available only for the first reestablishment of eligibility.
- (10) (a) *The Education Professional Standards Board shall issue a ten (10) year emeritus certificate to an applicant who has:*
1. *Retired or will retire not more than one (1) year prior to the expiration date of the certificate;*
  2. *Met the requirements to receive an emeritus certificate as set forth in administrative regulation promulgated by the Education Professional Standards Board; and*
  3. *Completed the required application unless the provisions of KRS 161.120 apply.*
- (b) *The Education Professional Standards Board shall issue a one (1) time five (5) year exception certificate to an individual:*
1. *Whose certificate has expired;*
  2. *Whose rank upon expiration was Rank I or Rank II;*
  3. *Who has met the requirements to receive an exception certificate as set forth in administrative regulation promulgated by the Education Professional Standards Board;*
  4. *Who completed three (3) years of classroom instruction prior to the certificate's expiration; and*
  5. *Who has completed the required application unless the provisions of KRS 161.120 apply.*
- (11) The Education Professional Standards Board shall approve the curricula of any college or university, or of any department thereof, for the training of teachers, and any nontraditional or alternative teacher preparation program offered in a public or private postsecondary education institution, private contractor, or state agency, and shall also approve the curricula of any local district alternative certification program, when the curricula comply with the administrative regulations of the Education Professional Standards Board for the issuance of certificates and when the institution has met the terms and conditions provided in KRS 161.010 to 161.120. Any student who has completed any of these curricula, as approved by the Education Professional Standards Board, and who has completed the prescribed requirements for the issuance of certificates shall be granted a certificate corresponding to the curricula completed.

**Signed by Governor April 5, 2021.**

## CHAPTER 188

( HB 125 )

AN ACT relating to motorcycles.

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

➔SECTION 1. A NEW SECTION OF KRS 186.400 TO 186.640 IS CREATED TO READ AS FOLLOWS:

*The Transportation Cabinet shall establish a restriction on motorcycle operator's licenses which limits the operator to the operation of a three (3) wheeled motorcycle only.*

➔Section 2. KRS 186.480 is amended to read as follows:



- (1) The Department of Kentucky State Police shall examine every applicant for an operator's license as identified in KRS 186.635, except as otherwise provided in this section. The examination shall be held in the county where the applicant resides unless:
  - (a) The applicant is granted written permission by the Transportation Cabinet to take the examination in another county, and the Department of Kentucky State Police agree to arrange for the examination in the other county; or
  - (b) The applicant is tested using a bioptic telescopic device.
- (2) The examination shall include a test of the applicant's eyesight to ensure compliance with the visual acuity standards set forth in KRS 186.577. The examination shall also include a test of the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, the applicant's knowledge of traffic laws, and an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle. ~~An applicant for a motorcycle operator's license shall be required to show his or her ability to operate a motorcycle, in addition to other requirements of this section.~~ The provisions of this subsection shall not apply to an applicant who:
  - (a) At the time of application, holds a valid operator's license from another state, provided that state affords a reciprocal exemption to a Kentucky resident; or
  - (b) Is a citizen of the Commonwealth who has been serving in the United States military and has allowed his or her operator's license to expire.
- (3) *In addition to the requirements of subsection (2) of this section, an applicant for a motorcycle operator's license shall be required to show his or her ability to operate a motorcycle. An applicant who successfully completes the skills portion of the test under this subsection on a:*
  - (a) *Three (3) wheeled motorcycle shall be issued a motorcycle operator's license restricted to the operation of three (3) wheeled motorcycles under Section 1 of this Act; or*
  - (b) *Two (2) wheeled motorcycle shall be issued a motorcycle operator's license without the restriction identified in Section 1 of this Act, and may operate both two (2) and three (3) wheeled motorcycles.*
- (4) Any person whose intermediate license or operator's license is denied, suspended, or revoked for cause shall apply for reinstatement at the termination of the period for which the license was denied, suspended, or revoked by submitting to the examination. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated.
- ~~(5)(4)~~ An applicant shall not use an autocycle for *any* road skills testing administered under the provisions of this section.

➔Section 3. KRS 15A.350 is amended to read as follows:

- (1) The Justice and Public Safety Cabinet shall establish a motorcycle safety education program. The program shall provide for instructor training courses, instructor approval, and rider training courses for novice riders that shall be held at locations *accessible to Kentucky residents* ~~(throughout the state)~~. The program may provide for the following:
  - (a) Rider training courses for *novice and* experienced riders;
  - (b) Activities to increase the awareness of a motorcyclist's knowledge of the effects of alcohol and drug use;
  - (c) Driver improvement efforts;
  - (d) Licensing improvement efforts;
  - (e) Program promotion activities;
  - (f) Enhancement of the public's awareness of motorcycles; and
  - (g) Enhancement of motorcycle safety through education.
- (2) The Justice and Public Safety Cabinet shall promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the development of standards for, and the administration of, a motorcycle safety education program. Standards for the motorcycle rider training courses shall include standards for course content, delivery, curriculum, materials, student evaluation, and the training and approval of instructors. Standards shall

meet or exceed established national standards for motorcycle rider training courses prescribed by the National Highway Traffic Safety Administration.

➔Section 4. KRS 15A.352 is amended to read as follows:

- (1) The motorcycle safety education program shall offer motorcycle rider training courses designed to develop and instill the knowledge, attitudes, habits, and skills necessary for the proper operation of a motorcycle. The courses shall be taught by instructors approved under KRS 15A.354 and shall include no fewer than eight (8) hours of hands-on instruction for a novice course.
- (2) Rider training courses shall be open to ~~a~~~~any~~ resident of ~~any~~~~the~~ state who is eligible for a motor vehicle instruction permit *in the person's home state*.
- (3) Rider training courses shall be provided free of charge to applicants under eighteen (18) years of age.
- (4) The cabinet shall issue certificates of completion in a manner and form prescribed by administrative regulations promulgated pursuant to KRS Chapter 13A to persons who satisfactorily complete the requirements of a motorcycle rider training course offered or authorized by the state program.
- (5) The Transportation Cabinet shall exempt applicants for a motorcycle driver's license or endorsement from the licensing skill test if they present satisfactory evidence of successful completion of an approved rider training course that includes a similar test of skill. ***Applicants under this subsection who successfully completed their testing on a three (3) wheeled motorcycle shall be subject to the restrictions outlined in subsection (3) of Section 2 of this Act.***
- (6)
  - (a) The Motorcycle Safety Education Commission shall publish a list of approved rider training courses which meet the licensing requirements.
  - (b) The Motorcycle Safety Education Commission shall publish a list of approved instructor training courses which meet the licensing requirements.

➔Section 5. KRS 15A.354 is amended to read as follows:

- (1) The cabinet shall approve instructors for the motorcycle rider training courses. A person shall not be approved as an instructor unless the person meets the requirements of this section and administrative regulations of the cabinet and holds a currently valid instructor certification issued by the governing body of a program approved under KRS 15A.352(6)(b).
- (2) The program shall offer instructor training courses to prepare instructors to teach the motorcycle rider training courses. Successful completion of the instructor training course shall require the participant to demonstrate knowledge of the course material, knowledge of proper motorcycle operation, motorcycle riding proficiency, and the necessary aptitude for instructing students. A person shall not be approved as an instructor unless the person has successfully completed the instructor training course or an equivalent course offered in another state.
- (3) The cabinet shall establish additional requirements for the approval of instructors, including but not limited to the following:
  - (a) The person shall have a high school diploma or its equivalent;
  - (b) The person shall be at least eighteen (18) years of age and hold a valid motorcycle driver's license or endorsement;
  - (c) The person shall have at least two (2) years of recent motorcycle riding experience; and
  - (d) The person's driver's license shall not have been suspended or revoked at any time during the preceding two (2) years or at any time within the preceding five (5) years for any alcohol or drug related offense.
- (4) In the case of a nonresident, the cabinet shall obtain and review the person's driving record from the state where the person is licensed prior to approval or reapproval of the person as an instructor.
- (5) The cabinet shall ~~annually~~ review the status of all approved instructors ***at least once every two (2) years*** and shall withdraw approval from any instructor who is no longer qualified under the requirements of this section. The cabinet shall immediately withdraw approval of an instructor when it receives adequate notice of any disqualification.

**Signed by Governor April 5, 2021.**

**CHAPTER 189****( HB 261 )**

AN ACT relating to fraud against the Kentucky Public Pensions Authority.

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

➔Section 1. KRS 61.685 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS Chapter 413, upon discovery of any error or omission in system records, the system shall correct all records, including but not limited to membership in the system, service credit, member and employer contributions, and benefits paid or payable. The system may conduct audits to detect possible fraud, misrepresentation, and change in circumstance, which may result in errors or omissions in the system's records. The system, by its executive director or by representatives appointed in writing by the executive director, may take testimony or depositions, and may examine records, documents, or files of any person whose records, documents, or files may furnish knowledge concerning any system records, when the executive director or representative deems this reasonably necessary for purposes incident to the performance of the system's functions. The system may enforce these powers by application to the Franklin Circuit Court, which court may compel compliance with the orders of the executive director or representatives appointed by the executive director.
- (2) Neither the board nor any of its individual members shall be liable to any person for any claim arising from the failure of any participating employer, or any employer who should have been participating in any retirement system operated by the board, to make retirement contributions on behalf of the person.
- (3)
  - (a) **For purposes of this subsection:**
    1. **"Person" means a natural person, individual, county, city, agency, board or commission, sole proprietorship, partnership, corporation, limited liability company, organization, association, business, trust, or other legal entity. "Person" may be construed as singular or plural; and**
    2. **"Knowingly" means, with respect to conduct or to a circumstance described by this subsection, that a person is aware that his or her conduct is of that nature or that the circumstance exists.**
  - (b) **A person shall be liable under this subsection if he or she knowingly:**
    1. **Submits or causes to be submitted a false or fraudulent claim for the payment or receipt of any benefit provided under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852;**
    2. **Makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim to obtain benefits provided under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852; or**
    3. **Possesses or otherwise has custody or control of money, records, or property used or to be used by the Kentucky Public Pensions Authority or the systems it administers and fails to deliver or delivers less than all of the money, records, or property to which the authority or the retirement systems it administers are entitled, including but not limited to member agencies failing to report and remit employer and employee contributions and employment records to the authority.**
  - (c) **A person found to have committed one (1) or more of the actions under paragraph (b) of this subsection by a preponderance of the evidence in an administrative process before the authority or in an action before the Franklin Circuit Court in conformity with all due process protections shall be liable for:**
    1. **Restitution of any payments received for which the person was not entitled to receive by reason of violation of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 and interest at the maximum legal rate pursuant to KRS 360.010 in effect on the date any payment was made for the period from the date payment was made to the date of repayment to the authority;**
    2. **A civil payment in an amount up to three (3) times the amount of the excess payments;**

3. *A civil payment of five hundred dollars (\$500) for each false or fraudulent claim submitted for the payment of benefits under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852; and*
  4. *Legal fees and costs of investigation and enforcement of civil remedies, including all attorneys' fees and costs of litigation.*
- (d) *Upon the written request of the authority, the Attorney General shall investigate and file the necessary actions to enforce civil penalties for violations of this subsection and, if funds are recovered by or on behalf of the authority in any legal action, may recover reasonable costs of litigation as determined by the court as provided by KRS 48.005.*
  - (e) *Civil payments, interest, and costs of investigation and enforcement of civil remedies, including attorneys' fees and other costs not included under paragraph (d) of this subsection, recovered on behalf of the authority under this subsection shall be made payable to the State Treasurer and remitted to the Kentucky Public Pensions Authority for deposit in the affected trusts administered by the Kentucky Public Pension Authority. The affected trusts shall be made whole, and any additional penalties and fees shall be distributed to the trusts as a whole consistent with the methods used to distribute administrative expenses between the trusts.*
  - (f) *The remedies under this section are separate from and cumulative to any other administrative, civil, or criminal remedies available to the authority and the systems it administers under federal or state law or regulation.*

Signed by Governor April 5, 2021.

## CHAPTER 190

### ( SB 131 )

AN ACT relating to transportation and making an appropriation therefor.

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

➔Section 1. KRS 15A.350 is repealed, reenacted as a new section of KRS Chapter 176, and amended to read as follows:

- (1) The ~~*Transportation*~~~~[Justice and Public Safety]~~ Cabinet shall establish a motorcycle safety education program. The program shall provide for instructor training courses, instructor approval, and rider training courses for novice riders that shall be held at locations *accessible to Kentucky residents*~~[throughout the state]~~. The program may provide for the following:
  - (a) Rider training courses for *novice and* experienced riders;
  - (b) Activities to increase the awareness of a motorcyclist's knowledge of the effects of alcohol and drug use;
  - (c) Driver improvement efforts;
  - (d) Licensing improvement efforts;
  - (e) Program promotion activities;
  - (f) Enhancement of the public's awareness of motorcycles; and
  - (g) Enhancement of motorcycle safety through education.
- (2) The ~~*Transportation*~~~~[Justice and Public Safety]~~ Cabinet shall promulgate administrative regulations, pursuant to KRS Chapter 13A, governing the development of standards for, and the administration of, a motorcycle safety education program. Standards for the motorcycle rider training courses shall include standards for course content, delivery, curriculum, materials, student evaluation, and the training and approval of instructors. Standards shall meet or exceed established national standards for motorcycle rider training courses prescribed by the National Highway Traffic Safety Administration.

➔Section 2. KRS 15A.352 is repealed, reenacted as a new section of KRS Chapter 176, and amended to read as follows:

- (1) The motorcycle safety education program shall offer motorcycle rider training courses designed to develop and instill the knowledge, attitudes, habits, and skills necessary for the proper operation of a motorcycle. The courses shall be taught by instructors approved under **Section 3 of this Act** [KRS 15A.354] and shall include no fewer than eight (8) hours of hands-on instruction for a novice course.
- (2) Rider training courses shall be open to ~~a~~resident of ~~any~~state who is eligible for a motor vehicle instruction permit **in the person's home state**.
- (3) Rider training courses shall be provided free of charge to applicants under eighteen (18) years of age.
- (4) The cabinet shall issue certificates of completion in a manner and form prescribed by administrative regulations promulgated pursuant to KRS Chapter 13A to persons who satisfactorily complete the requirements of a motorcycle rider training course offered or authorized by the state program.
- (5) The Transportation Cabinet shall exempt applicants for a motorcycle driver's license or endorsement from the licensing skill test if they present satisfactory evidence of successful completion of an approved rider training course that includes a similar test of skill.
- (6)
  - (a) The Motorcycle Safety Education Commission shall publish a list of approved rider training courses which meet the licensing requirements.
  - (b) The Motorcycle Safety Education Commission shall publish a list of approved instructor training courses which meet the licensing requirements.

➔Section 3. KRS 15A.354 is repealed, reenacted as a new section of KRS Chapter 176, and amended to read as follows:

- (1) The cabinet shall approve instructors for the motorcycle rider training courses. A person shall not be approved as an instructor unless the person meets the requirements of this section and administrative regulations of the cabinet and holds a currently valid instructor certification issued by the governing body of a program approved under **subsection (6)(b) of Section 2 of this Act** [KRS 15A.352(6)(b)].
- (2) The program shall offer instructor training courses to prepare instructors to teach the motorcycle rider training courses. Successful completion of the instructor training course shall require the participant to demonstrate knowledge of the course material, knowledge of proper motorcycle operation, motorcycle riding proficiency, and the necessary aptitude for instructing students. A person shall not be approved as an instructor unless the person has successfully completed the instructor training course or an equivalent course offered in another state.
- (3) The cabinet shall establish additional requirements for the approval of instructors, including but not limited to the following:
  - (a) The person shall have a high school diploma or its equivalent;
  - (b) The person shall be at least eighteen (18) years of age and hold a valid motorcycle driver's license or endorsement;
  - (c) The person shall have at least two (2) years of recent motorcycle riding experience; and
  - (d) The person's driver's license shall not have been suspended or revoked at any time during the preceding two (2) years or at any time within the preceding five (5) years for any alcohol or drug related offense.
- (4) In the case of a nonresident, the cabinet shall obtain and review the person's driving record from the state where the person is licensed prior to approval or reapproval of the person as an instructor.
- (5) The cabinet shall ~~annually~~ review the status of all approved instructors **at least once every two (2) years** and shall withdraw approval from any instructor who is no longer qualified under the requirements of this section. The cabinet shall immediately withdraw approval of an instructor when it receives adequate notice of any disqualification.

➔Section 4. KRS 15A.356 is repealed and reenacted as a new section of KRS Chapter 176 to read as follows:

- (1) The cabinet may enter into contracts with public or private entities for course delivery and for the provision of services or materials necessary for implementation of the program.

- (2) The cabinet may offer motorcycle rider training courses directly and may approve courses offered by independent public or private entities as authorized program courses if they are administered and taught in full compliance with standards established for the state program.
- (3) The cabinet may establish by administrative regulation reasonable enrollment fees to be charged for persons who participate in motorcycle rider training courses offered by the cabinet and for persons who participate in approved courses offered by independent public or private entities.
- (4) The cabinet may utilize up to ten percent (10%) of available program funds each fiscal year to defray its own expenses in offering motorcycle rider training courses and may reimburse entities that offer approved courses for the expenses incurred in offering the courses to minimize course enrollment fees charged to the students.
- (5) The cabinet shall provide meeting facilities and administrative assistance and support to the Motorcycle Safety Education Commission and the expenses shall be paid from the budget of the cabinet. The cabinet shall prepare and maintain all minutes of the commission's proceedings and shall be the custodian of all files and records of the commission.

➔Section 5. KRS 15A.358 is repealed, reenacted as a new section of KRS Chapter 176, and amended to read as follows:

- (1) The motorcycle safety education program fund is established as a restricted fund in the State Treasury. Moneys in the fund are hereby appropriated for the purposes set forth in *Sections 1 to 9 of this Act* [~~KRS 15A.350 to 15A.366~~]. Moneys in the fund shall be utilized to provide motorcycle training courses as established in *Section 2 of this Act* [~~KRS 15A.352~~] and for implementation of the program, including reimbursement of entities that offer approved motorcycle rider education courses. The *Transportation* [~~Justice and Public Safety~~] Cabinet may deduct up to ten percent (10%) of available program funds per fiscal year for administrative costs from the motorcycle safety education program fund.
- (2) If at the end of each fiscal year money remains in the fund, it shall be retained in the fund. The interest and income earned on money in the fund, after deducting any applicable charges, shall be credited to the motorcycle safety education program fund.
- (3) The following revenue shall be credited to the fund:
  - (a) Four dollars (\$4) of the annual registration fee for each registered motorcycle as provided in *Section 12 of this Act* [~~KRS 186.050~~];
  - (b) Four dollars (\$4) of the application fee for a motorcycle instruction permit as provided in KRS 186.531;
  - (c) Ten dollars (\$10) of the fee for each original or renewal motorcycle driver's license or endorsement as provided in KRS 186.531; and
  - (d) Any federal or state motorcycle safety funds granted to the program.

➔Section 6. KRS 15A.360 is repealed, reenacted as a new section of KRS Chapter 176, and amended to read as follows:

The *Transportation* [~~Justice and Public Safety~~] Cabinet shall report monthly to the Interim Joint Committee on Appropriations and Revenue on the revenues deposited into the motorcycle safety education program fund, the expenditures incurred, and the available balance in the fund. In addition, the cabinet shall identify the safety programs provided, the cost of the programs, location, and number of attendees. To facilitate the timely reporting of data under this section, the cabinet shall enter into agreements with entities that provide the training to require monthly billing and attendance records.

➔Section 7. KRS 15A.362 is repealed, reenacted as a new section of KRS Chapter 176, and amended to read as follows:

- (1) The Motorcycle Safety Education Commission is established as an independent body to help foster the growth and development of the motorcycle safety education program established under KRS 15A.350.
- (2) The Motorcycle Safety Education Commission shall be composed of seven (7) members, appointed as follows:
  - (a) One (1) representative of the Department of Kentucky State Police, appointed by the Governor;
  - (b) One (1) representative of the Transportation Cabinet, appointed by the Governor;
  - (c) One (1) instructor in the motorcycle safety education program, appointed by the Governor;

- (d) Two (2) members of the Kentucky Motorcycle Association, to be appointed by the Governor from a list of five (5) nominees selected by the association;
  - (e) One (1) member appointed by the Governor from a list of three (3) nominees selected by the President of the Senate; and
  - (f) One (1) member appointed by the Governor from a list of three (3) nominees selected by the Speaker of the House of Representatives.
- (3) Members of the Motorcycle Safety Education Commission shall serve a term of four (4) years. Sitting members shall be eligible to succeed themselves.
  - (4) Commission members shall receive no compensation for their services and shall not be compensated for expenses incurred from travel or in connection with the performance of their duties as commission members.
  - (5) The commission shall elect its chair and vice chair from its membership.
  - (6) The commission shall meet quarterly or upon the call of the chair or the request of the secretary of the ~~Transportation, Justice and Public Safety~~ Cabinet.
  - (7) The commission may take action only at meetings where a quorum is present.
  - (8) The commission shall keep a record of its meetings and recommendations.
  - (9) ***The commission shall be attached to the Office of Highway Safety within the Department of Highways for administrative purposes.***

➔Section 8. KRS 15A.364 is repealed and reenacted as a new section of KRS Chapter 176 to read as follows:

The Motorcycle Safety Education Commission shall have the following responsibilities:

- (1) Approve any administrative regulation relating to the motorcycle safety education program promulgated by the cabinet prior to the administrative regulation being filed with the Legislative Research Commission pursuant to KRS Chapter 13A;
- (2) Approve any proposal by the cabinet to contract for services pursuant to KRS Chapter 45A or any interagency agreement for services relating to the motorcycle safety education program prior to the issuance of the contract or the agreement;
- (3) Approve all expenditures of money relating to the motorcycle safety education program which has not been specifically authorized in the biennial budget;
- (4) Establish for the cabinet the short-range and long-range goals to promote the continued growth and expansion of the motorcycle safety education program;
- (5) Make recommendations regarding the administration of the motorcycle safety education program;
- (6) Ensure that the cabinet and the motorcycle safety education program is informed on the views and philosophies of interested parties; and
- (7) Act as a communication channel between the relevant state agencies and motorcyclists and the general public.

➔Section 9. KRS 15A.366 is repealed and reenacted as a new section of KRS Chapter 176 to read as follows:

The cabinet shall prepare an annual report on the program to be submitted to the Governor and the Legislative Research Commission and made available to the public for review during the cabinet's normal business hours. The report shall include:

- (1) The number and location of courses offered;
- (2) The number of:
  - (a) Applicants that have applied to be instructors during the previous year;
  - (b) Applicants approved to be instructors during the previous year; and
  - (c) Active instructors during the previous year;
- (3) The number of students that registered for the various courses and the number of students that completed the various courses successfully;

- (4) The number of permits, licenses, and registrations issued;
- (5) The amount of money collected by category for permits, licenses, and registrations;
- (6) Other information about program implementation as the cabinet shall deem appropriate; and
- (7) An assessment of the overall impact of the program on motorcycle safety in the state.

The report shall also provide a complete accounting of revenue receipts of the motorcycle safety education program fund and of all moneys expended under the program.

➔Section 10. KRS 186.450 is amended to read as follows:

- (1) A person who is at least sixteen (16) years of age may apply for an instruction permit to operate a motor vehicle. A person who possesses a valid intermediate motor vehicle operator's license issued under KRS 186.452 or a person who is at least eighteen (18) years of age may apply for an instruction permit to operate a motorcycle. A holder of either a motor vehicle or motorcycle instruction permit may also operate a moped under that permit. A person applying for an instruction permit under this section shall make application to the Transportation Cabinet. A person applying for an instruction permit shall be required to comply with the following:
  - (a) If the person is under the age of eighteen (18), the instruction permit application shall be signed by the applicant's parent or legal guardian. If the person does not have a living parent or does not have a legal guardian, the instruction permit application shall be signed by a person willing to assume responsibility for the applicant pursuant to KRS 186.590;
  - (b) If the person is under the age of eighteen (18) and in the custody of the Cabinet for Health and Family Services, the instruction permit application shall be signed by:
    1. The applicant's parent, legal guardian, grandparent, adult sibling, aunt, or uncle if the parental rights have not been terminated in accordance with KRS Chapter 625;
    2. The foster parent with whom the applicant resides;
    3. Another person who is at least age eighteen (18) and is willing to assume responsibility for the applicant pursuant to KRS 186.590; or
    4. The applicant, without another person, upon verification by the Cabinet for Health and Family Services in accordance with KRS 605.102 that shall include proof of financial responsibility in accordance with KRS 186.590(2); and
  - (c) All applicants for an instruction permit shall comply with the examinations required by KRS 186.480.
- (2) If an applicant successfully passes the examinations required by KRS 186.480, the applicant shall be issued an instruction permit upon payment of the fee set forth in KRS 186.531.
- (3)
  - (a) An instruction permit to operate a motor vehicle shall be valid for three (3) years and may be renewed. An instruction permit to operate a motorcycle shall be valid for one (1) year and may be renewed one (1) time.
  - (b) Except as provided in KRS 186.415, a person who has attained the age of sixteen (16) years and is under the age of eighteen (18) years shall have the instruction permit a minimum of one hundred eighty (180) days before applying for an intermediate license and shall have an intermediate license for a minimum of one hundred eighty (180) days before applying for an operator's license.
  - (c) A person who was under eighteen (18) years of age at the time of application for an instruction permit and is eighteen (18) years of age or older shall have the instruction permit a minimum of one hundred eighty (180) days and complete a driver training program under KRS 186.410(4) before applying for an operator's license.
  - (d) A person who is at least eighteen (18) years of age and is under the age of twenty-one (21) years at the time of application for an instruction permit shall have the instruction permit a minimum of one hundred eighty (180) days before applying for an operator's license.
  - (e) A person who is at least twenty-one (21) years of age at the time of application for an instruction permit shall have the instruction permit a minimum of thirty (30) days before applying for an operator's license.



- (f) In accordance with *subsection (5) of Section 2 of this Act* ~~[KRS 15A.352(5)]~~, a person whose motorcycle instruction permit has expired may apply to the cabinet to receive a motorcycle operator's license or endorsement if the person presents proof of successful completion of a motorcycle safety education course approved by the *Transportation* ~~[Justice and Public Safety]~~ Cabinet under *Sections 1 to 9 of this Act* ~~[KRS 15A.350 to 15A.366]~~.
- (4) (a) A person shall have the instruction permit in his possession at all times when operating a motor vehicle, motorcycle, or moped upon the highway.
- (b) When operating a motor vehicle, a motor vehicle instruction permit holder shall be accompanied by a person with a valid operator's license who is at least twenty-one (21) years of age occupying the seat beside the operator at all times.
- (c) The requirements of paragraph (b) of this subsection shall not apply to a motor vehicle instruction permit holder being supervised on a multiple-vehicle driving range by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school.
- (5) A person with an instruction permit who is under the age of eighteen (18) shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving, including but not limited to emergencies, involvement in school-related activities, or involvement in work-related activities.
- (6) Except when accompanied by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school, a person with an instruction permit who is under the age of eighteen (18) years shall not operate a motor vehicle at any time when accompanied by more than one (1) unrelated person who is under the age of twenty (20) years. A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of this subsection if the officer has no other cause to stop or seize the person other than a violation of this subsection. This subsection shall not apply to any operator of a vehicle registered under the provisions of KRS 186.050(4) who is engaged in agricultural activities.
- (7) A violation under subsection (4), (5), or (6) of this section, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1) shall add an additional minimum of one hundred eighty (180) days from the date of the violation before a person who is under the age of eighteen (18) years may apply for an intermediate license to operate a motor vehicle, motorcycle, or moped.
- (8) A person under the age of eighteen (18) who accumulates more than six (6) points against his driving privilege may have the driving privilege suspended pursuant to KRS Chapter 186 or probated by the court.

➔Section 11. KRS 186.531 is amended to read as follows:

- (1) As used in this section:
  - (a) "AOC Fund" means the circuit court clerk salary account created in KRS 27A.052;
  - (b) "GF" means the general fund;
  - (c) "IP" means instruction permit;
  - (d) "License Fund" or "LF" means the KYTC photo license account created in KRS 174.056;
  - (e) "MC" means motorcycle;
  - (f) "MC Fund" or "MCF" means the motorcycle safety education program fund established in *Section 5 of this Act* ~~[KRS 15A.358]~~;
  - (g) "OL" means operator's license; and
  - (h) "PIDC" means personal identification card.
- (2) The fees imposed for voluntary travel ID operator's licenses, instruction permits, and personal identification cards shall be as follows. The fees received shall be distributed as shown in the table. The fees shown, unless otherwise noted, are for an eight (8) year period:

Card Type	Fee	LF	GF	MCF
OL (initial/renewal)	\$48	\$48	\$0	\$0

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OL (Under 21) (Up to 4 years)	\$18	\$18	\$0	\$0
Any OL, MC, or combination (duplicate/corrected)	\$15	\$13.25	\$1.75	\$0
Motor vehicle IP (3 years)	\$18	\$16	\$2	\$0
Motorcycle IP (1 year)	\$18	\$13	\$1	\$4
Motorcycle OL (initial/renewal)	\$48	\$38	\$0	\$10
Combination vehicle/MC OL (initial/renewal)	\$58	\$48	\$0	\$10
PIDC (initial/renewal)	\$28	\$25	\$3	\$0
PIDC (duplicate/corrected)	\$15	\$13.50	\$1.50	\$0

(3) Except as provided in subsection (11) of this section, the fees imposed for standard operator's licenses, instruction permits, and personal identification cards shall be as follows:

(a) If the identity document is issued through a circuit clerk's office, the fees received shall be distributed as shown in the table. The fees shown, unless otherwise noted, are for an eight (8) year period:

Card Type	Fee	Road Fund	License Fund	AOC Fund	GF	MC Fund
OL (initial/renewal)	\$43	\$28	\$7	\$8	\$0	\$0
OL (Under 21) (Up to 4 years)	\$15	\$7.50	\$4	\$3.50	\$0	\$0
Any OL, MC OL or combination (duplicate /corrected)	\$15	\$5.25	\$4	\$4	\$1.75	\$0
Motor vehicle IP (3 years)	\$15	\$5	\$4	\$4	\$2	\$0
Motorcycle IP (1 year)	\$15	\$5	\$4	\$1	\$1	\$4
Motorcycle OL (initial/renewal)	\$43	\$17.50	\$8	\$7.50	\$0	\$10
Combination vehicle/MC OL (initial/renewal)	\$53	\$25	\$7	\$11	\$0	\$10
PIDC (initial/renewal)	\$23	\$8	\$8	\$4	\$3	\$0
PIDC (duplicate/corrected)	\$15	\$6	\$4	\$3.50	\$1.50	\$0
PIDC (no fixed address) KRS 186.4122(5) and 186.4123(5)	\$10	\$0	\$5	\$5	\$0	\$0

- (b) If the identity document is issued through a Transportation Cabinet office, the fees received shall be distributed as shown in the table. The fees shown, unless otherwise noted, are for an eight (8) year period:

Card Type	Fee	LF	GF	MCF
OL(initial/renewal)	\$43	\$43	\$0	\$0
OL (Under 21) (Up to 4 years)	\$15	\$15	\$0	\$0
Any OL, MC, or combination (duplicate/corrected)	\$15	\$13.25	\$1.75	\$0
Motor vehicle IP (3 years)	\$15	\$13	\$2	\$0
Motorcycle IP (1 year)	\$15	\$10	\$1	\$4
Motorcycle OL (initial/renewal)	\$43	\$33	\$0	\$10
Combination vehicle/MC OL (initial/renewal)	\$53	\$43	\$0	\$10
PIDC (initial/renewal)	\$23	\$20	\$3	\$0
PIDC (duplicate/corrected)	\$15	\$13.50	\$1.50	\$0
PIDC (no fixed address) under KRS 186.4122(5)/186.4123(5)	\$10	\$10	\$0	\$0

- (4) The fee for a second or subsequent duplicate personal identification card for a person who does not have a fixed, permanent address, as allowed under KRS 186.4122(5) and 186.4123(5), shall be the same as for a duplicate regular personal identification card.
- (5) The fee for a four (4) year original or renewal license issued pursuant to KRS 186.4101 shall be fifty percent (50%) of the amount shown in subsections (2) and (3) of this section. The distribution of fees shown in subsections (2) and (3) of this section shall also be reduced by fifty percent (50%) for licenses that are issued for four (4) years.
- (6) Any fee for any identity document applied for using alternative technology under KRS 186.410 and 186.4122 shall be distributed in the same manner as a document applied for in person with the cabinet.
- (7) (a) An applicant for an original or renewal operator's license, permit, commercial driver's license, motorcycle operator's license, or personal identification card shall be requested by the cabinet to make a donation to promote an organ donor program.
- (b) The donation under this subsection shall be added to the regular fee for an original or renewal motor vehicle operator's license, permit, 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.
- (c) The fee shall be paid to the cabinet and shall be forwarded by the cabinet on a monthly basis to the Kentucky Circuit Court Clerks' Trust for Life, and such moneys are hereby appropriated to be used exclusively for the purpose of promoting an organ donor program. A donation under this subsection shall be voluntary and may be refused by the applicant at the time of issuance or renewal.
- (8) In addition to the fees outlined in this section, the following individuals, upon application for an initial or renewal operator's license, instruction permit, or personal identification card, shall pay an additional application fee of thirty dollars (\$30), which shall be deposited in the photo license account:
- (a) An applicant who is not a United States citizen or permanent resident and who applies under KRS 186.4121 or 186.4123; or
- (b) An applicant who is applying for a instruction permit, operator's license, or personal identification card without a photo under KRS 186.4102(9).
- (9) (a) Except for individuals exempted under paragraph (c) of this subsection, an applicant for relicensing after revocation or suspension shall pay a reinstatement fee of forty dollars (\$40).

- (b) The reinstatement fee under this subsection shall be distributed by the State Treasurer as follows:
1. Thirty-five dollars (\$35) shall be deposited into the photo license account; and
  2. Five dollars (\$5) shall be deposited into a trust and agency fund to be used in defraying the costs and expenses of administering a driver improvement program for problem drivers.
- (c) This subsection shall not apply to:
1. Any person whose license was suspended for failure to meet the conditions set out in KRS 186.411 when, within one (1) year of suspension, the driving privileges of the individual are reinstated; or
  2. A student who has had his or her license revoked pursuant to KRS 159.051.

(10) ~~Beginning July 1, 2020,~~ As payment for any fee identified in this section, the cabinet:

- (a) Shall accept cash and personal checks; and
- (b) May accept other methods of payment in accordance with KRS 45.345.

(11) There shall be no fee assessed for the initial, renewal, or duplicate standard personal identification card to an individual, if the individual:

- (a) Does not possess a valid operator's license or a commercial driver's license; and
- (b) Is at least eighteen (18) years of age on or before the next regular election.

➔Section 12. KRS 186.535 is amended to read as follows:

- (1) From the portion of the fee for each eight (8) year original or renewal operator's license which is assigned to the photo license account under KRS 186.531, two dollars (\$2) shall be credited to a special account within the road fund, and shall be used exclusively by the Transportation Cabinet for the purpose of expanding the state driver education program, and two dollars (\$2) shall be paid to the fiscal court of the county where the driver's license is issued to be used by the fiscal court for county road purposes. The distribution of fees under this subsection shall be reduced by fifty percent (50%) for licenses issued for a four (4) year term in accordance with KRS 186.4101.
- (2) From the fee for each annual registration of a motorcycle pursuant to KRS 186.050, four dollars (\$4) shall be credited to ~~a special account within the road fund and shall be used exclusively for the purpose of~~ the motorcycle safety education program fund pursuant to **Section 5 of this Act and shall be used exclusively for the purposes outlined in Sections 1 to 9 of this Act** ~~KRS 186.050~~.

➔Section 13. KRS 176.010 is amended to read as follows:

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

- (1) "Biennial highway construction plan" means the specifically identified individual transportation projects or portions thereof identified for funding during the upcoming biennium, which correspond to the first two (2) years of the six (6) year road plan;
- (2) "Department" means Department of Highways;
- (3) **"Cabinet" means the Transportation Cabinet;**
- (4) "Lowest and best bidder" includes the reciprocal resident bidder preference described in KRS 176.082;
- (5)~~(4)~~ "Project" means the design, right-of-way, utility, or construction phase of a highway construction project;
- (6)~~(5)~~ "Roads" includes highways, bridges, and bridge approaches; and
- (7)~~(6)~~ "Six (6) year road plan" means the plan developed under KRS 176.430.

➔Section 14. KRS 190.030 is amended to read as follows:

- (1) (a) A motor vehicle dealer, new, used, or auction motor vehicle dealer, nonprofit motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, new recreational vehicle dealer, a salesperson of motor vehicles, or a salesperson of new recreational vehicles shall not engage in business in this state at any location without a license issued for that location as provided in KRS 190.010 to 190.080.

- (b) If a person *licensed as a motor vehicle dealer or new recreational vehicle dealer* acts as a motor vehicle salesperson or a new recreational vehicle salesperson, *that person*~~[he]~~ shall secure a motor vehicle salesperson's license or a new recreational vehicle salesperson's license in addition to a license for a motor vehicle dealer or for a new recreational vehicle dealer.
- (c) *In addition to the authority granted under subsection (6) of this section*, the motor vehicle commission may *promulgate*~~[provide by]~~ administrative *regulations in accordance with KRS Chapter 13A to establish licenses and appropriate fees*~~[regulation]~~ for other licensee activities~~[and an appropriate fee]~~.
- (2) A manufacturer of motor vehicles, recreational vehicles, factory branch, distributor, distributor branch, or wholesaler shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (3) A factory representative or distributor representative shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (4) Application for license shall be made to the licensor, at a time, in a form, and containing information the licensor shall require and shall be accompanied by the required fee. The licensor may require, *as part of*~~[in]~~ the application *process*~~[or otherwise]~~, information relating to the applicant's solvency, ~~[his]~~ financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business. The information may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in this section.
- (5) All licenses shall be granted or refused within thirty (30) days after submission of a complete application and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted. If a complaint of unfair cancellation of dealer franchise is in the process of being heard, a replacement application for the franchise shall not be considered until a decision is rendered by the commission.
- (6) (a) *The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish annual license fees, not to exceed five hundred dollars (\$500)*~~[fee]~~ for:
1. *New motor vehicle dealers;*
  2. *Used motor vehicle dealers;*
  3. *Motor vehicle leasing dealers;*
  4. *Restricted motor vehicle dealers;*
  5. *Motorcycle dealers;*
  6. *Motor vehicle manufacturers and factory branches;*
  7. *Distributors, motor vehicle auction dealers, and wholesalers;*
  8. *Factory representatives and distributor branch representatives;*
  9. *Automotive mobility dealers;*
  10. *Recreational vehicle manufacturers and distributors; and*
  11. *New recreational vehicle dealers.*
- (b) *The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish annual license fees, not to exceed fifty dollars (\$50), for motor vehicle salespersons and new recreational vehicle salespersons.*
- (c) *The license fee imposed on motor vehicle salespersons and new recreational vehicle salespersons shall be paid by the licensed dealer for every salesperson the dealer employs.*
- (d) *A license fee shall not be imposed on nonprofit motor vehicle dealer salespersons*~~[a calendar year, or part thereof, shall be as follows:~~
- ~~(a) For new motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof, plus one hundred dollars (\$100) for a supplemental license for each used car lot not immediately adjacent to the office or to a branch;~~
  - ~~(b) For used motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof;~~
  - ~~(c) For motor vehicle leasing dealers, one hundred dollars (\$100) for each office or branch or agent thereof;~~

- ~~(d) For restricted motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof;~~
  - ~~(e) For motorcycle dealers, one hundred dollars (\$100) for each office, branch, or agent thereof;~~
  - ~~(f) For motor vehicle manufacturers, one hundred dollars (\$100); and for each factory branch in this state, one hundred dollars (\$100);~~
  - ~~(g) For distributors, motor vehicle auction dealers or wholesalers, the same as for dealers;~~
  - ~~(h) For motor vehicle or recreational vehicle salespersons, twenty dollars (\$20), to be paid by the licensed dealer for every salesperson the dealer employs;~~
  - ~~(i) For factory representatives, or distributor branch representatives, one hundred dollars (\$100);~~
  - ~~(j) For automotive mobility dealers, one hundred dollars (\$100);~~
  - ~~(k) For nonprofit motor vehicle dealers, one hundred dollars (\$100);~~
  - ~~(l) For nonprofit motor vehicle dealer salespersons, a license fee shall not be imposed;~~
  - ~~(m) For recreational vehicle manufacturers or distributors, one hundred dollars (\$100); and~~
  - ~~(n) For new recreational vehicle dealers, one hundred dollars (\$100)].~~
- (7) (a) The licenses of dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of the office or branch and shall be conspicuously displayed there. If the location is changed, the licensor shall endorse the change of location on the license. A licensee shall not be charged a fee for changing locations. A change of location shall require a new application.
- (b) 1. A motor vehicle dealer who is not a new motor vehicle dealer may conduct a temporary sale or display in the county where the dealer is licensed to conduct business.
2. A new motor vehicle dealer may conduct a temporary sale or display in the dealer's market as defined in KRS 190.047(6).
3. A recreational vehicle dealer may conduct a temporary sale or display in the county where the dealer is licensed to conduct business or in any other county where there is no licensed recreational vehicle dealer.
- (c) A temporary sale or display may be conducted under this subsection if the temporary sale or display is permitted under an enabling ordinance enacted by the city, county, urban-county, or consolidated local government within whose boundaries the temporary sale or display is to be conducted. A temporary sale or display shall be advertised as temporary in nature and shall consist of a representative sampling of the inventory of each participating licensee.
- (d) The provisions of this subsection shall not apply to a nonprofit motor vehicle dealer.
- (8) Every salesperson, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the salesperson shall immediately mail his license to the licensor who shall endorse the change on the license without charge.
- (9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the licensor may require the applicant or licensee to furnish and maintain a bond in a form, amount and with sureties up to one hundred thousand dollars (\$100,000), conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee. The bonds shall be executed in the name of the State of Kentucky for the benefit of any aggrieved parties, but the penalty of the bond shall not be invoked except after a court adjudication. The commission may promulgate administrative regulations to permit the applicant to submit evidence, in lieu of posting bond, that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a bond complying with this subsection, for payment on conditions and indemnity set forth in this subsection. The bonding requirements of this subsection shall not apply to manufacturers, factory branches, and their agents.
- (10) Application for dealer's license shall be submitted to the commission and contain information the commission may require. A motor vehicle dealer, unless licensed under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use any motor vehicle registration plates.

(11) Every motor vehicle dealer or new recreational vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at intervals and show information the licensor may require.

➔Section 15. (1) The Legislative Program Review and Investigations Committee shall review the system of traffic safety programs for traffic offenders operated by county attorneys in the Commonwealth.

(2) The review under this section shall cover Fiscal Year 2019-2020.

(3) The Legislative Program Review and Investigations Committee shall report, at a minimum, preliminary findings of the review required under this section by December 29, 2021.

(4) 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 16. The General Assembly hereby confirms Executive Order 2020-992, which transfers the Motorcycle Safety Education Commission and the Motorcycle Safety Education Program from the Justice and Public Safety Cabinet to the Transportation Cabinet.

➔Section 17. KRS 186.450 is amended to read as follows:

(1) A person who is at least sixteen (16) years of age may apply for an instruction permit to operate a motor vehicle. A person who possesses a valid intermediate motor vehicle operator's license issued under KRS 186.452 or a person who is at least eighteen (18) years of age may apply for an instruction permit to operate a motorcycle. A holder of either a motor vehicle or motorcycle instruction permit may also operate a moped under that permit. A person applying for an instruction permit under this section shall make application to the Transportation Cabinet. A person applying for an instruction permit shall be required to comply with the following:

(a) If the person is under the age of eighteen (18), the instruction permit application shall be signed by the applicant's parent or legal guardian. If the person does not have a living parent or does not have a legal guardian, the instruction permit application shall be signed by a person willing to assume responsibility for the applicant pursuant to KRS 186.590;

(b) If the person is under the age of eighteen (18) and in the custody of the Cabinet for Health and Family Services, the instruction permit application shall be signed by:

1. The applicant's parent, legal guardian, grandparent, adult sibling, aunt, or uncle if the parental rights have not been terminated in accordance with KRS Chapter 625;
2. The foster parent with whom the applicant resides;
3. Another person who is at least age eighteen (18) and is willing to assume responsibility for the applicant pursuant to KRS 186.590; or
4. The applicant, without another person, upon verification by the Cabinet for Health and Family Services in accordance with KRS 605.102 that shall include proof of financial responsibility in accordance with KRS 186.590(2); and

(c) All applicants for an instruction permit shall comply with the examinations required by KRS 186.480.

(2) If an applicant successfully passes the examinations required by KRS 186.480, the applicant shall be issued an instruction permit upon payment of the fee set forth in KRS 186.531.

(3) (a) An instruction permit to operate a motor vehicle shall be valid for three (3) years and may be renewed. An instruction permit to operate a motorcycle shall be valid for one (1) year and may be renewed one (1) time.

(b) Except as provided in KRS 186.415, a person who has attained the age of sixteen (16) years and is under the age of eighteen (18) years shall have the instruction permit a minimum of one hundred eighty (180) days before applying for an intermediate license and shall have an intermediate license for a minimum of one hundred eighty (180) days before applying for an operator's license.

(c) A person who was under eighteen (18) years of age at the time of application for an instruction permit and is eighteen (18) years of age or older shall have the instruction permit a minimum of one hundred eighty (180) days and complete a driver training program under KRS 186.410(4) before applying for an operator's license.

- (d) A person who is at least eighteen (18) years of age and is under the age of twenty-one (21) years at the time of application for an instruction permit shall have the instruction permit a minimum of one hundred eighty (180) days before applying for an operator's license.
  - (e) A person who is at least twenty-one (21) years of age at the time of application for an instruction permit shall have the instruction permit a minimum of thirty (30) days before applying for an operator's license.
  - (f) In accordance with KRS 15A.352(5), a person whose motorcycle instruction permit has expired may apply to the cabinet to receive a motorcycle operator's license or endorsement if the person presents proof of successful completion of a motorcycle safety education course approved by the Justice and Public Safety Cabinet under KRS 15A.350 to 15A.366.
- (4) (a) A person shall have the instruction permit in his possession at all times when operating a motor vehicle, motorcycle, or moped upon the highway.
  - (b) When operating a motor vehicle, a motor vehicle instruction permit holder shall be accompanied by a person with a valid operator's license who is at least twenty-one (21) years of age occupying the seat beside the operator at all times.
  - (c) The requirements of paragraph (b) of this subsection shall not apply to a motor vehicle instruction permit holder being supervised on a multiple-vehicle driving range by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school.
- (5) A person with an instruction permit who is under the age of eighteen (18) shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving, including but not limited to emergencies, involvement in school-related activities, or involvement in work-related activities.
  - (6) Except when accompanied by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school, a person with an instruction permit who is under the age of eighteen (18) years shall not operate a motor vehicle at any time when accompanied by more than one (1) unrelated person who is under the age of twenty (20) years. A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of this subsection if the officer has no other cause to stop or seize the person other than a violation of this subsection. This subsection shall not apply to any operator of a vehicle registered under the provisions of KRS 186.050(4) who is engaged in agricultural activities.
  - (7) A violation under subsection (4), (5), or (6) of this section, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1) shall add an additional minimum of one hundred eighty (180) days from the date of the violation before a person who is under the age of eighteen (18) years may apply for an intermediate license to operate a motor vehicle, motorcycle, or moped.
  - (8) A person under the age of eighteen (18) who accumulates more than six (6) points against his driving privilege may have the driving privilege suspended pursuant to KRS Chapter 186 or probated by the court.
  - (9) ***The Transportation Cabinet shall promulgate administrative regulations, in accordance with KRS Chapter 13A, to establish procedures for:***
    - (a) ***Minors who reside with individuals in informal guardianship arrangements to have an adult who resides with them sign the minor's application and assume responsibility in accordance with subsection (1) of this section;***
    - (b) ***Individuals who have signed for responsibility under subsection (1) of this section to rescind that assumption of responsibility;***
    - (c) ***Notifying minors when an adult has rescinded responsibility under subsection (1) of this section; and***
    - (d) ***Allowing minors for whom an adult has rescinded responsibility under subsection (1) of this section, to obtain a new signature of an individual assuming responsibility without having to retake any examinations the minor has successfully passed.***

Signed by Governor April 6, 2021.



## CHAPTER 191

## ( HB 465 )

AN ACT relating to the acquisition by utilities of assets used to provide water or sewer utility service.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Accumulated depreciation" means the total amount of depreciation of an asset as calculated by the use of generally accepted accounting principles;*
- (b) *"Asset acquisition price" means full and actual costs of a water or sewer utility or its assets;*
- (c) *"Net original cost" means the original cost of a utility asset less its accumulated depreciation; and*
- (d) *"Water or sewer system" means any or all assets of a person, including but not limited to a utility, city, sanitation district, metropolitan sewer district, water commission, or regional wastewater commission, that are used to provide services listed in KRS 278.010(3)(d) or (f).*

(2) *In furtherance of and consistent with the General Assembly's findings and goals stated in KRS 224A.300(1), in any matter in which the commission determines for ratemaking purposes the value of an asset used to provide water or sewer service acquired by a utility from a water or sewer system, the commission shall fix the value of that asset at an amount between its net original cost and its asset acquisition price without regard for the original source of funds used to procure the asset, but only if the acquiring utility demonstrates and the commission finds that:*

- (a) *The asset acquisition price was established by arms-length negotiations;*
- (b) *The asset acquisition price plus the cost of restoring the acquired facilities to required standards will not materially adversely impact the overall costs or rates of the acquiring utility's existing and new customers;*
- (c) *Acquisition of the asset will result in operational economies;*
- (d) *The purchase prices of the utility and non-utility assets are clearly identified, and where practical, separated; and*
- (e) *The acquisition will result in overall financial and service benefits of the acquiring utility's operations.*

(3) (a) *A utility that has entered into an agreement to acquire the assets of a water or sewer system used to provide water or sewer service may apply to the commission for an order declaring the value of the acquired assets for ratemaking purposes. The application shall include:*

1. *The agreement for the acquisition of the assets or facilities at issue;*
2. *The proposed valuation for ratemaking purposes of the acquired assets;*
3. *The net original cost of the acquired assets and the accounting records supporting such cost to the extent such information is available;*
4. *The original source of funds used to procure each asset to the extent such information is available; and*
5. *Any other documents or evidence that the commission may require.*

(b) *An application made under this subsection shall be made under oath and shall be signed and filed on behalf of the acquiring utility by its president or other executive officer duly designated by the utility as having knowledge of the matters set forth therein. The commission shall issue a decision on the merits of an application filed under this subsection no later than sixty (60) days after the application is accepted for filing, unless the commission extends this period, for good cause, to one hundred fifty (150) days from the date of acceptance. The commission may take any action necessary to ensure a complete record, including conducting a hearing on the application.*

- (4) *In lieu of applying for a declaratory order under subsection (3) of this section on the valuation of assets acquired from a water or sewer system used to provide water or sewer service, an acquiring utility may, as part of its first application for a change in base rates following the acquisition of such assets, seek an order declaring the value of the acquired assets for ratemaking purposes. The commission shall declare the value of the acquired assets using the same factors required to be considered under subsection (2) of this section.*
- (5) *No later than the date of the filing of the application described in subsection (3) of this section, the acquiring utility shall provide notice of the application to the following:*
- (a) *By certified mail, the local governing body of each city or county wherein any part of the water or sewer system to be acquired is located or provides retail water or sewer service;*
  - (b) *By certified mail, the local governing body of each city or county in whose jurisdiction the acquiring utility provides retail water or sewer service;*
  - (c) *The customers of the water or sewer system being acquired, as provided in the bylaws or other governing corporate documents of the system being acquired, and using the method of notice so required; and*
  - (d) *The wholesale customers or suppliers of the water or sewer system to be acquired by causing the notice to be placed in priority mail.*
- (6) *No later than the date of the filing of the application described in subsection (3) of this section, additional notification designed to educate and inform the public and all affected customers shall be posted on the Web sites or social media of the acquiring entity and of the water or sewer system to be acquired, if such Web sites or social media exist.*
- (7) *The commission shall consider intervention requests made by any person in any matter under this section in accordance with the commission's administrative regulations addressing intervention generally.*
- (8) *The acquiring utility may, as part of any application for a change in base rates following the acquisition of water or sewer utility service assets, propose to unify the rate structure of the acquired system with its remaining customer base. In reviewing an acquiring utility's proposed change in base rates, the commission shall consider whether it is reasonable to require the acquiring utility to maintain separate rate schedules for the customers of the acquired system and for the other customers.*

Signed by Governor April 6, 2021.

## CHAPTER 192

### ( HB 113 )

AN ACT relating to the Teachers' Retirement System.

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

➔SECTION 1. A NEW SECTION OF KRS 161.220 TO 161.716 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any provision of KRS 161.220 to 161.716 to the contrary, the Teachers' Retirement System may, when it deems appropriate, use and accept electronic signatures on any retirement system document, and for any reason that the retirement system would otherwise require a signature, if the electronic signatures are submitted using technology that the board of trustees of the retirement system deems sufficient to protect their integrity, security, and authenticity.*
- (2) *If deemed appropriate for use and acceptance under this section, an electronic signature shall have the same force and effect as a handwritten signature.*
- (3) *The board of trustees of the retirement system may promulgate an administrative regulation in accordance with KRS Chapter 13A to establish guidelines for the use and acceptance of electronic signatures.*

➔Section 2. KRS 161.220 is amended to read as follows:

As used in KRS 161.220 to 161.716 and 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, employees participating in the system pursuant to KRS 196.167(3)(b)1., and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
  - (a) Local boards of education;
  - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;
  - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
  - (d) The Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;
  - (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
  - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included, except as limited by KRS 161.612. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;
  - (g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;
  - (h) The Office of Career and Technical Education, except that the executive director shall not be a member;
  - (i) The Office of Vocational Rehabilitation;
  - (j) The Kentucky Educational Collaborative for State Agency Children;
  - (k) The Governor's Scholars Program;
  - (l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member, except that any person who retires on or after January 1, 2019, shall upon reemployment after retirement not earn a second retirement account;
  - (m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;

- (n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.235, 161.540, and 161.620;
  - (o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000;
  - (p) Employees of the Kentucky Department of Education only who are graduates of a four (4) year college or university, notwithstanding a substitution clause within a job classification, and who are serving in a professional job classification as defined by the department;
  - (q) The Governor's School for Entrepreneurs Program; and
  - (r) Employees of the Office of Adult Education within the Department of Workforce Investment in the Education and Workforce Development Cabinet who were employees of the Council on Postsecondary Education, Kentucky Adult Education Program and who were members of the Kentucky Teachers' Retirement System at the time the program was transferred to the cabinet pursuant to Executive Orders 2019-0026 and 2019-0027; ~~and~~
- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
- (6) "New teacher" means any member not a present teacher;
- (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
- (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
- (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:
- (a) The member's actual salary; or
  - (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes. ***The board of trustees may promulgate an administrative regulation in accordance with KRS Chapter 13A to establish a methodology for measuring the limitation so that the combined increases in salary for***

*each of the last three (3) full years of salary prior to retirement shall not exceed the total permissible percentage increase received by other members of the employer for the same three (3) year period.*

*For individuals who became members of the retirement system prior to July 1, 2021, this limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. The board of trustees may promulgate an administrative regulation in accordance with KRS Chapter 13A to provide definitions for a corresponding change in position or in length of employment.* This limitation shall also not apply to the payment to a member for accrued annual leave if the individual becomes a member before July 1, 2008, or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service as provided by KRS 161.155;

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;
- (13) "Regular interest" means interest at three percent (3%) per annum, except:
  - (a) For an individual who becomes a member on or after July 1, 2008, but prior to January 1, 2019, "regular interest" means interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment; and
  - (b) For an individual who becomes a member on or after January 1, 2019, who is participating in the hybrid cash balance plan, "regular interest" means the regular interest credited to the member's accumulated account balance as provided by KRS 161.235;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;

- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;
- (21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;
- (22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400;
- (23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick leave authorized by KRS 161.155, annual, personal, and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1, 2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation;
- (24) "Participant" means a member, as defined by subsection (4) of this section, or an annuitant, as defined by subsection (15) of this section;
- (25) "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;
- (26) "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;
- (27) "University member" means an individual who becomes a member through employment with an employer specified in subsection (4)(b) and (n) of this section;
- (28) "Nonuniversity member" means an individual who becomes a member through employment with an employer specified under subsection (4) of this section, except for those members employed by an employer specified in subsection (4)(b) and (n) of this section;
- (29) "Accumulated employer credit" means the employer pay credit deposited to the member's account and regular interest credited on such amounts as provided by KRS 161.235; and
- (30) "Accumulated account balance" means:
- (a) For members who began participating in the system prior to January 1, 2019, the member's accumulated contributions; or
  - (b) For members who began participating in the system on or after January 1, 2019, in the hybrid cash balance plan as provided by KRS 161.235, the combined sum of the member's accumulated contributions and the member's accumulated employer credit.

➔Section 3. KRS 161.290 is amended to read as follows:

- (1) The board of trustees shall meet on the third Monday during the months of March, June, September, and December of each year. Special meetings may be called by the chairperson upon giving adequate notice to each member of the board of trustees. The business to be transacted at special meetings shall be specified in the notice of the meeting.
- (2) The members of the board of trustees shall serve without compensation, except that elective trustees shall receive ninety dollars (\$90) for each day the board is in session and all elected trustees shall be reimbursed

from the expense fund for all necessary expenses they incur through service to the board without limitation of the provisions of KRS Chapters 44 and 45.

- (3) The board of trustees may authorize a per diem, not to exceed ninety dollars (\$90) per day, for trustees representing the system on committees or commissions established by statute or for service as an official representative of the board of trustees.
- (4) The school district *or other public agency or entity of the state* which employs a teacher trustee who is required to attend regular or special meetings of the board of trustees, represent the system on committees or commissions, or serve as an official representative of the board of trustees shall provide the teacher trustee with special leave with pay and pay the compensation for a substitute for the teacher trustee during periods of absence upon certification by the teacher trustee that the trustee is performing these duties for the system.

➔Section 4. KRS 161.310 is amended to read as follows:

- (1) The board of trustees shall from time to time promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business.
- (2) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to the retirement system shall conform to this chapter.
- (3) All rules, regulations, or policies adopted, or decisions made, by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to retirement incentives for members as defined in KRS 161.220(4) shall contain provisions for the school district, university, or other employer to make full payment to the retirement system at the time a member retires for all actuarial obligations that occur to the retirement system as a result of retirement incentive payments ***with no resulting financial obligation for the state***. Any ***retirement incentive provided*** ~~payment made~~ by the employer to a member on the condition that the member terminate employment with the employer shall be deemed a retirement incentive for purposes of this subsection if the member retires within six (6) months following the member's termination in employment. ***Retirement incentives include remuneration of any kind and any tangible or intangible benefit provided to or on behalf of the member before, after, or at the member's date of retirement. Retirement incentives do not include lump-sum payments for accumulated sick, annual, or compensatory leave that are generally available to members upon termination of employment. Notwithstanding any provision of KRS 161.220 to 161.716 to the contrary, retirement incentives shall not be included in a member's final average salary or annual compensation as defined under subsections (9) and (10) of Section 2 of this Act, respectively.*** This subsection shall not apply to retirement incentive plans adopted by local boards of education prior to December 31, 1997, and to those employees of local school districts who retired on or before July 1, 1998.

➔Section 5. KRS 161.340 is amended to read as follows:

- (1)
  - (a) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The chairperson shall not serve more than four (4) consecutive years as chairperson or vice chairperson of the board. The vice chairperson shall not serve more than four (4) consecutive years as chairperson or vice chairperson of the board. A trustee who has served four (4) consecutive years as chairperson or vice chairperson of the board may be elected chairperson or vice chairperson of the board after an absence of two (2) years from the position.
  - (b) The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of trustees may require. The executive secretary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.
- (2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.

- (3) (a) Except as provided by KRS 161.430(7), the board shall contract for actuarial, auditing, legal, medical, investment counseling, and other professional or technical services, *insurance*, and commodities, as are required to carry out the obligations of the board in accordance with the provisions of this chapter, subject to KRS Chapters 45, 45A, 56, and 57 but without the limitations provided by KRS Chapters 12 and 13B.
- (b) The board shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General. The hourly rate of reimbursement for any contract for legal services under this paragraph shall not exceed the maximum hourly rate provided in the Legal Services Duties and Maximum Rate Schedule promulgated by the Government Contract Review Committee established pursuant to KRS 45A.705, unless a higher rate is specifically approved by the secretary of the Finance and Administration Cabinet or his or her designee.
- (4) ~~[(The board shall require the trustees, executive secretary, and employees it determines proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.]~~
- ~~(5)~~—The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties. *Insurance may be obtained or provided by contracting with an insurance carrier, by self-insurance, by indemnification, or by any combination thereof.*
- ~~(5)~~~~(6)~~ Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.
- ~~(6)~~~~(7)~~ Notwithstanding any statute to the contrary, the executive branch of government shall accept from the ~~the~~ ~~Kentucky~~ Teachers' Retirement System all accrued annual and sick leave balances and service credits of employees leaving the ~~the~~ ~~Kentucky~~ Teachers' Retirement System and accepting appointments within the executive branch. These leave balances shall be attested to by the ~~the~~ ~~Kentucky~~ Teachers' Retirement System and shall not exceed those limits established by statute or administrative regulation for employees of the executive branch.

➔Section 6. KRS 161.470 is amended to read as follows:

- (1) The membership of the retirement system shall consist of all new members, all present teachers, and all persons participating under the retirement system as of June 30, 1986, except as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29. The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.
- (2) Service credit shall be forfeited upon withdrawal. If a member again enters service it shall be as a new member, except that any teacher who withdraws by claiming his deposits may repay the system the amount withdrawn plus interest and reestablish his service credit as provided in subsection (3) of this section.
- (3) Effective July 1, 1988, and thereafter, an active contributing member of the retirement system with contributing service equal to one (1) year may regain service credit by depositing in the teachers' savings fund the amount withdrawn with interest at the rate to be set by the board of trustees, and computed from the first of the month of withdrawal and including the month of redeposit. Service credit regained pursuant to this subsection on or after January 1, 2019, shall not be used to determine the date the individual purchasing the service became a member of the Teachers' Retirement System.
- (4) Effective July 1, 1974, any active contributing member with at least two (2) years of contributing service credit who declined membership as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29, may secure service credit for prior service, and for any subsequent service prior to date of membership, by depositing in the teachers' savings fund contributions for each year of subsequent service prior to date of membership, with interest at the rate of eight percent (8%) compounded annually to the date of deposit.
- (5) Membership in the retirement system shall be terminated:
- By retirement for service;
  - By death;
  - By withdrawal of the member's accumulated account balance;



- (d) When a member, having less than five (5) years of Kentucky service is absent from service for more than three (3) consecutive years; or
- (e) For persons **whose membership begins**~~hired~~ on or after August 1, 2000, when a member is convicted, in any state or federal court of competent jurisdiction, of a felony related to his **or her** employment as provided in subparagraphs 1. and 2. of this paragraph.
  - 1. Notwithstanding any provision of law to the contrary, a **person whose membership begins**~~member hired~~ on or after August 1, 2000, who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his **or her** employment shall forfeit rights and benefits earned under the retirement system, except for the return of his **or her** accumulated contributions and interest credited on those contributions.
  - 2. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefits shall be forfeited.

Except for paragraph (e) of this subsection, upon termination of member accounts under this subsection, funds in the account shall be transferred to the guarantee fund. Inactive members may apply for refunds of these funds at any time. The terminated service shall be reinstated, if not withdrawn by the member, in the event that the member returns to active contributing service.

- (6) In case of withdrawal from service prior to eligibility for retirement, the board of trustees shall on request of the member return all of his **or her** accumulated account balance, including any payments made by the member to the state accumulation fund, but the member shall have no claim on any contributions made by the state or employer with a view to his **or her** retirement, except as provided by KRS 161.235, or to contributions made to the medical insurance fund. **A member who is withdrawing from service prior to retirement eligibility shall be entitled to a refund following sixty (60) days after his or her last day of employment.** If the member is eligible for an immediate service retirement allowance as provided in KRS 161.600, no withdrawal and refund shall be permitted, unless the allowance would prohibit the member from qualifying for Social Security benefits or the member elects to withdraw part or all of his service for the purpose of obtaining **service** credit in another retirement plan. Requests for refund of contributions by the member must be filed on forms prescribed by the Teachers' Retirement System and the employer shall be financially responsible for all information that is certified on the prescribed form. A member may not withdraw any part of his or her accumulated account balance in the retirement system except as provided by this subsection.
- (7) Except as provided in KRS 161.520 and 161.525, in case of death prior to retirement, the board of trustees shall pay to the estate of the deceased member, unless a beneficiary was otherwise applicably designated by the deceased member, then to the beneficiary, all of his **or her** accumulated account balance, including any payments made by the member to the state accumulation fund, but the estate or beneficiary shall have no claim on any contributions made by the state or employer with a view to the retirement of the member, except as provided by KRS 161.235, or to contributions made to the medical insurance fund.
- (8) Any active contributing member of the Kentucky Employees Retirement System, the County Employees Retirement System, the State Police Retirement System, or the Judicial Retirement System may use service, under that retirement system for the purpose of meeting the service requirement of subsections (3) and (4) of this section.

➔Section 7. KRS 161.480 is amended to read as follows:

- (1) (a) Each person, upon becoming a member of the retirement system, shall file a detailed statement as required by the board of trustees and shall designate a primary beneficiary or two (2) or more cobeneficiaries to receive any benefits accruing from the death of the member.
- (b) A contingent beneficiary may be designated in addition to the primary beneficiary or cobeneficiaries. The member may name more than one (1) contingent beneficiary.
- (c) 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 ~~Kentucky~~ Teachers' Retirement System, except in the event of subsequent marriage or divorce. Subsequent marriage by the member shall void the primary beneficiary and any cobeneficiary designation, even that of a trust, and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. **An individual who is married prior to becoming a member of the retirement system and remains married**

*at the time of becoming a member shall have his or her spouse considered the primary beneficiary, unless the member designates another beneficiary.* A final divorce decree shall terminate an ex-spouse's status as either primary beneficiary, cobeneficiary, or contingent beneficiary, unless subsequent to divorce the member redesignates the former spouse as primary beneficiary, cobeneficiary, or contingent beneficiary.

- (d) To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of a member's accumulated account balance in the retirement system as provided under KRS 161.470(7). A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.
  - (e) 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, *unless the member is married at the time of his or her death, in which case the spouse shall be deemed the beneficiary.*
  - (f) 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.
- (2) The provisions of this section shall be retroactive as they relate to election of beneficiaries by members still in active status on the effective date of this section. The provisions of this section shall not apply to any account from which a member is drawing a retirement allowance or to the life insurance benefit available under KRS 161.655.

➔Section 8. KRS 161.500 is amended to read as follows:

- (1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. *Nonuniversity members are entitled to a full year of service credit if they have no more than five (5) unpaid days in a school or fiscal year under a contract requiring a work schedule of one hundred eighty-five (185) days or greater. University members are entitled to a full year of service credit if they have no more than five (5) unpaid days in a school or fiscal year under a contract requiring a work schedule of one hundred eighty (180) days or greater.* ~~Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year.~~ In the event *a member* ~~an individual who became a member prior to January 1, 2019,~~ is paid for less than *the required number of days for a full year of service credit* ~~one hundred eighty (180) days~~, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.
- (2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.
- (3) Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.
- (4) No service credit shall be granted in the Teachers' Retirement System for service that has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

➔Section 9. KRS 161.515 is amended to read as follows:

- (1) For the purposes of this section, "out-of-state service" shall mean service in any state in a comparable position on a full-time basis, which would be covered if in Kentucky.
- (2) (a) An active contributing member who has been a contributing member of the retirement system for at least one (1) full scholastic year subsequent to the latest out-of-state service, may present for credit service rendered out of state, not to exceed ten (10) years actually taught as a certified or licensed teacher. All members who elect to purchase this service shall pay to the retirement system the full actuarial cost as provided under KRS 161.220(22). For each year of which the retirement system shall accept payment, one (1) year of service credit shall be given. For members who purchased this service

under the cost formula as it existed under this subsection on June 30, 2005, this credit may not be used to meet the service requirements of KRS 161.525, 161.600, or 161.661, except as provided in subsection (2)(c) of this section. No credit shall be granted for service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

- (b) A member of the retirement system having teaching service in the elementary or secondary schools operated by the United States overseas or in this country, or in a public college or university in Kentucky, not included in the Teachers' Retirement System of the State of Kentucky, may present this service for credit in the retirement system on the same basis as provided above for out-of-state service credit; however, no service may be presented which shall be used as a basis for retirement benefits in any program supported wholly or in part by a public institution or governmental agency. This service when added to service credited under subsection (2)(a) of this section shall not exceed a total of ten (10) years' service credit.
  - (c) A member having service referred to in subsection (2)(a) or (2)(b) of this section who purchased this service under the cost formula as it existed under those subsections on June 30, 2005, may elect to use this service for meeting the requirements of KRS 161.600(1)(c) by making an additional contribution to the state accumulation fund equal to a member contribution rate of eight percent (8%) for each year so used. These payments shall not be picked up as described in KRS 161.540(2). The salary base to be used in determining this additional contribution shall be the final average salary which is used in calculating the member's regular retirement annuity.
- (3) Members entering the Teachers' Retirement System for the first time, July 1, 1976, and after this date, shall not receive credit for service defined in subsections (2)(a) or (2)(b) of this section in excess of one (1) year of credit for each two (2) years of Kentucky service in a covered position or ten (10) years, whichever is the lesser number.
- (4) A member, having completed service as a volunteer in the Kentucky Peace Corps created by KRS 154.1-720, may purchase service credit for the time served in the corps on the same basis as provided in this section for the purchase of out-of-state service credit. A member, having completed service as a federal Peace Corps volunteer, may purchase up to two (2) years of service credit for time served in the Peace Corps on the same basis as provided in this section for the purchase of out-of-state service credit.
- (5) Service purchased under this section by members *shall be credited based upon the retirement factor established by Section 19 of this Act, as applicable* ~~[who at the time of purchase are employed by employers other than those described in KRS 161.220(4)(b) or (n) shall be credited, as described in KRS 161.620(1)(a) and (b), with a retirement factor of two and one half percent (2.5%) for each year of service that was originally performed on or after July 1, 1983, and two percent (2.0%) for each year of service performed before July 1, 1983. Service purchased under this section by members who at the time of purchase are employed by employers described in KRS 161.220(4)(b) or (n) shall be credited, as described in KRS 161.620(1)(a), with a retirement factor of two percent (2.0%) for each year of service, regardless of when the service was performed].~~
- ~~[(6) Effective January 1, 2019, this section does not apply to individuals who become members on or after January 1, 2019.]~~

➔Section 10. KRS 161.520 is amended to read as follows:

Upon the death of an active contributing member or upon the death of a member retired for disability, except as provided in KRS 161.661(6), the survivors of the deceased member in the following named order, may elect to receive a survivor's benefit payable as follows:

- (1) Where there is a surviving widow or widower who is named as the primary beneficiary of the member's retirement account, the benefit shall be:
  - (a) One hundred eighty dollars (\$180) per month with no restriction on other income;
  - (b) Two hundred forty dollars (\$240) per month when the surviving widow or widower's total income from all sources does not exceed six thousand six hundred dollars (\$6,600) per year or five hundred fifty dollars (\$550) per month; or
  - (c) If the deceased member has a minimum of ten (10) years of service credit with the Teachers' Retirement System, the surviving widow or widower may apply for an annuity actuarially equivalent to the annuity that would have been paid to the deceased member when eligibility conditions were met. Eligibility for

payments would begin at the time the age of the deceased member would have met the requirements of KRS 161.235(6) or 161.600(1), as applicable. In exercising this right, the surviving widow or widower shall be entitled to receive an annuity for life, except as provided in subsection (6) of this section. This subsection applies to surviving spouses of members who die on or after July 1, 1978. A surviving widow or widower of a member who dies after July 1, 1978, shall be eligible for benefit payments provided under paragraphs (a) and (b) of this subsection until they begin receiving payments under this provision;

- (2) (a) Where there are surviving unmarried children under age eighteen (18) or under age nineteen (19) if a full-time student in high school, the benefit shall be two hundred dollars (\$200) per month in the case of one (1) child, three hundred forty dollars (\$340) per month in the case of two (2) children, four hundred dollars (\$400) per month in the case of three (3) children, and four hundred forty dollars (\$440) per month in the case of four (4) or more children. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (3) of this section.
  - (b) Notwithstanding any provision of law to the contrary, the surviving spouse may elect to receive a lump-sum refund of the member's accumulated account balance in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section only if the surviving spouse is designated as the primary beneficiary and:
    1. Is a biological or adoptive parent of all children eligible for a benefit under this subsection and has not had his or her parental rights terminated; or
    2. Has been appointed as legal guardian of all of the children eligible under paragraph (a) of this subsection.
  - (c) To elect a lump-sum refund of the member's accumulated account balance under paragraph (b) of this subsection, the surviving spouse who is designated as the primary beneficiary must sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsection (1) of this section. The surviving spouse shall not waive the survivorship benefits available under this subsection or subsections (1) and (6) of this section if any of the member's children have attained age eighteen (18) or older unless all of those children consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection;
- (3) (a) Where the survivor is a child age eighteen (18) or older whose mental or physical condition is sufficient to cause his dependency on the deceased member at the time of the member's death, the benefit shall be two hundred dollars (\$200) per month, payable for the life of the child or until the time as the mental or physical condition creating the dependency no longer exists or the child marries. The mental or physical condition of the adult child shall be revealed by a competent examination by a licensed physician and shall be approved by a majority of a medical review committee as defined in KRS 161.661(14). Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (2) of this section.
  - (b) Notwithstanding any provision of law to the contrary, the surviving spouse shall not elect to receive a lump-sum refund of the member's accumulated account balance in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section unless:
    1. The surviving spouse is designated as the primary beneficiary;
    2. The surviving spouse has been appointed by the court as guardian, conservator, or other fiduciary with sufficient general or specific authority to waive the survivorship benefits available under this subsection for any child or children age eighteen (18) or older who have been adjudicated incompetent to make decisions on their own behalf by a court of law; and
    3. Any child or children age eighteen (18) or older who are mentally competent to make decisions on their own behalf ~~as attested to by two (2) physicians' statements~~ consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection.
  - (c) If eligible to elect a lump-sum refund of the member's accumulated account balance, the surviving spouse shall sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsections (1) and (2) of this section;

- (4) Where the sole eligible survivors are dependent parents aged sixty-five (65) or over, the benefit shall be two hundred dollars (\$200) per month for one (1) parent or two hundred ninety dollars (\$290) per month for two (2) parents. Dependency of a parent shall be established as of the date of the death of the member;
- (5) Where the sole eligible survivor is a dependent brother or sister, the benefit shall be one hundred sixty five dollars (\$165) per month. In order to qualify, the brother or sister must have been a resident of the deceased member's household for at least one (1) full year prior to the member's death or must have been receiving care in a hospital, nursing home, or other institution at the member's expense for same period;
- (6) The benefit to a child as defined in subsection (2) of this section shall terminate upon the attainment of age eighteen (18) or upon reaching age nineteen (19), if a full-time student in high school, or upon marriage, except that benefits shall continue until the attainment of age twenty-three (23) for an unmarried child who is a full-time student in a recognized educational program beyond the high school level. The benefit to a widow, widower, dependent parent, or dependent brother or sister or dependent child age eighteen (18) or older shall terminate upon marriage, or upon termination of the condition creating the dependency;
- (7) The board of trustees shall be the sole judge of eligibility or dependency of any beneficiary, and may require formal application or information relating to eligibility or dependency, including proof of annual income satisfactory to the board. The board of trustees may subpoena records and individuals whenever it deems this action necessary;
- (8) No payment of benefits shall be made unless the board of trustees authorizes the payment. The board shall promulgate administrative regulations for the administration of the provisions in this section and in every case the decision of the board of trustees shall be final as to eligibility, dependency, or disability, and the amount of benefits payable;
- (9) In the event that there are no eligible survivors as defined in subsections (1) to (5) of this section, or in the event that the surviving spouse elects not to receive survivorship benefits on his or her own behalf or on behalf of any of the member's children as permitted under subsections (2) and (3) of this section, the board of trustees shall pay to the estate or the designated beneficiaries of the deceased member a refund of his *or her* accumulated account balance as provided in KRS 161.470(7). If the benefits paid or payable under subsections (1) to (5) of this section and KRS 161.661 shall amount to a sum less than the member's accumulated account balance at the time of death, the board of trustees shall pay to the estate or designated beneficiaries of the deceased member the balance of the accumulated account balance;
- (10) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits; and
- (11) Benefits under subsections (2) and (3) of this section shall apply to a child who is a legally adopted survivor at the time of the death of the member. This provision shall be retroactive to include a child who was born after January 1, 1990, and is a legally adopted survivor of a member whose death occurred prior to July 15, 2008.

➔Section 11. KRS 161.540 is amended to read as follows:

- (1) (a) Effective January 1, 2019, each individual who is a contributing nonuniversity member, shall contribute to the retirement system twelve and eight hundred fifty-five thousandths percent (12.855%) of annual compensation, of which:
  1. Nine and one hundred five thousandths percent (9.105%) of annual compensation shall be used to fund pension benefits; and
  2. Three and three-quarters percent (3.75%) of annual compensation shall be used to fund retiree health benefits.
- (b) Effective January 1, 2019, each individual who is a contributing university member, shall contribute to the retirement system ten and four-tenths percent (10.4%) of annual compensation, of which:
  1. Seven and six hundred twenty-five thousandths percent (7.625%) of annual compensation shall be used to fund pension benefits; and

2. Two and seven hundred seventy-five thousandths percent (2.775%) of annual compensation shall be used to fund retiree health benefits.
- (c) When the medical insurance fund established under KRS 161.420(5) achieves a sufficient prefunded status as determined by the retirement system's actuary, the board of trustees shall recommend to the General Assembly that the contributions required under paragraph (a)2. or (b)2. of this subsection shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated.
  - (d) Payments authorized by statute that are made to retiring members, who became members of the system before July 1, 2008, for not more than sixty (60) days of unused accrued annual leave shall, *subject to subsection (10) of Section 2 of this Act*, be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. *Notwithstanding the provisions of this subsection or any other statute to the contrary, for retirement calculation purposes, members may only be credited for payment of annual leave under the following conditions:*
    1. *Payment by an employer for annual leave shall be equally available to all members serving under contracts requiring the same number of worked days and greater; and*
    2. *At least two (2) members of the employer shall receive payment for annual leave.*
  - (e) The contribution of members shall not exceed ~~the [these]~~ applicable percentages on annual compensation *as set forth in this section or as where otherwise limited by statute*. When a member retires, if it is determined that he *or she* has made contributions on a salary in excess of the amount to be included for the purpose of calculating his *or her* final average salary, any excess contribution shall be refunded *in a lump sum to the member's employer for distribution to the member* ~~[to him in a lump sum at the time of the payment of his first retirement allowance. In the event a member is awarded a court-ordered back salary payment the employer shall deduct and remit the member contribution on the salary payment, plus interest to be paid by the employer, to the retirement system unless otherwise specified by the court order].~~
- (2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010. The picked-up member contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.
- ➔Section 12. KRS 161.545 is amended to read as follows:
- (1) (a) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees if contributions were not otherwise made as a result of the service. This paragraph does not apply to members who retired on or after January 1, 2019, and are reemployed on or after January 1, 2019.
  - (b) Members placed on leave of absence during a period of full-time employment as defined in KRS 161.220(21) may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).
- (2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence during a period of full-time employment as defined in KRS 161.220(21) since July 1, 1964, for reasons of health as defined under the Federal Family Medical Leave Act of 1993, 29 U.S.C. secs. 2601 et seq., child rearing, or to improve their educational qualifications, and did not purchase the leave of absence as provided in subsection (1) of this section may obtain credit for the leave of absence as provided under the administrative regulations of the board of trustees and under the following conditions:

- (a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence or by other documentation that was generated contemporaneously with the leave that is determined by the retirement system to reasonably establish that a leave of absence was granted; ~~and~~
  - (b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing *the appropriate contributions* in the state accumulation fund *and medical insurance fund*; ~~and an amount equal to this total.~~
  - (c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.
- (3) *Sabbatical leaves of absence granted by any one (1) of the five (5) universities identified in subsection (4)(b) of Section 2 of this Act for which the university employee is provided full pay at the rate he or she was provided as a full-time employee immediately preceding the sabbatical leave shall be deemed as full-time employment provided for the university and employee and employer contributions shall be made in accordance with KRS 161.550 and Section 11 of this Act.*
- (4) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).
- (5)~~(4)~~ Notwithstanding any other provisions~~(4)~~ of this section to the contrary, purchase of service credit under subsection (2) of this section:
- (a) For individuals who become members on or after July 1, 2008, but prior to January 1, 2019, shall be purchasable only at the full actuarial cost; and
  - (b) Shall not apply to individuals who become members on or after January 1, 2019.

➔Section 13. KRS 161.553 is amended to read as follows:

- (1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in paragraphs (a) ~~and~~ (b) ~~and~~ (c) of this subsection are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or *biennia* ~~bienniums~~ prior to July 1, ~~2021~~~~(2010)~~:

(a) Cost-of-Living	<del>2010-2011</del> <b>2021-2022</b>	Each Succeeding Fiscal Year
Allowance		
<del>[ 1994-1996</del>		
<del>1996-1998</del>	<del>\$4,459,000</del>	
<del>1998-2000</del>	<del>\$15,333,900</del>	<del>\$15,333,900 through 2012-2013</del>
		<del>\$7,938,600 in 2013-2014</del>
<del>2000-2002</del>	<del>\$12,511,400</del>	<del>\$12,511,400 through 2014-2015</del>
		<del>and</del>
		<del>\$7,227,700 in 2015-2016</del>
2002-2004	\$21,405,700	<del>[\$21,405,700 through 2021-2022</del>
		<del>and</del>
		<del>] \$11,204,100 in 2022-2023</del>
2004-2006	\$15,413,700	\$15,413,700 through 2023-2024
		and
		\$7,421,400 in 2024-2025
2006-2008	\$15,730,200	\$15,730,200 through 2025-2026
		and
		\$7,104,600 in 2026-2027;

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(b)	<del>Minimum Value</del>	<del>2010-2011</del>	<del>Each Succeeding Fiscal Year</del>
	<del>Annuities</del>		
	<del>2002-2004</del>	<del>\$3,375,900</del>	<del>\$3,375,900 through 2016-2017</del>
			<del>and</del>
			<del>\$2,027,800 in 2017-2018; and</del>
(e)	<del>Sick Leave</del>	<del>2021-2022</del> <del>[2010-2011]</del>	<del>Each Succeeding Fiscal Year</del>
	<del>Allowance</del>		
	<del>[ 1998-2000</del>	<del>\$4,660,300</del>	<del>\$4,660,300 through 2012-2013</del>
			<del>and</del>
			<del>\$2,425,900 in 2013-2014</del>
	<del>2000-2002</del>	<del>\$6,167,100</del>	<del>\$6,167,100 through 2014-2015</del>
			<del>and</del>
			<del>\$3,579,100 in 2015-2016]</del>
	<del>2002-2004</del>	<del>\$5,337,000</del>	<del>[\$5,337,000 through 2021-2022</del>
			<del>and</del>
			<del>]</del> <del>\$3,022,800 in 2022-2023</del>
	<del>2004-2006</del>	<del>\$5,480,300</del>	<del>\$5,480,300 through 2023-2024</del>
			<del>and</del>
			<del>\$2,558,700 in 2024-2025</del>
	<del>2006-2008</del>	<del><b>\$5,646,400</b></del> <del>[\$5,814,400]</del>	<del><b>\$5,646,400</b></del> <del>[\$5,814,400] through 2025-2026</del>
			<del>and</del>
			<del><b>\$3,331,200</b></del> <del>[\$3,499,200] in 2026-2027</del>
	<del>2008-2010</del>	<del><b>\$4,926,000</b></del> <del>[\$8,969,000]</del>	<del><b>\$4,926,000</b></del> <del>[\$8,969,000] through 2027-2028</del>
			<del>and</del>
			<del><b>\$2,355,000</b></del> <del>[\$6,281,300] in 2028- 2029]</del>
	<del>2010-2012</del>	<del><b>\$5,198,100</b></del> <del>[\$6,516,600]</del>	<del><b>\$5,198,100</b></del> <del>[\$13,674,800] through 2029-2030</del>
			<del>and</del>
			<del><b>\$2,723,900</b></del> <del>[\$7,158,200] in 2030- 2031</del>
	<del>2012-2014</del>	<del><b>\$6,726,200</b></del>	<del><b>\$6,726,200 through 2031-2032</b></del>
			<del>and</del>
			<del><b>\$3,357,900 in 2032-2033</b></del>
	<del>2014-2016</del>	<del><b>\$7,206,200</b></del>	<del><b>\$7,206,200 through 2033-2034</b></del>
			<del>and</del>
			<del><b>\$3,279,700 in 2034-2035</b></del>
	<del>2016-2018</del>	<del><b>\$6,129,500</b></del>	<del><b>\$6,129,500 through 2035-2036</b></del>
			<del>and</del>
			<del><b>\$3,054,200 in 2036-2037</b></del>
	<del>2018-2020</del>	<del><b>\$5,229,200</b></del>	<del><b>\$5,229,200 through 2037-2038</b></del>
			<del>and</del>



*\$2,477,900 in 2038-2039*

2020-2022                      *\$9,266,200*                      *\$9,266,200 through 2039-2040*

*and*

*\$4,633,100 in 2040-2041*

- (2) The cost of providing the transitional funding for the state medical insurance fund stabilization contribution as provided by KRS 160.550(2) may be funded by annual appropriations from the state on an amortized basis. The schedule in this subsection is the annual appropriation which shall be made by the state in the respective fiscal years or ~~bienna~~~~biennium~~ prior to July 1, ~~2021~~~~[2010]~~:

<del>[Amortization of</del>	<del>2010-2011</del>	<del>Each Succeeding Fiscal Year</del>
<del>Transitional Funding</del>		
<del>2004-2006</del>	<del>\$13,325,100</del>	<del>\$13,325,100 through 2014-2015</del>
<del>and</del>		
<del>\$9,075,500 in 2015-2016</del>		
<del>2006-2008</del>	<del>\$28,487,400</del>	<del>\$28,487,400 through 2016-2017</del>
<del>and</del>		
<del>\$18,280,000 in 2017-2018</del>		
<del>2008-2010</del>	<del>\$36,554,100</del>	<del>\$36,554,100 through 2018-2019</del>
<del>and</del>		
<del>\$18,266,100 in 2019-2020]</del>		
Amortization of	<del>2021-2022</del> <del>[2010-2011]</del>	Each Succeeding Fiscal Year
Medical Subsidy		
<del>2010-2012</del>	<del>\$1,798,700</del> <del>[2008-2010]</del>	<del>\$2,574,100</del>
<del>\$2,574,100 through 2018-2019</del>		<del>and</del>
<del>\$1,345,200 in 2019-2020</del>		

~~— ]~~

- (3) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	\$34,689,893
1990-1992	\$68,107,473
1992-1994	\$15,749,976

➔Section 14. KRS 161.560 is amended to read as follows:

- (1) (a) Each agency, *school district, and institution* employing members of the retirement system shall deduct from the compensation of each member for each payroll period subsequent to the date the individual became a member, the percentage of his compensation due under the rates prescribed in KRS 161.540. No later than fifteen (15) days following ~~the end of~~ each *pay date* ~~[payroll period]~~, the ~~employer~~~~[agency]~~ shall **have on deposit with the retirement system all required deductions** ~~[forward all amounts deducted to the Teachers' Retirement System]~~. The retirement system ~~may~~~~[shall]~~ charge the ~~employer~~~~[employing agency]~~ interest at an annual rate not to exceed **eight percent (8%)** ~~[twelve percent (12%)]~~ for deductions not **deposited** ~~[remitted]~~ within the specified fifteen (15) days.
- (b) **Each employer employing members of the retirement system shall have on file at the retirement system's office no later than fifteen (15) days following each pay date** payroll reports, contributions lists, and other data required by administrative regulation of the board ~~[of trustees shall be submitted]~~. **The retirement system may impose a penalty on the employer not to exceed one thousand dollars (\$1,000) when the employer does not meet the reporting date. However, the retirement system may waive the penalty for good cause.**

- (c) **Each employer employing members of the retirement system shall have on file at the retirement system's office an annual summary report** ~~[Employers shall submit an annual report, in compliance with requirements of the retirement system,]~~ of member contributions and periods employed ~~[to the retirement system]~~ no later than August 1 following the completion of each fiscal year. The retirement system may impose a penalty on the employer not to exceed one thousand dollars (\$1,000) when the employer does not meet the August 1 reporting date. **However, the retirement system may waive the penalty for good cause.**
- (d) The deductions **described by paragraph (a) of this subsection** shall be made notwithstanding the fact that the salary as a result may be less than the minimum compensation provided by law. Every member shall be deemed to consent and agree to the deductions, and the deductions shall be considered as having been paid to the member. After August 1, 1982, member contributions shall be picked up by the agency pursuant to KRS 161.540(2).

- (2) If an employer fails to deduct the correct retirement contribution from a member's compensation, the member may make the contribution that should have been deducted by the employer and receive retirement credit for the payment. For correction of omitted member contributions that occur more than one (1) year after the year in which the error was made, the employer shall be responsible for paying interest to the retirement system at a rate of eight percent (8%) from the end of the year in which the service was performed to the date of payment.

➔Section 15. KRS 161.597 is amended to read as follows:

- (1) A member in active contributing status may purchase any service credit which the member is authorized to purchase by making installment payments in lieu of a lump-sum payment.
- (2) To initiate an installment payment plan, a member shall make a written request to the retirement system for an estimate to purchase service credit by making installment payments.
- (3) To qualify for installment payments, the total cost of the service purchase, including any chargeable interest, shall exceed one thousand dollars (\$1,000).
- (4) Installment payments shall be at least fifty dollars (\$50) per month and shall be made for a period of time which is not less than twelve (12) months nor more than sixty (60) months. Interest at eight percent (8%) per annum, unless the board specifies in an administrative regulation a different interest rate, shall be charged on all installment payment purchases of service credit that are purchasable at less than full actuarial cost. **Interest shall be assigned to the guarantee fund.**
- (5) Installment payments shall be made on a monthly basis by ~~[payroll deduction or]~~ electronic fund transfer ~~[and forwarded separately to the Teachers' Retirement System on forms or by computer format not later than fifteen (15) days following the end of each month].~~ The payments shall be considered accumulated contributions and shall not be picked up as provided in KRS 161.560, except that subject to approval by the Internal Revenue Service and only as permitted by the Internal Revenue Code, installment payments ~~[by payroll deduction]~~ shall be made on a tax-deferred basis.
- (6) A member may elect to terminate **electronic fund transfers** ~~[payroll deductions]~~ at any time and purchase the remaining service credit by lump-sum payment. A member on a leave of absence may **continue to** make ~~personal~~ installment payments. Termination of employment in a covered position shall terminate installment payments. If the member is later employed by a different employer in a covered position, the member may request a new estimate and reinstate installment payments. A member that misses two (2) consecutive installment payments shall be in default. A member in default shall receive **a refund of all prior installment payments and the member's service credit shall be reduced accordingly** ~~[on a pro rata basis for the total amount of contributions made by installment payments].~~ A member in default may not reinstate installment payments for twelve (12) months from the date the member was in default.
- (7) If a member dies before completing scheduled installment payments, the named beneficiary of the member's retirement account may pay the remaining balance due by a lump-sum payment within thirty (30) days of the death of the member.

➔Section 16. KRS 161.605 is amended to read as follows:

Any member retired by reason of service may return to work in a position covered by the ~~[Kentucky]~~ Teachers' Retirement System and continue to receive his or her retirement allowance under the following conditions:

- (1) Any member who is retired with thirty (30) or more years of service may return to work in a full-time or a part-time position, **or in a position providing substitute teaching service**, covered by the ~~[Kentucky]~~ Teachers'

Retirement System and earn up to a maximum of seventy-five percent (75%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is seventy-five percent (75%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, **excluding employer-provided medical insurance required under subsection (5) of this section**, shall be considered. Members who were retired on or before June 30, 2002, shall be entitled to return to work under the provisions of this section as if they had retired with thirty (30) years of service. Nonqualified service credit purchased under the provisions of KRS 161.5465 or elsewhere with any state-administered retirement system shall not be used to meet the thirty (30) year requirement set forth in this subsection. Out-of state teaching service provided in public schools for kindergarten through grade twelve (12) may count toward the thirty (30) year requirement set forth in this subsection even if it is not purchased as service credit, if the member obtains from his or her out-of-state employer certification of this service on forms prescribed by the retirement system;

- (2) Any member who is retired with less than thirty (30) years of service after June 30, 2002, may return to work in a full-time or part-time position, **or in a position providing substitute teaching service**, covered by the ~~Kentucky~~ Teachers' Retirement System and earn up to a maximum of sixty-five percent (65%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is sixty-five percent (65%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, **excluding employer-provided medical insurance required under subsection (5) of this section**, shall be considered;
- (3) Reemployment of a retired member under subsection (1) or (2) of this section in a full-time teaching or nonteaching position in a local school district shall be permitted only if the employer certifies to the Kentucky Teachers' Retirement System that there are no other qualified applicants available to fill the teaching or nonteaching position. The employer may use any source considered reliable, including but not limited to data provided by the Education Professional Standards Board and the Department of Education, to determine whether other qualified applicants are available to fill the teaching or nonteaching position. The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to determine whether other qualified applicants are available to fill a teaching or nonteaching position and, if not, for filling the position with a retired member who will then be permitted to return to work in that position under subsection (1) or (2) of this section. The administrative regulations shall ~~ensure~~ ~~assure~~ that a retired member shall not be hired in a teaching or nonteaching position by a local school district until the superintendent of the school district assures the Kentucky Teachers' Retirement System that every reasonable effort has been made to recruit other qualified applicants for the position on an annual basis;
- (4) Under this section, an employer may employ full-time a number of retired members not to exceed three percent (3%) of the membership actively employed full-time by that employer. The board of trustees may reduce this three percent (3%) cap upon recommendation of the retirement system's actuary if a reduction is necessary to maintain the actuarial soundness of the retirement system. The board of trustees may increase the three percent (3%) cap upon a determination that an increase is warranted to help address a shortage in the number of available teachers and upon the determination of the retirement system's actuary that the proposed cap increase allows the actuarial soundness of the retirement system to be maintained. For purposes of this subsection, "full-time" means the same as defined by KRS 161.220(21). A local school district may exceed the quota established by this subsection by making an annual written request to the Kentucky Department of Education which the department may approve on a year-by-year basis if the statewide quota has not been met. A district's written request to exceed its quota shall be submitted no sooner than two (2) weeks after the start of the school year;
- (5)
  - (a) Except as provided by subsection (10) of this section, a member returning to work in a full-time or part-time position, **or in a position providing substitute teaching service**, under subsection (1) or (2) of this section ~~shall~~ ~~will~~ contribute to an account with the retirement system that ~~shall~~ ~~will~~ be administered independently from and with no reciprocal impact with the member's original retirement account, or any other account from which the member is eligible to draw a retirement allowance.
  - (b) Except as provided by subsection (10) of this section, a member returning to work under subsection (1) or (2) of this section shall make contributions to the retirement system at the rate provided under KRS 161.540. The new account shall independently meet ~~all~~ ~~the~~ ~~five~~ ~~(5)~~ ~~year~~ vesting **requirements** ~~requirement~~ as well as all other conditions set forth in KRS 161.600(1) before any retirement allowance is payable from this account. The retirement allowance accruing under this new account shall be calculated pursuant to KRS 161.620(1)(b). This new account shall not entitle the

member to a duplication of the benefits offered under KRS 161.620(7) or 161.675, nor shall this new account provide the benefits offered by KRS 161.520, 161.525, 161.620(3), 161.655, 161.661, or 161.663.

- (c) A member returning to work under subsection (1) or (2) of this section shall waive his or her medical insurance with the ~~the Kentucky~~ Teachers' Retirement System during the period of reemployment and shall receive the medical insurance coverage that is generally provided by the member's active employer to the other members of the retirement system that the active employer employs. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member.
  - (d) A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit for any service provided after the member's effective date of retirement but prior to the date that the member returns to work. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit that the member would have otherwise been eligible to purchase prior to the member's ~~initial~~ retirement.
  - (e) A member who returns to work under subsection (1) or (2) of this section, or in the event of the death of the member, the member's estate or applicably designated beneficiary, shall be entitled, within ninety (90) days of the posting of the annual report submitted by the employer, to a refund of contributions as permitted and limited by KRS 161.470;
- (6) The board of trustees may annually, on July 1, adjust the current daily rate of a member's last annual compensation, for each full twelve (12) month period that has elapsed subsequent to the member earning his or her last annual compensation, by the percentage increase in the annual average of the consumer price index for all urban consumers for the calendar year preceding the adjustment as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%) annually. Each annual adjustment shall become part of the member's daily rate base. Failure to comply with the salary limitations set forth in subsections (1) and (2) of this section as may be adjusted by this subsection shall result in a reduction of the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar that the member exceeds these salary limitations, **and the member shall be refunded his or her retirement contributions made on the compensation that exceeds these salary limitations**. Notwithstanding any other provision of law to the contrary, a member retiring from a local school district who returns to work for a local school district under subsection (1) or (2) of this section shall be entitled, without any reduction to his or her retirement allowance or any other retirement benefit, to earn a minimum amount equal to one hundred seventy dollars (\$170) per day;
- (7) (a) A retired member returning to work under subsection (1) or (2) of this section shall have separated from service for a period of at least one (1) year if returning to work for the same employer on a full-time basis, and at least three (3) months if returning to work for a different employer on a full-time basis. A retired member returning to work under subsection (1) or (2) of this section on a part-time basis shall have separated from service for a period of at least three (3) months before returning to work for any employer.
  - (b) As an alternative to the separation-from-service requirements in paragraph (a) of this subsection, a retired member who is returning to work for the same employer in a full-time position under subsections (1) and (2) of this section may elect a separation-from-service of not less than two (2) months followed by a forfeiture of the retired member's retirement allowance on a month-to-month basis for each month that the member has separated from service for less than twelve (12) full months. A retired member returning to work for the same employer in a part-time position, or for a different employer in a full-time position, may elect an alternative separation-from-service requirement of at least two (2) months followed by a forfeiture of the member's retirement allowance for one (1) month. During the period that the member forfeits his or her retirement allowance and thereafter, member and employer contributions shall be made to the retirement system as a result of employment in any position subject to membership in the retirement system. The member shall contribute to an account with the retirement system subject to the conditions set forth in subsection (5) of this section. ~~For purposes of measuring the separation-from-service requirements set forth throughout this section, a member's separation from service begins on the first day following the last day of paid employment for the member prior to retirement.~~
  - (c) **A retired member who is returning to work for an employer that has employees who participate in the Teachers' Retirement System shall comply with the separation-from-service requirements in this**

*subsection before performing any service for the employer, regardless of whether the retired member is providing service in a position covered by the Teachers' Retirement System.*

- (d) *The starting date for any separation from service required under this subsection shall be the effective date of the member's retirement.*
  - (e) *The separation-from-service requirements of this subsection are not met if there is a prearranged agreement between the member and an employer that has employees who participate in the Teachers' Retirement System prior to retirement for the member to work for the employer after retirement.*
  - (f) *The Teachers' Retirement System may require the member and the employer for which the member is returning to work to certify in writing on a form prescribed by the Teachers' Retirement System that no prearranged agreement was or will be entered into between the member and employer prior to retirement for the member to work for the employer after retirement.*
  - (g) Failure to comply with the separation-from-service requirements in this subsection voids a member's retirement and the member shall be required to return all the retirement benefits he or she received, with interest, for the period of time that the member returned to work without a sufficient separation from service;
- (8) (a) Effective July 1, 2004, local school districts may employ retired members in full-time or part-time teaching or administrative positions without limitation on the compensation of the retired members that is otherwise required by subsections (1) and (2) of this section. Under provisions of this subsection, a local school district may only employ retired members to fill critical shortage positions for which there are no other qualified applicants as determined by the local superintendent. The number of retired members that a local school district may employ under this subsection shall be no more than two (2) members per local school district or one percent (1%) of the total active members employed by the local school district on a full-time basis as defined under KRS 161.220(21), whichever number is greater. Retired members returning to work under this subsection shall be subject to the separation-from-service requirements set forth in subsection (7) of this section. Retired members returning to work under this subsection shall waive their medical insurance coverage with the retirement system during their period of reemployment and receive medical insurance coverage that is offered to other full-time members employed by the local school district. Retired members returning to work under this subsection shall contribute to an account subject to the conditions set forth in subsection (5) of this section. Retired members returning to work under this subsection shall make contributions to the retirement system at the rate provided under KRS 161.540. The employer shall make contributions at the rate provided under KRS 161.550. Local school districts shall make annual payments to the retirement system on the compensation paid to the reemployed retirees at the rates determined by the retirement system's actuary that reflect any accrued liability resulting from the reemployment of these members.
- (b) The Department of Education may employ retired members in full-time or part-time teaching or nonteaching positions without the limitations on compensation otherwise required by subsections (1) and (2) of this section to fill critical shortage areas in the schools it operates, including the Kentucky School for the Blind, the Kentucky School for the Deaf, and the Kentucky Virtual High School, and to serve on audit teams. The department shall be subject to the same requirements as local school districts as provided in paragraph (a) of this subsection, except the Kentucky Teachers' Retirement System shall determine the maximum number of employees that may be employed under this paragraph;
- (9) The return-to-work limitations set forth in this section shall apply to retired members who are returning to work in the same position from which they retired, or a position substantially similar to the one from which they retired, or a position described in KRS 161.046 or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the return to work limitations set forth in this section. The board of trustees shall determine whether employment in a nonteaching position is subject to this subsection;
- (10) (a) Notwithstanding the provisions of this section, individuals who retire and begin drawing a retirement allowance from one (1) or more of the systems or plans administered by the Kentucky Retirement Systems, the Teachers' Retirement System, or the Judicial Form Retirement System on or after January 1, 2019, who are reemployed on or after January 1, 2019, with an employer participating in the Teachers' Retirement System shall not be eligible to contribute to or earn benefits in a second retirement account during the period of reemployment. Employers shall be required to pay the employer normal

cost for pension benefits established by KRS 161.550 for any period of full-time reemployment to help pay down the unfunded liability of the Teachers' Retirement System pension fund.

- (b) The provisions of subsections (1) to (8) of this section are not subject to KRS 161.714;
- (11) Any member retired by reason of service may waive his or her annuity and return to full-time employment in a position covered by the ~~the Kentucky~~ Teachers' Retirement System under the following conditions:
- (a) The member shall receive no annuity payments while employed in a covered position, shall waive his or her medical insurance coverage with the ~~the Kentucky~~ Teachers' Retirement System during the period of reemployment, and shall receive the medical insurance coverage that is generally offered by the member's active employer to the other members of the retirement system employed by the active employer. The member's estate or, if there is a beneficiary applicably designated by the member, then the beneficiary, shall continue to be eligible for life insurance benefits as provided in KRS 161.655. Service subsequent to retirement shall not be used to improve an annuity, except as provided in paragraphs (b) and (c) of this subsection;
- (b) Any member who waives regular annuity benefits and returns to teaching or covered employment shall be entitled to make contributions on the salaries received for this service and have his retirement annuity recalculated as provided in the regular retirement formula in KRS 161.620(1), less any applicable actuarial discount applied to the original retirement allowance due to the election of a joint and last survivor option. Retirement option and beneficiary designation on original retirement shall not be altered by postretirement employment, and dependents and spouses of the members shall not become eligible for benefits under KRS 161.520, 161.525, or 161.661 because of postretirement employment;
- (c) When a member returns to full-time teaching or covered employment as provided in subsection (b) of this section, the employer is required to withhold and remit regular retirement contributions. The member must be employed full-time for at least one (1) consecutive contract year to be eligible to improve an annuity. The member shall be returned to the annuity rolls on July 1 following completion of the contract year or on the first day of the month following the month of termination of service if full-time employment exceeds one (1) consecutive contract year. ***A member shall not be returned to the annuity rolls until after he or she has filed a retirement application in compliance with KRS 161.600(6).*** Any discounts applied at the time of the original retirement due to service or age may be reduced or eliminated due to additional employment if full-time employment is for one (1) consecutive contract year or longer; and
- (d) A member retired by reason of service who has been employed the equivalent of twenty-five (25) days or more during a school year under KRS 161.605 may waive the member's retirement annuity and return to regular employment covered by the ~~the Kentucky~~ Teachers' Retirement System during that school year a maximum of one (1) time during any five (5) year period, beginning with that school year;
- (12) Retired members may be employed in a part-time teaching capacity by an agency described in KRS 161.220(4)(b) or (n), not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year. Retired members may be employed for a period not to exceed the equivalent of one hundred (100) days in any one (1) fiscal year in a part-time administrative or nonteaching capacity by an agency described in KRS 161.220(4)(b) or (n) in a position that would otherwise be covered by the retirement system. ***Except as otherwise provided by this subsection,*** the return to work provisions set forth in subsections (1) to (8) of this section shall not apply to retired members who return to work solely for an agency described in KRS 161.220(4)(b) or (n). Calculation of the number of days and teaching hours for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service. Any member who exceeds the twelve (12) hour or one hundred (100) day limitations of this subsection shall be subject to having his or her retirement voided and be required to return all retirement allowances and other benefits paid to the member or on the member's behalf since the effective date of retirement. In lieu of voiding a member's retirement, the system may reduce the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar of compensation that the member earns in employment exceeding twelve (12) hours, one hundred (100) days, or any apportionment of the two (2) combined. ***Retired members returning to work for an employer described in subsection (4)(b) or (n) of Section 2 of this Act shall comply with the separation-from-service requirements of subsection (7) of this section;***

- (13) When a retired member returns to employment in a part-time teaching capacity or in a nonteaching capacity as provided in subsection (12) of this section, the employer shall contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for retired members who return to work under subsection (12) of this section; and
- (14) For retired members who return to work during any one (1) fiscal year in both a position described in KRS 161.220(4)(b) or (n) and in a position described under another provision under KRS 161.220(4), and for retired members who return to work in a position described under KRS 161.220(4)(b) or (n) in both a teaching and an administrative or nonteaching capacity, the board of trustees shall adopt a methodology for a pro rata apportionment of days and hours that the retired member may work in each position.

➔Section 17. KRS 161.612 is amended to read as follows:

Effective July 1, 2002, any individual occupying a position on a part-time basis that requires certification or graduation from a four (4) year college or university as a condition of employment and any individual providing part-time or substitute teaching services that are the same or similar to those teaching services provided by certified, full-time teachers shall be a member of the ~~Kentucky~~ Teachers' Retirement System, according to the conditions and only to the extent set forth in this section, if the individual is employed by one (1) of the public boards, institutions, or agencies set forth in KRS 161.220, excluding those public boards, institutions, and agencies described in KRS 161.220(4)(b) and (n). Members providing part-time and substitute services shall participate in the retirement system as follows:

- (1) Members providing part-time and substitute services shall accrue service credit as provided under KRS 161.500 and be entitled to a retirement allowance upon meeting the service retirement conditions of KRS 161.235 or 161.600, as applicable. The board of trustees shall adopt a methodology for accrediting service credit to these members on a pro rata basis. The methodology adopted by the board of trustees may be amended as necessary to ensure its actuarial soundness. The retirement allowance for members providing part-time and substitute services shall be calculated pursuant to KRS 161.235 or 161.620, as applicable, except that the provisions of KRS 161.620(3) shall not apply. Members providing part-time and substitute services who meet the service retirement conditions of KRS 161.235 or 161.600, as applicable, may also be eligible to participate as approved by the board of trustees in the medical insurance program provided by the retirement system under KRS 161.675. Members providing part-time and substitute services shall make contributions to the ~~Kentucky~~ Teachers' Retirement System at the rate provided under KRS 161.540. A member who provides part-time or substitute services, or in the event of the death of the member, the member's estate or applicably designated beneficiary, will be entitled, within ninety (90) days of the posting of the annual report submitted by the member's employer, to a refund of contributions as permitted and limited by KRS 161.470;
- (2) (a) 1. The board of trustees shall adopt eligibility conditions under which members providing part-time and substitute services may participate in the benefits provided under KRS 161.520, 161.655, 161.661, and 161.663.
2. *For all disability retirement applications filed with the Teachers' Retirement System on or after July 1, 2021, disability retirement payments and any other recurring payments payable by any other state-administered retirement system to members providing part-time or substitute services shall be applied to reduce, on a dollar-for-dollar basis, the minimum monthly disability retirement allowance of five hundred dollars (\$500) provided for under subsection (6) of Section 24 of this Act.*
3. *Effective July 1, 2021, members providing part-time or substitute services shall not be eligible to apply for a disability retirement allowance if they are eligible for a service retirement allowance that is not subject to an actuarial reduction required under KRS 161.600(1)(b) or (d).*
- (b) The board of trustees may permit members providing part-time or substitute services to participate in other benefits offered by the retirement system by promulgating administrative regulations that establish eligibility conditions for participation in these benefits. All eligibility conditions adopted by the board of trustees pursuant to this subsection may be amended as necessary to ensure their actuarial soundness;
- (3) In addition to the pro rata methodology adopted by the board of trustees under subsection (1) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding the accrual, retention, accreditation, and use of service credit that apply to members providing full-time services. In addition to the eligibility conditions set forth by the board of trustees under subsection (2) of this

section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding both the eligibility to participate and the extent of participation in any benefit offered under KRS 161.220 to 161.716 that apply to members providing full-time services;

- (4) Notwithstanding any other provisions of this section to the contrary, instructional assistants who provide teaching services in the local school districts on a full-time basis in positions covered by the County Employees Retirement System who are used as substitute teachers on an emergency basis for five (5) days or less during any one (1) fiscal year shall not be considered members of the Teachers' Retirement System during that period in which they are serving as substitute teachers for five (5) days or less;
- (5) The board of trustees may adopt a pro rata methodology to determine the annual compensation of members providing part-time and substitute services in order to determine benefits provided under KRS 161.661 and 161.663. Members providing part-time and substitute services who had retirement contributions posted to their accounts during the previous fiscal year and who have not had those contributions refunded to them are eligible to vote for the board of trustees;
- (6) The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership;
- (7) Effective January 1, 2019, this section does not apply to any individual who retires on or after January 1, 2019, and is reemployed on or after January 1, 2019; and
- (8) The provisions of this section are not subject to KRS 161.714.

➔Section 18. KRS 161.614 is amended to read as follows:

A court order awarding additional back salary to or reinstating a member as a result of employment in a position covered by the ~~the Kentucky~~ Teachers' Retirement System shall entitle the member to additional salary or service credit, or both, under the following circumstances:

- (1) Members shall make contributions to the ~~the Kentucky~~ Teachers' Retirement System at the rate set forth in KRS 161.540 and members' employers shall make contributions at the rate set forth in KRS 161.550, with interest accruing on all contributions at the rate of eight percent (8%) per annum from the end of each fiscal year that back salary or the reinstatement was ordered. Contributions, plus interest, shall be made for each year that back salary or reinstatement was ordered. No service or salary credit shall be credited to a member's account unless full contributions are paid to the ~~the Kentucky~~ Teachers' Retirement System;
- (2) The member may have court-ordered back salary credited to his or her account only to the extent that the member actually received payment for the back salary and only to the extent that the court-ordered back salary is within the salary scale that was available to the member in the covered position for the years that the back salary was awarded. Court-ordered back salary can be credited to the member's account only as permitted under KRS 161.220(9) and (10). The member may have court-ordered service credited to his or her account only after the retirement system has received the contributions and interest on the full compensation that would normally be earned in the position that is the subject of the litigation;
- (3) The member's employer ordered to pay back salary or to reinstate the member by a court of competent jurisdiction shall provide the retirement system with a breakdown of the back salary awarded to the member on a year-by-year basis;
- (4) The calculations of the contributions and interest required to be paid for court-ordered back salary or reinstatement shall be provided by the retirement system to the member or the member's employer at the member's or employer's request. Requests for these calculations shall be made with at least two (2) weeks of advance notice to the retirement system to provide these calculations. The retirement system will calculate accrued interest as of the last day of the month during which payment of the full contributions are made;
- (5) For purposes of this section, a settlement agreement that provides back salary or reinstatement, and is adopted by order or judgment of a court of competent jurisdiction or is referenced in an order dismissing the action as settled shall have the same effect as a court order adjudicating the matter. Orders entered by a government board or agency as a result of litigation conducted on an administrative hearing level and legally binding arbitration *and mediation* awards shall be considered as court orders for the purposes of this section; and
- (6) Under no circumstances shall a member be entitled to service credit as a result of court-ordered reinstatement that is in violation of the provisions of KRS 161.500.

➔Section 19. KRS 161.620 is amended to read as follows:



(1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:

- (a) For retirements effective July 1, 1998, and thereafter, except as otherwise provided by this section, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all nonuniversity members. The annual retirement allowance for each year of service performed by members of the Teachers' Retirement System who are university members shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as provided in this section;
- (b) For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, who upon retirement have earned less than ten (10) full years of service credit, the retirement allowance shall be two percent (2%) of the member's final average salary for each year of service. For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, and who upon retirement have earned at least ten (10) full years of service credit, the annual allowance for each year of service shall be two and one-half percent (2.5%) of the member's final average salary;
- (c) The board of trustees may approve for members who initially retire on or after July 1, 2004, and who become nonuniversity members before July 1, 2008, a retirement allowance of three percent (3%) of the member's final average salary for each year *or partial year* of service credit earned in excess of thirty (30) years.

This three percent (3%) factor shall be in lieu of the two and one-half percent (2.5%) factor provided for in paragraph (b) of this subsection for every year or fraction of a year of service in excess of thirty (30) years. Upon approval of this three percent (3%) retirement factor, the board of trustees may establish conditions of eligibility regarding the type of service credit that will qualify for meeting the requirements of this subsection. This subsection is optional with the board of trustees and shall not be subject to KRS 161.714;

- (d) For individuals who become nonuniversity members of the Teachers' Retirement System on or after July 1, 2008, the retirement allowance shall be:
  - 1.
    - a. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;
    - b. Two percent (2%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
    - c. Two and three-tenths percent (2.3%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or
    - d. Two and one-half percent (2.5%) of the member's final average salary for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and
  - 2. Three percent (3%) of the member's final average salary for each year *or partial year* of service earned in excess of thirty (30) years of service at retirement subject to the same terms and conditions as set forth in paragraph ~~(c)~~~~(c-2)~~ of this subsection;
- (e) For individuals who become university members of the Teachers' Retirement System on or after July 1, 2008, the retirement allowance shall be:
  - 1. One and one-half percent (1.5%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;
  - 2. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
  - 3. One and eighty-five hundredths percent (1.85%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but less than twenty-seven (27) years of service at retirement; or

4. Two percent (2%) of the member's final average salary for each year of service if the member has earned twenty-seven (27) or more years of service at retirement; and
  - (f) The retirement allowance of a member at retirement, as measured on a life annuity, shall not exceed the member's last yearly salary or the member's final average salary, whichever is the greater amount. For purposes of this section, "yearly salary" means the compensation earned by a member during the most recent period of contributing service, either consecutive or nonconsecutive, preceding the member's effective retirement date and shall be subject to the provisions of KRS 161.220(9) and (10).
- (2) Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase.
- (3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than four hundred dollars (\$400) effective July 1, 2002, and not less than four hundred forty dollars (\$440) effective July 1, 2003, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection, except the following:
  - (a) Individuals who become members of the ~~Kentucky~~ Teachers' Retirement System on or after July 1, 2008; or
  - (b) Members whose retirement allowance payment is reduced below the minimum allowance as a result of its division in a qualified domestic relations order or any other provision permitted under KRS 161.700.
- (4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.
- (5) Effective July 1, 2008, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed three and one-half percent (3.5%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.
- (6) Effective July 1, 2009, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed seven-tenths of one percent (0.7%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.
- (7) Effective July 1, 1990, monthly payments of two hundred dollars (\$200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.

- (8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code.
- (9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall not be used in determining a member's retirement annuity. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.
- (10) Effective January 1, 2019, subsections (1) to (7) of this section do not apply to individuals who become members of the Teachers' Retirement System on or after January 1, 2019.

➔Section 20. KRS 161.630 is amended to read as follows:

- (1) (a) An individual who became a member prior to January 1, 2019, upon retirement, shall receive a retirement allowance in the form of a life annuity, with refundable balance, as provided in KRS 161.620, unless an election is made before the effective date of retirement to receive actuarially equivalent benefits under options which the board of trustees approves.
- (b) An individual who is participating in the hybrid cash balance plan as provided by KRS 161.235 may, before the effective date of retirement, elect to receive his or her accumulated account balance annuitized into a monthly payment under one (1) of the actuarial equivalent payment options approved by the board of trustees.
- (c) No option shall provide for a benefit with an actuarial value at the age of retirement greater than that provided in KRS 161.235(7)(a) or 161.620, as applicable. This section does not apply to disability allowances as provided in KRS 161.661(1).
- (2) The retirement option chosen by a retiree at the time of service retirement shall remain in force unless the retiree became a member prior to January 1, 2019, and elects to make a change under the following conditions:
- (a) A divorce, annulment, or marriage dissolution following retirement shall, at the election of the retiree, cancel any optional plan selected at retirement that provides *indefinitely* continuing benefits to a spousal beneficiary and return the retiree to a single lifetime benefit equivalent as determined by the board; or
- (b) Following marriage or remarriage, or the death of the designated beneficiary, a retiree may elect a new optional plan of payment based on the actuarial equivalent of a single lifetime benefit at the time of the election, as determined by the board. The plan shall become effective the first of the month following receipt of an application on a form approved by the board.
- (3) Except as otherwise provided in this section, a beneficiary designation shall not be changed after the effective date of retirement except for retirees who elect the life annuity with refundable balance or the predetermined years certain and life thereafter option. A member may remove a beneficiary at any time, but shall not designate a substitute beneficiary. If a member elects to remove a beneficiary, the member's retirement allowance shall not change regardless of the retirement option selected by the member, even if the removed beneficiary predeceases the member.
- (4) A member who experiences a qualifying event under subsection (2) of this section and who elects a new optional plan of payment shall make that election within sixty (60) days of the qualifying event.

➔Section 21. KRS 161.643 is amended to read as follows:

- (1) Each school district, *institution*, and agency employing annuitants of the retirement system shall ***have on file at the retirement system's office an annual summary report*** ~~(maintain a record)~~ of the days employed and the compensation paid to each annuitant and ***other data as required by administrative regulation of the board of trustees*** ~~(submit an annual report on forms prescribed by the retirement system)~~, no later than August 1, following the completion of each fiscal year.
- (2) The retirement system may impose a penalty on the employer not to exceed one thousand dollars (\$1,000) when the employer does not meet the August 1 ***filing*** ~~(reporting)~~ date or fails to provide the information required for employment of annuitants of the retirement system. ***However, the retirement system may waive the penalty for good cause.***
- (3) ***The retirement system may promulgate administrative regulations in accordance with KRS Chapter 13A to require employers to report more frequently than on an annual basis.***

➔Section 22. KRS 161.650 is amended to read as follows:

- (1) In the case of death of a member who has retired by reason of service or disability, any portion of the member's accumulated contributions, including member contributions to the state accumulation fund and regular interest to the date of retirement, that has not, and will not be paid as an allowance or benefit shall be paid to the member's beneficiary in such manner as the board of trustees elects.
- (2)
  - (a) The member may designate a primary beneficiary or two (2) or more cobeneficiaries to receive any remaining accumulated member contributions payable under this section.
  - (b) A contingent beneficiary may be designated in addition to the primary beneficiary or the cobeneficiaries. The member may designate two (2) or more contingent beneficiaries.
  - (c) To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of any remaining funds of the member's accumulated contributions.
  - (d) 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. Cobeneficiaries shall be composed of a single class of individuals, or trusts where permitted, who will share in equal proportions in any payment that may become available under this section.
  - (e)
    1. Any beneficiary designation made by the member 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.
    2. *Subsequent marriage by the member shall void the primary beneficiary and any cobeneficiary designation, even that of a trust, and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. An individual who is married prior to becoming a retired member of the retirement system and remains married at the time of becoming a retired member shall have his or her spouse considered the primary beneficiary, unless the member designates another beneficiary for any amounts payable under subsection (1) of this section.*
    3. 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.
  - (f) In the event that the member fails to designate a beneficiary or all designated beneficiaries predecease the member, any remaining accumulated member contributions shall be payable to the member's estate, *unless the member is married at the time of his or her death, in which case any remaining contributions shall be payable to his or her spouse.*

➔Section 23. KRS 161.655 is amended to read as follows:

- (1) Effective July 1, 2000, the Teachers' Retirement System shall for those individuals who became members prior to January 1, 2019:
  - (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)
  - (a) 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.
  - (b) 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.

- (c) 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, ***unless the member is married at the time of his or her death, in which case the spouse shall be deemed the beneficiary.***
- (d) 1. 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.
2. 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.
3. ***An individual who is married prior to becoming an active member or a retired member of the retirement system and remains married at the time of becoming an active or retired member of the retirement system shall have his or her spouse considered the primary beneficiary, unless the member designates another beneficiary.***
4. 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.
- (e) ***The Teachers' Retirement System shall not acknowledge a beneficiary designation unless the life insurance beneficiary form is received by the Teachers' Retirement System prior to the member's death, or the life insurance beneficiary form has been deposited in the mail with a postmark date no later than the date of the member's death.***

- (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 24. KRS 161.661 is amended to read as follows:

- (1) (a) Any member who ***is accredited by the Teachers' Retirement System for***~~has completed~~ five (5) or more years of ~~accredited~~ service in~~the public schools of~~ Kentucky after July 1, 1941, may retire for disability and be granted a disability allowance if found to be eligible as provided in this section. Application for disability benefits shall be made within one (1) year of the last contributing service in Kentucky, and the disability must have occurred during the most recent period of employment in a position covered by the Teachers' Retirement System and subsequent to the ***accreditation by the Teachers' Retirement System***~~completion~~ of five (5) years of ***retirement system***~~teaching~~ service ***credit*** in Kentucky. A disability occurring during the regular vacation immediately following the last period of active service in Kentucky or during an official leave for which the member is entitled to make regular contributions to the retirement system, shall be considered as having occurred during a period of active service.
- (b) The annual disability allowance shall be equal to sixty percent (60%) of the member's final average salary.
- (c) ***The following individuals shall not be eligible for disability benefits under this section:***
1. ***Members with***~~Individuals who became members prior to January 1, 2019, who have~~ twenty-seven (27) or more years of service credit; ***and***
2. ***Individuals who become members on or after July 1, 2021, who are eligible for an unreduced benefit under KRS 161.600(1)(b)2. or (d)***~~are eligible for service retirement only. Individuals who become members on or after January 1, 2019, who have met the requirements of KRS 161.235(6)(b) shall be eligible for service retirement only.~~

- (2) The provisions of KRS 161.520, 161.525, and subsections (3), (4), and (5) of this section shall not apply to disability retirees whose benefits were calculated on the service retirement formula nor to survivors of these members.
- (3) Members shall earn one (1) year of entitlement to disability retirement, at sixty percent (60%) of the member's final average salary, for each four (4) years of service in a covered position, but any member meeting the service requirement for disability retirement shall be credited with no less than five (5) years of eligibility.
- (4) A member retired by reason of disability shall continue to earn service credit at the rate of one (1) year for each year retired for disability. This service shall be credited to the member's account at the expiration of entitlement as defined in subsection (3) of this section, or when the member's eligibility for disability benefits is terminated upon recommendation of a medical review committee, and this service shall be used in calculating benefits as provided in subsection (5) of this section, but under no circumstances shall this service be used to provide the member with more than twenty-seven (27) years of total service credit or the level of service credit needed to meet the requirements of KRS 161.235(6)(b), as applicable. The service credit shall be valued at the same level as service earned by active members as provided under KRS 161.235, 161.600, or 161.620, as applicable. Members participating in the hybrid cash balance plan as provided by KRS 161.235 shall also be credited with employer credits and interest credits for each year of service earned under the provisions of this subsection based upon the salary in which the last employer credit was paid. Payments during the entitlement period as specified by subsection (3) of this section shall not reduce the accumulated account balance of a member participating in the hybrid cash balance plan.
- (5) Any member retired by reason of disability and remaining disabled at the expiration of the entitlement period shall have his disability benefits recalculated using the service retirement formula with service credit and any additional accumulated account balance earned as set out in subsection (4) of this section. For persons who became members prior to January 1, 2019, the retirement allowance shall be calculated as set forth in KRS 161.620, except that those persons less than sixty (60) years of age shall be considered as sixty (60) years of age. For persons who become members on or after January 1, 2019, the retirement allowance or benefit shall be calculated as set forth in KRS 161.235, except that those persons less than age sixty-five (65) shall be considered as sixty-five (65) years of age. Members having their disability benefits recalculated under this subsection shall not be entitled to a benefit based upon an average of their three (3) highest salaries as set forth in KRS 161.220(9), unless approved otherwise by the board of trustees.
- (6) Members who have their disability retirement allowance recalculated at the expiration of the entitlement period shall continue to have coverage under the post-retirement medical insurance program. Restrictions on employment shall remain in effect until the member attains age seventy (70) or until the member's eligibility is discontinued. KRS 161.520 and 161.525 shall not apply to survivors of disability retirees whose retirement allowances have been recalculated at the expiration of the entitlement period. Members who have their disability retirement allowance recalculated at the expiration of their entitlement period shall be entitled to a minimum monthly allowance of five hundred dollars (\$500) as the basic straight life annuity. The minimum allowance shall be effective July 1, 1992, and shall apply to those members who have had their allowance recalculated prior to that date and to disability retirees who will have their benefit allowance recalculated on or after that date. ***For individuals who become members on or after July 1, 2021, disability retirement payments and any other recurring payments payable by any other state-administered retirement system shall be applied to reduce, on a dollar-for-dollar basis, the minimum monthly disability retirement allowance payable under this subsection.***
- (7) Effective July 1, 1992, members retired for disability prior to July 1, 1964, shall be entitled to a minimum monthly allowance of five hundred dollars (\$500) as their basic straight life annuity and their surviving spouse shall be eligible for survivor benefits as provided in KRS 161.520(1)(a) and (b).
- (8) Any member retired by reason of disability may voluntarily waive disability benefits and return to teaching or any individual who became a member prior to January 1, 2019, who is age sixty (60) years or older, may elect to waive disability benefits and retire for service on the basis of service credited to the member on the effective date of the disability retirement, or any individual who becomes a member on or after January 1, 2019, who is sixty-five (65) years of age or older, may elect to waive disability benefits and retire for service on the basis of his or her accumulated account balance and service credited to the member on the effective date of disability retirement.
- (9) In order to qualify for retirement by reason of disability a member must suffer from a physical or mental condition presumed to be permanent in duration and of a nature as to render the member incapable of being gainfully employed in a covered position. The incapability must be revealed by a competent examination by a licensed physician or physicians and must be approved by a majority of a medical review committee.

- (10) A member retired by reason of disability shall be required to undergo periodic examinations at the discretion of the board of trustees to determine whether the disability allowance shall be continued. When examination and recommendation of a medical review committee indicate the disability no longer exists, the allowance shall be discontinued.
- (11) Eligibility for payment shall begin on the first day of the month following receipt of the application in the Teachers' Retirement System office, or the first of the month next following the last payment of salary or sick leave benefits by the employer, whichever is the later date.
- (12) No person who receives a disability allowance may be employed in a position that entails duties or qualification requirements similar to positions subject to participation in the retirement system either within or without the State of Kentucky. So doing shall constitute a misdemeanor and shall result in loss of the allowance from the first date of this service. ***For purposes of this subsection and subsection (13) of this section, "employment" and "occupation," and derivatives thereof, mean any activity engaged in by the member receiving disability allowance from which income is earned.*** A member who applies for and is approved for disability retirement on or after July 1, 2002, and whose annual disability benefit is less than forty thousand dollars (\$40,000) may earn income in any occupation other than covered employment only to the extent that the annual income from the other employment when added to the annual disability benefit does not exceed forty thousand dollars (\$40,000). For any member who exceeds this limit as a result of income from other employment, the Kentucky Teachers' Retirement System shall reduce the member's disability benefit on a dollar-for-dollar basis for each dollar that the member's combined annual disability benefit and annual income from other employment exceeds forty thousand dollars (\$40,000). The board of trustees may annually increase the forty thousand dollar (\$40,000) limit by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%). ***The retirement system may require income verification from the member, including but not limited to copies of tax returns and federal forms W-2 and W-4P.***
- (13) All members who applied for disability retirement before July 1, 2002, and were approved as a result of that application shall be subject to the income limitations as they existed on June 30, 2002, until July 1, 2006. Effective July 1, 2006, the twenty-seven thousand dollar (\$27,000) limitation shall be increased to forty thousand dollars (\$40,000) and may be adjusted by the board of trustees by the consumer price index in the manner described in subsection (12) of this section. The recipient of a disability allowance who engages in any gainful occupation other than covered employment must make a report of the duties involved, compensation received, and any other pertinent information required by the board of trustees. ***The retirement system may require income verification from the member, including but not limited to copies of tax returns and federal forms W-2 and W-4P.***
- (14) The board of trustees shall designate medical review committees, each consisting of three (3) licensed physicians. A medical review committee shall pass upon all applications for disability retirement and upon all applicant statements, medical certifications, and examinations submitted in connection with disability applications. The disposition of each case shall be recommended by a medical review committee in writing to the retirement system. Members of a medical review committee shall follow administrative regulations regarding procedures as the board of trustees may enact and shall be paid reasonable fees and expenses as authorized by the board of trustees in compliance with the provisions of KRS 161.330 and 161.340. The retirement system may secure additional medical examinations and information as it deems necessary. A member may appeal any final agency decision denying his or her disability retirement application pursuant to the provisions of KRS 161.250(2).
- (15) A disability may be presumed to be permanent if the condition creating the disability may be reasonably expected to continue for one (1) year or more from the date of application for disability benefits.
- (16) Any member who has voluntarily waived disability benefits or whose disability benefits have been discontinued on recommendation of a medical review committee, may apply for reinstatement of disability benefits. The application for reinstatement must be made to the retirement system within twelve (12) months of the date disability benefits terminated. If the termination of benefits were voluntary, the reinstatement may be made without medical examination if application is made within three (3) months of the termination date. Other applications for reinstatement will be processed in the same manner as new applications for benefits.
- (17) No person who is receiving disability benefits under this section may be employed in a position which qualifies the person for membership in a retirement system financed wholly or in part with public funds. Employment in a position prohibited by this subsection shall result in disqualification for those disability benefits from the date of employment in the prohibited position.

- (18) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section, or becomes disqualified from receiving a portion of those benefits due to income from other than covered employment, shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits. The ~~Kentucky~~ Teachers' Retirement System may, in order to collect an outstanding debt, reduce or terminate any benefit that a member is otherwise entitled to receive.

➔Section 25. KRS 161.680 is amended to read as follows:

- (1) If any change or error in a record results in any individual receiving from the retirement system more or less than the individual was entitled to receive, the board of trustees shall, when the error is discovered, correct the error, and as far as practicable adjust the payments so that the actuarial equivalent of the benefit to which the individual was entitled shall be paid.
- (2) *The Teachers' Retirement System shall take all practicable and cost-effective steps to collect overpayments from a member's or retiree's account. Methods of correction of overpayments from any member's or retiree's account shall include but are not limited to reclamation of the overpayment from the member's or retiree's account at the depository bank, the deduction of moneys from account refunds, deduction from the retirement allowance or joint and survivor annuity payable from the account, and deduction of moneys from the life insurance benefit. Collection of overpayments shall be initiated regardless of the designated beneficiary for any amounts payable from the account.*

➔Section 26. The amendments to subsection (9) of Section 2 of this Act and any administrative regulations promulgated as a result of the amendments to subsection (9) of Section 2 of this Act shall not result in any additional increases in benefits to members and annuitants or any additional increases in liabilities to the system.

**Signed by Governor April 6, 2021.**

## CHAPTER 193

### ( SJR 59 )

A JOINT RESOLUTION directing the Cabinet for Health and Family Services to create an advisory committee to investigate funding mechanisms and feasibility studies around recovery housing including a full continuum of care for the treatment of individuals with substance use disorders.

WHEREAS, strategies need to be developed to assist those involved in the criminal justice system with access to a treatment program for a substance use disorder; and

WHEREAS, incarceration for individuals with nonviolent drug-related offenses usually does not serve the individual or the society well; and

WHEREAS, treatment and recovery for those individuals who do not pose a threat to public safety have proven to be more effective than incarceration for reducing recidivism and transforming the individual to a productive and meaningful life; and

WHEREAS, the cost of treatment and recovery, including recovery housing, is less costly and has a good return on investment versus incarceration; and

WHEREAS, there is significant long-term outcomes data that shows supportive recovery housing with social recovery and a therapeutic community that addresses social determinants of health markedly reduce recidivism; and

WHEREAS, the financial support to provide diversion to treatment and recovery programs can be made available through a variety of resources, including Medicaid, SNAP, and other federal programs; and

WHEREAS, the court system is continuing to address the marked increase in family court cases and issues experienced by families, and particularly children, harmed by the devastation and consequences due to the rise in substance use disorder;



NOW, THEREFORE,

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

➔Section 1. The General Assembly hereby directs the Cabinet for Health and Family Services to create an advisory committee to establish a pilot program to investigate funding mechanisms for a diversion program for treatment and recovery housing services for individuals with substance use disorder who have been arrested for substance use disorder-related offenses. The advisory committee shall be attached to the Office of the Secretary, Cabinet for Health and Family Services, for administrative purposes. The advisory committee shall have the following members:

- (1) The secretary of the Cabinet for Health and Family Services, or his or her designee;
- (2) The secretary of the Justice and Public Safety Cabinet, or his or her designee;
- (3) The secretary of the Education and Workforce Development Cabinet, or his or her designee;
- (4) The director of the Administrative Office of the Courts, or his or her designee;
- (5) The executive director of the Office of Drug Control Policy, or his or her designee;
- (6) Two individuals who are substance use disorder treatment providers, one from a rural area and one from an urban area, appointed by the Governor;
- (7) One individual in recovery from a substance use disorder, appointed by the Governor;
- (8) Two members of the Senate, one of whom shall have knowledge about substance use disorder treatment and recovery models and methodologies, appointed by the President of the Senate, who shall be ex officio nonvoting members; and
- (9) Two members of the House of Representatives, one of whom shall have knowledge about substance use disorder treatment and recovery models and methodologies, appointed by the Speaker of the House of Representatives, who shall be ex officio nonvoting members.

➔Section 2. The pilot program shall be called the Second Chance Pathways to Recovery program. The pilot program may operate in multiple locations in the Commonwealth. The pilot program shall be implemented and operational by July 1, 2022.

➔Section 3. In establishing the operations of the pilot program, the advisory committee shall meet at least monthly. The Cabinet for Health and Family Services may contract for services of the advisory committee. The advisory committee shall include in its deliberations the following:

- (1) Evaluation and recommendations of criteria to assess appropriateness of arrested individuals for participation in the pilot program;
- (2) Identification of treatment and recovery resources presently available through appropriate providers and recovery housing operators that are capable of providing needed services and documented outcomes of services provided in the criminal justice system. These services include but are not limited to peer support services, substance use disorder treatment services, recovery housing services, job training, education, and meaningful work placement opportunities;
- (3) Identification of information and outcomes measurements to be tracked and reported on the effectiveness of performance of models and services to ascertain the return on investment of the pilot program in addition to recidivism and reuse rates for up to five years from treatment entry;
- (4) Identification of information and data that should be collected and analyzed and how such data should be collected, used, and disclosed;
- (5) Evaluations and recommendations concerning policies and processes for the pilot program, including the process needed to notify the courts of any violations of diversion agreements by those participating in the pilot program; and
- (6) Evaluation of and recommendations concerning reimbursement payment models, including Medicaid, for recommended services and resources, including recovery housing. The advisory committee shall include in its payment recommendations an evaluation of the return on investment for the Commonwealth.

➔Section 4. The Cabinet for Health and Family Services shall prepare a plan to establish the independent collection of data from a third party that has the capability to provide IT services, including a resident management system and outcome data portal for the collection and evaluation of an annual report on outcomes.

➔Section 5. The Cabinet for Health and Family Services shall create a report and recommendations related to the establishment of the pilot program and the report shall be submitted to the Legislative Research Commission for referral to the appropriate committee or committees by December 1, 2021.

Signed by Governor April 6, 2021.

## CHAPTER 194

( HB 556 )

Provisions of this bill that are to be deleted due to vetoes of the Governor that were not overridden by the General Assembly are displayed as bracketed and struck-through text enclosed in double asterisks, e.g., **\*\*[text]\*\***.

AN ACT relating to fiscal matters, 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 148 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Commission" means the Harrodsburg Sestercentennial Commission established in subsection (2) of this section; and*
- (b) *"Sestercentennial" means the two hundred fiftieth anniversary of the founding of Harrodsburg on June 16, 1774.*

(2) *The Harrodsburg Sestercentennial Commission is hereby established to plan, encourage, develop, and coordinate events and other activities related to the two hundred fiftieth anniversary of Harrodsburg in 2024. To accomplish its charge, the commission shall:*

- (a) *Ensure that adequate way-finding signage and mapping is accomplished to mark and identify Old Fort Harrod State Park;*
- (b) *Educate citizens of the Commonwealth and the nation about the stories of pioneers and Native Americans in the early days of westward settlement and the impact Harrodsburg and settlements of its nature had on Kentucky and American history;*
- (c) *Plan and implement events for a year-long sestercentennial commemoration in the year 2024 of the founding of Harrodsburg and whatever events in the immediately preceding and following years are deemed appropriate by the commission, including any battlefield commemorations if funds are available;*
- (d) *Assist local governments and their representatives with planning, preparation, and grant applications for sestercentennial events and projects;*
- (e) *Coordinate federal, state, local, and nonprofit organizations' sestercentennial activities occurring in Kentucky;*
- (f) *Coordinate events and activities with parties, commissions, and organizations wishing to participate in the 2024 commemoration;*
- (g) *Act as a point of contact for national organizations wishing to distribute information to state and local groups about grant opportunities, meetings, and national events related to the settlement of Harrodsburg and sestercentennial activities;*
- (h) *Seek funding sources such as foundations, line item appropriations, federal grants, philanthropic organizations, and lineage societies;*
- (i) *Create press, print, and electronic contacts that generate stories on a continual basis;*
- (j) *Encourage and contract new publications and create a call for papers on Harrodsburg, Fort Harrod, James Harrod, or other participating or involved parties, and how the history of this early frontier settlement impacted American history;*

- (k) *Organize symposiums and other methodologies to investigate genealogy relative to Harrodsburg;*
  - (l) *Create higher and lower educational programs;*
  - (m) *Perform other duties necessary to educate Kentuckians on the history of Harrodsburg and early frontier settlements and on the Commonwealth's role in early westward expansion;*
  - (n) *Evaluate the existing infrastructure of Old Fort Harrod State Park, provide recommendations for what infrastructure should be in place for the successful undertaking of appropriate events and activities in accordance with this section, and coordinate with state and local bodies to make necessary infrastructure improvements; and*
  - (o) *Coordinate planning for the sestercentennial with the nonprofit organization Harrodsburg 250th, Inc., this organization having been established by the local governments of Harrodsburg and Mercer County to serve as the point of contact for local planning for the sestercentennial.*
- (3) *The commission shall consist of the following eleven (11) members:*
- (a) *The secretary of the Education and Workforce Development Cabinet or his or her designee;*
  - (b) *The secretary of the Transportation Cabinet or his or her designee;*
  - (c) *Two (2) members from the Tourism, Arts and Heritage Cabinet, appointed by the secretary of the cabinet;*
  - (d) *One (1) member from the Kentucky Heritage Council, appointed by the state historic preservation officer;*
  - (e) *One (1) member of the Kentucky Humanities Council, appointed by the chair of the council;*
  - (f) *One (1) member of Harrodsburg 250th, Inc., recommended by the chair of that organization and appointed by the Governor;*
  - (g) *One (1) member of the Friends of Fort Harrod, recommended by the leader of that organization and appointed by the Governor; and*
  - (h) *Three (3) citizen members appointed by the Governor, one (1) of whom shall be designated as the chair.*
- (4) *The Harrodsburg Sestercentennial Commission shall be attached to the Kentucky Historical Society for administrative purposes only.*
- (5) *This section shall expire on January 1, 2027.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky State Parks Centennial Commission is established to plan and implement events to celebrate the one hundredth anniversary of the state parks system in 2024. To accomplish its charge, the commission shall:*
- (a) *Assist local governments and organizations with planning, preparation, and grant applications for parks centennial events and projects;*
  - (b) *Coordinate events and activities with parties, commissions, and organizations wishing to participate in the centennial celebration;*
  - (c) *Seek funding sources such as foundations, line item appropriations, federal grants, and philanthropic organizations;*
  - (d) *Establish press, print, and electronic contacts that generate stories on a continual basis; and*
  - (e) *Perform other duties necessary to highlight Kentucky's parks system during its one hundredth year.*
- (2) *The Kentucky State Parks Centennial Commission shall consist of the following nine (9) members:*
- (a) *The secretary of the Tourism, Arts and Heritage Cabinet or his or her designee;*
  - (b) *One (1) additional member from the Tourism, Arts and Heritage Cabinet, appointed by the secretary;*
  - (c) *One (1) member from the Kentucky Historical Society, appointed by the executive director of the society;*

- (d) *One (1) member from the Kentucky Heritage Council, appointed by the state historic preservation officer;*
  - (e) *Three (3) members selected by the secretary of the Tourism, Arts and Heritage Cabinet who work in onsite park leadership; and*
  - (f) *Two (2) citizen members, one (1) of whom shall be designated as the chair and appointed by the Governor.*
- (3) *The Kentucky State Parks Centennial Commission shall be attached to the Kentucky Tourism, Arts and Heritage Cabinet for administrative purposes only.*
- (4) *This section shall expire on January 1, 2025.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
- (a) *"Commission" means the Kentucky Sestercentennial Commission established in subsection (2) of this section; and*
  - (b) *"Sestercentennial" means the two hundred fiftieth anniversary of historic events from 1774 to 1776 that include the founding of Harrodsburg in 1774, the opening of Boone Trace in 1775, the genesis of westward movement, and the important events tied to our nation's founding in 1776.*
- (2) *The Kentucky Sestercentennial Commission is hereby established to plan and implement events to celebrate the two hundred fiftieth anniversary of Old Fort Harrod in 2024, culminating with the Declaration of Independence in 1776. To accomplish its charge, the commission shall:*
- (a) *Elect a chair of the commission and have the authority to form subcommittees and working groups that include non-commission members in order to plan, develop, and coordinate specific activities;*
  - (b) *Plan, encourage, develop, and coordinate the commemoration of the two hundred fiftieth anniversary of the founding of the United States and recognize Kentucky's integral role in that event and the impact of its people on the nation's past, present, and future;*
  - (c) *Ensure that adequate way-finding signage and mapping is accomplished to mark and identify the relevant points of interest and routes involved in the founding of Kentucky and the opening of the west;*
  - (d) *Educate citizens of the Commonwealth and the nation about the stories of pioneers, African Americans, and Native Americans in the early days of westward settlement and the impact Fort Harrod and Fort Boonesborough had on Kentucky and American history;*
  - (e) *Plan and implement events for a three (3) year sestercentennial commemoration of the years 2024 to 2026 and following years deemed appropriate by the commission, including any battlefield commemorations if funds are available;*
  - (f) *Assist local governments with planning, preparation, and grant applications for sestercentennial events and projects;*
  - (g) *Coordinate federal, state, local, and nonprofit organizations' sestercentennial activities occurring in Kentucky;*
  - (h) *Coordinate events and activities with parties, commissions, and organizations wishing to participate in the commemoration;*
  - (i) *Seek funding sources such as foundations, line item appropriations, federal grants, philanthropic organizations, and lineage societies;*
  - (j) *Establish press, print, and electronic contacts that generate stories on a continual basis;*
  - (k) *Encourage and contract new publications and create a call for papers on how the history of this early frontier settlement impacted American history;*
  - (l) *Organize symposiums and other methodologies to investigate genealogy relative to the events involved in the founding of Kentucky and opening of the west;*
  - (m) *Create higher and lower educational programs; and*

- (n) *Perform other duties necessary to educate Kentuckians on the history of early frontier settlements and on the Commonwealth's role in early westward expansion and to highlight the importance of the years 1774 to 1776 to Kentucky history.*
- (3) *The commission shall consist of the following fourteen (14) members:*
- (a) *The secretary of the Education and Workforce Development Cabinet or his or her designee;*
  - (b) *One (1) member from the Tourism, Arts and Heritage Cabinet appointed by the secretary of the cabinet;*
  - (c) *One (1) member from the Kentucky Heritage Council, appointed by the state historic preservation officer;*
  - (d) *One (1) member from the Kentucky Humanities Council, appointed by the chair of the council;*
  - (e) *One (1) member of the Friends of Fort Harrod, recommended by the leader of that organization and appointed by the Governor;*
  - (f) *Three (3) citizen members appointed by the Governor, one (1) of whom shall be designated as the chair;*
  - (g) *The commissioner of the Department of Parks or his or her designee;*
  - (h) *The president of Friends of Boone Trace, Inc. or his or her designee;*
  - (i) *The president of the Fort Boonesborough Foundation, or his or her designee;*
  - (j) *One (1) member from the Kentucky African American Heritage Commission appointed by the chair of that commission;*
  - (k) *One (1) member of the Kentucky Native American Heritage Commission appointed by the chair of that commission; and*
  - (l) *One (1) member of the Kentucky Historical Society appointed by the executive director of the society.*
- (4) *The Kentucky Sestercentennial Commission shall be attached to the Kentucky Historical Society for administrative purposes only.*
- (5) *This section shall expire on January 1, 2027.*

➔Section 4. 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 KRS 532.120;
    2. Successfully receiving a High School Equivalency Diploma or a high school diploma, a college degree, a completed vocational or technical education program, or a correspondence postsecondary education program which results in a diploma or degree, as provided, defined, and approved by the department in the amount of ninety (90) days per diploma, degree, or technical education program completed;
    3. Successfully completing a drug treatment program, evidence-based program, or any other promising practice or life skills program approved by the department, in the amount of not more than ninety (90) days for each program completed. The department shall determine criteria to establish whether a life skills or promising practice program is eligible for sentence credits. Programs shall demonstrate learning of skills necessary for reintegration into the community to minimize barriers to successful reentry. Approval of programs shall be subject to review by the cabinet; and
  - (b) May receive a credit on his or her sentence for:
    1. Good behavior in an amount not exceeding ten (10) days for each month served, 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.
- (2) Except for a sentencing credit awarded for prior confinement, the department may forfeit any sentencing credit awarded under subsection (1) of this section previously earned by the prisoner or deny the prisoner the right to earn future sentencing credit in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.
- (3) 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 credit computation or in computing dates of expiration of sentence.
- (4) Until successful completion of the sex offender treatment program, an eligible sexual offender may earn sentencing credit. However, the sentencing credit 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 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 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, 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 sexual offender with an intellectual disability.
- (5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of sentencing credit and the ability to earn sentencing credit 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 forfeited as well as any prohibition imposed on the future earning of sentencing credit.
- (6) *Starting in fiscal year 2021-2022 and through fiscal year 2023-2024, if a state prisoner is confined in a jail pursuant to Section 6 of this Act and earns sentencing credits under subsection (1)(a)2. or 3. of this section while confined in that jail, at the end of that prisoner's period of confinement in that jail, the department shall pay a fee to the unit of local government or regional jail authority responsible for the administration of that jail as follows:*
- (a) *For every Department of Corrections-approved program completed which resulted in the issuance of a ninety (90) day sentencing credit, a payment of one thousand dollars (\$1,000) shall be made;*
- (b) *For every Department of Corrections-approved program completed which resulted in the issuance of a sixty (60) day sentencing credit, a payment of six hundred dollars (\$600) shall be made; and*
- (c) *For every Department of Corrections-approved program completed which resulted in the issuance of a thirty (30) day sentencing credit, a payment of three hundred dollars (\$300) shall be made.*
- (7) The provisions in subsection (1)(a)2. of this section shall apply retroactively to July 1, 2018~~[15, 2011]~~.

➔Section 5. There is hereby appropriated General Fund moneys in the amount of \$30,000,000 in fiscal year 2021-2022 to the Community Services and Local Facilities budget unit to provide the incentive payments outlined in Sections 4 and 6 of this Act. Notwithstanding KRS 45.229, any unexpended funds in fiscal year 2021-2022 shall lapse to the Budget Reserve Trust Fund Account (KRS 48.705).

➔Section 6. KRS 532.100 is amended to read as follows:

- (1) As used in this section, "jail" means a "jail" or "regional jail" as defined in KRS 441.005.
- (2) 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 or her sentence and until released in accordance with the law.

- (3) When a definite term of imprisonment is imposed, the court shall commit the defendant to a jail for the term of his or her sentence and until released in accordance with the law.
- (4) 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.
- (5)
  - (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 or she shall serve that term in a 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 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 jail in a county in which the fiscal court has agreed to house state prisoners if:
      - a. Beds are available in the 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) Any jail that houses state inmates under 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 this subsection. The Department of Corrections shall approve programming offered by jails to state inmates for sentencing credits in accordance with KRS 197.045.
  - (e) Before housing any female state inmate, a jail shall be certified pursuant to KRS 197.020.
  - (f)
    1.
      - a. If a jail is at or over one hundred fifty percent (150%) capacity, the Department of Corrections may direct the jail to transfer a specified number of state prisoners to vacant beds at other designated jails or state institutions. As used in this paragraph, "capacity" means the capacity listed on the certificate of occupancy issued each year to the jail by the Department of Corrections.
      - b. The Department of Corrections shall choose which state prisoners are eligible for transfer based on the security level of the vacant bed at the receiving jail or state institution.
      - c. State prisoners who are approved for transfer to a Department of Corrections facility for necessary medical treatment and care pursuant to KRS 441.560 shall not be transferred to another jail.
      - d. State prisoners enrolled in a Department of Corrections approved program pursuant to KRS 197.045 shall not be transferred.
      - e. State prisoners awaiting trial in the county they are being housed shall not be transferred.
      - f. Jails that receive state prisoners pursuant to this subparagraph shall be responsible for the transportation of those prisoners to the jail.
    2. If the Department of Corrections directs the transfer of a state prisoner pursuant to subparagraph 1. of this paragraph, the jailer has fourteen (14) days to transfer the state prisoner. If the jailer

refuses to release custody of the state prisoner to the receiving jail within fourteen (14) days, the department shall reduce the per diem for the jail for an amount equal to the per diem of that prisoner for each day the jailer refuses to comply with the direction.

3. If the Department of Corrections directs the transfer of a state prisoner pursuant to subparagraph 1. of this paragraph, the jailer of the receiving jail shall accept the transfer and transport the state prisoner in accordance with subparagraph 1.f. of this paragraph. If, after receiving a copy of the direction, the jailer refuses to accept and transport the state prisoner, the Department of Corrections shall reduce the per diem for the receiving jail for an amount equal to the per diem of that prisoner for each day the jailer refuses to comply with the direction.
  4. If a jail has a vacant bed and has a Class C or Class D felon who, based on the Department of Corrections classification system, is eligible to be housed in that vacant bed, the department may direct the jail to transfer the state prisoner to that bed. If the jailer refuses to transfer the state prisoner to the vacant bed, the Department of Corrections shall reduce the per diem for the jail for an amount equal to the per diem of that prisoner for each day the jailer refuses to comply with the direction.
  5. The per diem reduced pursuant to subparagraph 2., 3., or 4. of this paragraph shall be enforced by withholding the amount from the per diem paid to the jail pursuant to KRS 431.215(2).
  6. If a jail that is at or over one hundred fifty percent (150%) capacity requests the transfer of a specified number of state prisoners, the Department of Corrections may, if vacant beds are available at other jails, direct the transfer in accordance with subparagraph 1. of this paragraph.
- (g) If a jail has vacant beds in an area of the jail usually reserved for state prisoners, the jail may house county prisoners in that area.
- (6) 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 herself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he or she 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 jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
- (7) (a) Class D felons and Class C felons serving their time in a jail shall be considered state prisoners, and, except as provided in subsection (5)(f) of this section, 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), except as provided in subsection (5)(f) of this section.
- (b) 1. ***The per diem amount paid to the jail shall be increased by two dollars (\$2) per day of program attendance for those inmates enrolled in and attending evidence-based programs approved by the department and that do not require instructors to have completed any postsecondary education.***
2. ***The per diem amount paid to the jail shall be increased by ten dollars (\$10) per day of program attendance for those inmates enrolled in and attending evidence-based programs approved by the department and that require instructors to have completed particular postsecondary courses.***
- (c) ***Any amount beyond the base per diem paid under paragraph (a) of this subsection that is paid under a contract to the jail for an inmate's attendance at an evidence-based program shall be credited toward the ten dollars (\$10) increase in per diem required under paragraph (b) of this subsection.***
- (8) State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.
- (9) (a) Class D felons eligible for placement in a jail may be permitted by the warden or jailer to participate in any approved community work program or other form of work release with the approval of the commissioner of the Department of Corrections.



- (b) The authority to release an inmate to work under this subsection may be exercised at any time during the inmate's sentence, including the period when the court has concurrent authority to permit work release pursuant to KRS 439.265.
- (c) The warden or jailer may require an inmate participating in the program to pay a fee to reimburse the warden or jailer for the cost of operating the community work program or any other work release program. The fee shall not exceed the lesser of fifty-five dollars (\$55) per week or twenty percent (20%) of the prisoner's weekly net pay earned from the community work program or work release participation. In addition, the inmate may be required to pay for any drug testing performed on the inmate as a requirement of the community work program or work release participation.
- (d) This subsection shall not apply to an inmate who:
  1. Is not eligible for work release pursuant to KRS 197.140;
  2. Has a maximum or close security classification as defined by administrative regulations promulgated by the Department of Corrections;
  3. Is subject to the provisions of KRS 532.043; or
  4. Is in a reentry center as defined in KRS 441.005.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "development area" means a region within a consolidated local government bounded by:*
  - (a) *To the south, Algonquin Parkway to the South Seventh Street intersection, but including the unincorporated communities adjacent to Park Duvalle and Algonquin:*
    1. *Beginning at the Ohio River, at the southwest corner of Chickasaw Park and then along the park's southern boundary to Southwestern Parkway;*
    2. *Southwestern Parkway south to Algonquin Parkway;*
    3. *Algonquin Parkway to South Forty-first Street;*
    4. *South Forty-first Street south to Bells Lane;*
    5. *Bells Lane east to Cane Run Road;*
    6. *Cane Run Road north to Linwood Avenue;*
    7. *Linwood Avenue east to Beech Street;*
    8. *Beech Street south to Wingfield Lane;*
    9. *Wingfield Lane east to Dixie Highway;*
    10. *Dixie Highway north to Algonquin Parkway; and*
    11. *Algonquin Parkway east to South Seventh Street;*
  - (b) *To the east, South Seventh Street north to Ninth Street and Ninth Street north to the Ohio River; and*
  - (c) *The Ohio River to the north and west;*
- (2) *Prior to any development actions taken by the West End Opportunity Partnership, a minimum investment shall be pledged within the order listed and received by the West End Opportunity Partnership:*
  - (a) *A combined total of twenty million dollars (\$20,000,000) shall be pledged by and received from private sector investors and a consolidated local government, with a minimum of five million dollars (\$5,000,000) pledged by a consolidated local government; and*
  - (b)
    1. *Only upon verification of receipt of the twenty million dollars (\$20,000,000) pledged under paragraph (a) of this subsection, general fund moneys in the amount of ten million dollars (\$10,000,000) shall be appropriated by the General Assembly to the Department for Local Government for use by the West End Opportunity Partnership for revitalization of the development area.*
    2. *The Kentucky State Treasurer shall verify that the West End Opportunity Partnership received the full twenty million dollars (\$20,000,000) in accordance with paragraph (a) of this*

*subsection prior to the General Assembly appropriating ten million dollars (\$10,000,000) from the general fund. The West End Opportunity Partnership shall provide the Kentucky State Treasurer the information needed to verify receipt of the funds. Within thirty (30) days of verifying the funds, the Kentucky State Treasurer shall notify the Interim Joint Committee on Appropriations and Revenue.*

3. *If the West End Opportunity Partnership has not received the full twenty million dollars (\$20,000,000) in accordance with paragraph (a) of this subsection prior to June 30, 2022, the General Assembly shall not appropriate the ten million dollars (\$10,000,000) required by subparagraph 1. of this paragraph.*

➔Section 8. Sections 1 and 3 of this Act, as codified following the 2021 Regular Session of the Kentucky General Assembly, shall be repealed effective January 1, 2027. Section 2 of this Act, as codified following the 2021 Regular Session of the Kentucky General Assembly, shall be repealed effective January 1, 2025.

➔Section 9. Section 7 of this Act is effective only if the 2021 Regular Session House Bill Number 321 is enacted and becomes law.

➔Section 10. There is hereby appropriated General Fund moneys in the amount of \$20,000,000 in fiscal year 2021-2022 to the rural hospital operations and facilities revolving loan fund established in KRS 154.20-190.

➔Section 11. (1) There is hereby appropriated Federal Funds from the American Rescue Plan Act in the amount of \$37,000,000 in fiscal year 2021-2022 to the ~~\*\*[Justice]~~ Administration ~~\*\*[budget unit]~~ to provide grants to mitigate the spread of SARS-CoV-2 and COVID-19 infections in congregate or vulnerable population settings. ~~\*\*[The Justice and Public Safety Cabinet shall issue a Request for Proposals to determine if vendors can provide services to detect, diagnose, trace, and monitor SARS-CoV-2 and COVID-19 infections in congregate and vulnerable population settings. Priority for Federal Funds grant awards shall be given to agencies engaged in cooperative agreements or contracts with Commonwealth's Attorneys in individual Judicial Circuits to specifically address alternative sentencing and diversionary programs for census reduction in congregate settings, including but not limited to prisons, jails, detention centers, and reentry facilities. Grant awards shall focus on providing technical assistance, guidance, and support. The Secretary of the Justice and Public Safety Cabinet shall award grants, contracts, or cooperative agreements to state, local, territorial, and Tribal public health departments for activities to detect, diagnose, trace, monitor, and report on SARS-CoV-2 and COVID-19 infections and related strategies and activities to mitigate the spread of SARS-CoV-2, in congregate or vulnerable population settings.]\*\*~~

~~(2) The Secretary shall develop performance outcome measures to which recipients of the funds in subsection (1) of this section shall adhere. The Secretary shall submit a report to the Interim Joint Committee on Appropriations and Revenue by December 31, 2021, and June 30, 2022. The report shall detail which entities received funding, identify the amount of funds awarded to each entity, summarize each entity's use of funds, and summarize each entity's performance.]\*\*~~

➔Section 12. The provisions of the Judicial Branch Budget, 2021 Regular Session HB 195/VO in Part, are amended as follows:

On page 10, delete lines 15 through 22 in their entirety and renumber subsequent sections accordingly.

➔Section 13. The Court of Justice shall prepare a report detailing the existing budget processes of the Court of Justice and the actual expenditure of funds from fiscal year 2020-2021 and budgeted expenditures for fiscal year 2021-2022, by fund source and individual location or office, for the Supreme Court, Court of Appeals, Circuit Court, Family Court, District Court, Administrative Office of the Courts, Judicial Retirement, Local Facilities Fund, Local Facilities Use Allowance Contingency Fund, and for services performed by the Circuit Court Clerks' offices. This report shall be submitted to the Interim Joint Committee on Appropriations and Revenue by September 1, 2021.

➔Section 14. (1) There is hereby appropriated General Fund moneys in the amount of \$14,700,000 in fiscal year 2021-2022 to the Court Operations and Administration budget unit to provide technology upgrades for virtual hearing equipment between county jails and courts in the amounts specified below:

- (a) \$6,000,000 to expand video arraignment systems to all courtrooms;
- (b) \$4,600,000 to support videoconferencing systems to permit a hybrid court model;
- (c) \$2,000,000 to incorporate a self-represented litigant portal;
- (d) \$1,100,000 to procure redaction system software; and
- (e) \$1,000,000 to procure self-service kiosks.

(2) Pursuant to KRS Chapter 45A, the Administrative Office of the Courts shall issue requests for proposals for the items listed in subsection (1) of this section by September 30, 2021.

→Section 15. There is hereby appropriated Federal Funds from the American Rescue Plan Act in the amount of \$6,173,600 in fiscal year 2020-2021 and \$5,934,200 in fiscal year 2021-2022 to the Community Services and Local Facilities budget unit to provide a \$2 per day, per state inmate per diem. The per diem shall be used to defray COVID-19-related expenditures for testing, mitigation, and other response expenditures to county jails that house state inmates. The funds hereby appropriated shall be retroactively paid to county jails that have housed state inmates in fiscal year 2020-2021 since the initial emergency declaration was issued and shall continue to be paid in fiscal year 2021-2022 for the duration of COVID-19-related emergency declarations in accordance with the provisions of KRS Chapter 39A.

→Section 16. (1) There is hereby authorized and appropriated Federal Funds from the Coronavirus Capital Projects Fund of the American Rescue Plan Act in the amount of \$53,000,000 in fiscal year 2021-2022 to the Facilities and Support Services budget unit in the Finance and Administration Cabinet for continuing renovations to the interior of the Capitol Building including mechanical, electrical, and plumbing upgrades. These expenditures shall conform to KRS 45.750 to 45.818.

(2) There is hereby authorized and appropriated Federal Funds from the Coronavirus Capital Projects Fund of the American Rescue Plan Act in the amount of \$5,000,000 in fiscal year 2021-2022 to the Facilities and Support Services budget unit in the Finance and Administration Cabinet for renovations to the exterior of the Capitol Annex Building including terrace repairs and waterproofing upgrades. These expenditures shall conform to KRS 45.750 to 45.818.

(3) In the event that the appropriations authorized in subsections (1) and (2) of this section do not qualify as eligible expenditures of the Coronavirus Capital Projects Fund, the Federal Funds shall be reallocated to the School Facilities Replacement and Renovation Fund.

→Section 17. There is hereby appropriated Federal Funds from the Coronavirus Capital Projects Fund of the American Rescue Plan Act of 2021 in the amount of \$127,000,000 in fiscal year 2021-2022 to the School Facilities Replacement and Renovation Fund in the School Facilities Construction Commission budget unit to support school facility construction costs.

Notwithstanding KRS 157.611 to 157.665, the School Facilities Construction Commission is authorized to make additional offers of assistance in fiscal year 2021-2022 to local school districts for schools that are ranked as the highest on the Kentucky Facilities Inventory and Classification System report as of February 27, 2020, that are A1 schools, that are ranked as a Priority 1 or 2 on the local school district's facility plan, and that have levied a ten-cent equivalent tax dedicated to capital improvements but remain unable to cash fund or to sufficiently support the required annual debt service for replacement or renovation of the school. The offer of assistance shall represent the difference between the cost to replace or renovate the designated facility and the amount of available local resources.

The School Facilities Construction Commission shall make offers of assistance to each local school district only upon the written authorization of the Commissioner of Education or his or her designee and documentation of the project cost.

→Section 18. There is hereby appropriated General Fund moneys in the amount of \$75,000,000 in fiscal year 2021-2022 to the School Facilities Construction Commission to support local area vocational education center renovation costs. A local school district that owns a facility designated as a local area vocational education center shall be eligible to receive up to \$10,000,000 to support renovation costs if the center provides ~~\*\*[substance use disorder programs and]~~\*\* job creation training. The School Facilities Construction Commission shall establish a funding pool and develop criteria for the districts to receive funding. Substance use disorder programs, job creation and training programs, bonding capacity, and a needs-based local match shall be included in the criteria.

→Section 19. Whereas an appropriation of moneys is made in fiscal year 2020-2021 to the Community Services and Local Facilities budget unit, 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.

**Vetoed in part and became law without Governor's signature April 7, 2021.**

## ( SB 36 )

AN ACT providing financing and conditions for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. There is hereby appropriated \$250,000,000 in Federal Funds in fiscal year 2021-2022 from the American Rescue Plan Act of 2021 Coronavirus State Fiscal Recovery Fund to the Kentucky Infrastructure Authority for the Drinking Water and Wastewater Grant Program. The \$250,000,000 appropriation shall be allocated in the following manner:

(1) \$75,000 shall be available to the Kentucky Infrastructure Authority for administering the grant program;

(2) \$150,000,000 shall be allocated to each county based on population. The county allocations shall be determined by each county's proportion of the state's population from the 2019 census data, with the exception of Jefferson County's share, which is discounted by 50 percent based on its high per capita allocation from the federal Coronavirus Local Fiscal Recovery Fund from the American Rescue Plan Act of 2021. The allocations by county shall serve as a funding cap for projects within that county. No county's proportionate share shall be reallocated unless by the express authority of the General Assembly;

(3) \$50,000,000 shall be available to the Kentucky Infrastructure Authority for grants to counties to provide drinking water services to unserved rural customers or to counties under a federal consent decree. The Kentucky Infrastructure Authority shall consider the social, economic, and environmental benefits in determining grant allocations;

(4) \$49,925,000 shall be available to the Kentucky Infrastructure Authority to supplement a project grant for a project whose cost is in excess of a county's allocation amount and other available grant sources. The Kentucky Infrastructure Authority shall consider the social, economic, and environmental benefits in determining project allocations; and

(5) Project allocations for projects that include multiple counties are eligible to access allocations from affected counties.

The Kentucky Infrastructure Authority shall promulgate administrative regulations to ensure that project approvals are based on rational criteria and include a project's readiness to proceed and the project's social, economic, and environmental benefits.

➔Section 2. **Substance Abuse, Mental Health, and Reentry Service Centers:** (1) Notwithstanding any statute to the contrary, beginning in fiscal year 2021-2022, the Department of Corrections shall pay each contracted provider of substance abuse, mental health, and reentry centers a minimum of 65 percent of the contracted beds monthly. Any contracted, but unfilled contracted beds as of the effective date of this Act may, at the discretion of the provider, be terminated.

(2) Each contracted provider, as provided for in subsection (1) of this section, shall report 100 percent of their occupancy to the Department of Corrections. The report shall detail the total number of beds, the number of beds available, the type of individual occupying bed space, and shall be submitted in a method and at a frequency established by the Department's discretion.

(3) Notwithstanding any statute to the contrary, the Department of Corrections shall be permitted to negotiate an inflationary price increase for contracted providers of substance abuse, mental health, and reentry centers during the COVID-19 state of emergency.

➔Section 3. Whereas the provisions of this Act provide financing and conditions for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by Governor April 7, 2021.**

## ( HB 382 )

AN ACT relating to fiscal matters, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. KRS 96.895 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
  - (a) "Book value" means original cost unadjusted for depreciation as reflected in the TVA's books of account;
  - (b) "Fund" means the regional development agency assistance fund established in subsection (4) of this section;
  - (c) "Fund-eligible county" means one (1) of Adair, Allen, Ballard, Barren, Bell, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Cumberland, Edmonson, Fulton, Graves, Grayson, Harlan, Hart, Henderson, Hickman, Livingston, Logan, Lyon, Marshall, McCracken, McCreary, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, Webster, or Whitley Counties;
  - (d) "Regional development agency" or "agency" means a *special purpose governmental entity as defined in KRS 65A.010(9)* ~~local industrial development authority established under KRS 154.50 301 to 154.50 346~~ that is designated by a fiscal court to receive a payment pursuant to this section;
  - (e) "TVA" means the Tennessee Valley Authority; and
  - (f) "TVA property" means land owned by the United States and in the custody of the TVA, together with improvements that have a fixed situs on the land, including work in progress but excluding temporary construction facilities, if these improvements either:
    1. Were in existence when title to the land on which they are situated was acquired by the United States; or
    2. Are allocated by the TVA or determined by it to be allocable to power. However, manufacturing machinery as interpreted by the Department of Revenue for franchise tax determination; ash disposal systems; and coal handling facilities, including railroads, cranes and hoists, and crushing and conveying equipment, shall be excluded.
- (2) Book value shall be determined, for purposes of applying this section, as of the June 30 used by the TVA in computing the annual payment to the Commonwealth that is subject to redistribution by the Commonwealth.
- (3) Except for payments made directly by the TVA to counties, the total fiscal year payment received by the Commonwealth of Kentucky from the TVA, as authorized by Section 13 of the Tennessee Valley Authority Act, as amended, shall be prorated thirty percent (30%) to the general fund of the Commonwealth and seventy percent (70%) among counties, cities, and school districts, as provided in subsections (6) and (7) of this section.
- (4)
  - (a) The regional development agency assistance fund is hereby established in the State Treasury.
  - (b) The fund shall be administered by the Department for Local Government for the purpose of providing funding to agencies that are designated to receive funding in a given fiscal year by the fiscal court of each fund-eligible county through the Regional Development Agency Assistance Program established in KRS 96.905.
  - (c) The fund shall only receive the moneys transferred from the general fund pursuant to subsection (5) of this section.
  - (d) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year. Any interest earnings of the fund shall become a part of the fund and shall not lapse.
- (5)
  - (a) For fiscal years beginning on or after July 1, ~~2018~~ 2020, a portion of the total fiscal year payment received by the Commonwealth that is allocated to the general fund shall be transferred from the general fund to the regional development agency assistance fund established in subsection (4) of this section.
  - (b) This portion shall be equal to:

- (a) ~~In fiscal year 2018-2019, two million dollars (\$2,000,000);~~
- (b) ~~In fiscal year 2019-2020, four million dollars (\$4,000,000); and~~
- (c) ~~In each fiscal year, beginning with the 2020-2021 fiscal year,] six million dollars (\$6,000,000).~~
- (c) ***Distribution of these moneys shall be made by dividing the amount in paragraph (b) of this subsection equally among each fund-eligible county.***
- (6) The payment to each county, city, and school district shall be determined by the proportion that the book value of TVA property in such taxing district, multiplied by the current tax rate, bears to the total of the book values of TVA property in all such taxing districts in the Commonwealth, multiplied by their respective tax rates. However, for purposes of this calculation, each public school district shall have its tax rate increased by thirty cents (\$0.30).
- (7) (a) As soon as practicable after the amount of payment to be made to the Commonwealth is finally determined by the TVA, the Department of Revenue shall determine the book value of TVA property in each county, city, and school district and shall prorate the payments allocated to counties, cities, and school districts under subsection (3) of this section among the distributees as provided in subsection (6) of this section.
- (b) The Department of Revenue shall:
1. Certify the payment due each ***county, city, and school district, including the amount distributed to the county under subsection (5) of this section,*** ~~taxing district]~~ to the Finance and Administration Cabinet; and
  2. ***Notify the Department for Local Government of that certification.***
- (c) ***Upon certification by the Department of Revenue, the Finance and Administration Cabinet*** ~~[which]~~ shall make the payment to such district.
- (8) In each fiscal year, after the Department of Revenue has calculated the prorated payment amount that is due to each county, ***city, and school district under subsections (6) and*** ~~[pursuant to subsection]~~ (7) of this section, the Department for Local Government shall ***notify in writing*** ~~[then make a written request to]~~ the fiscal court of each fund-eligible county ***regarding the amount that the county, city, and school district shall receive for the fiscal year, including the amount distributed to the county under subsection (5) of this section*** ~~[for the name and address of the agency the fiscal court designates to receive a payment from the fund pursuant to subsection (5) of this section].~~
- (9) ~~[Within sixty (60) days of the date of the Department for Local Government's request, each fiscal court shall designate in writing one (1) agency that shall receive a share of the total amount of funds transferred to the fund in that fiscal year pursuant to subsection (5) of this section. Each agency's share shall be calculated as the total amount of funds transferred to the fund in that fiscal year divided by the total number of agencies designated to receive funds by fiscal courts of fund-eligible counties. Once the amount is determined by the Department for Local Government, the payment shall be paid by the Finance and Administration Cabinet directly to the designated agency.] No amount shall be taken from the fund to pay administrative expenses by the Department for Local Government.~~
- (10) ~~If a fiscal court does not respond to the Department for Local Government within sixty (60) days of the date of the Department for Local Government's request, the payment otherwise due to an agency designated by that fiscal court shall be reallocated equally among the agencies that have been designated to receive payments by the other fiscal courts.~~
- (11) ~~All agencies receiving funds under this section shall provide a written report annually, no later than October 1, to the fiscal court that designated it for payment and to the Interim Joint Committee on Appropriations and Revenue. The report shall describe how the funds were expended and the results of the use of funds in terms of economic development and job creation.]~~
- (12) ~~This section shall be applicable to all payments received after April 10, 2018, from the TVA under Section 13 of the Tennessee Valley Authority Act as amended.]~~
- ➔Section 2. KRS 96.905 is amended to read as follows:
- (1) A Regional Development Agency Assistance Program is established to consist of a system of grants to agencies designated by fiscal courts of counties designated in KRS 96.895. Grants shall be administered by the Department for Local Government.

- (2) (a) Grants obtained under this program shall be used for:
1. Economic development and job creation activities ~~[- that the agency is empowered to undertake in that county];~~
  2. Acquiring federal, state, or private matching funds to the extent possible; and
  3. Debt service for approved projects;
- that the agency is empowered to undertake in that county.***
- (b) Grants obtained under this program shall not be used for:
1. Salaries; ~~[- or]~~
  2. Consulting fees; *or*
  3. ***Operational expenses.***
- (3) Applications for grants from funds provided for in KRS 96.895 shall:
- (a) Be made by the legislative bodies of one (1) or more counties entitled to receive money from the regional development agency assistance fund;
  - (b) ***Include any recipient agency as a co-applicant on the application; and***
  - (c) ***Include a concurrence letter from each legislative body entitled to receive money.***
- (4) The Department for Local Government shall review and approve grant applications from counties for agencies that operate in, or serve the interest of, the county whose fiscal court designated it to receive funding. Multiple counties may also submit a joint application requesting that part of their allotted funds be directed to an agency for a project that affects the counties.
- (5) By October 1 of each year, the commissioner of the Department for Local Government shall provide, in writing, to each the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section since the last report, a listing of all grants awarded, the amount of the award, the recipient agency, and the related project.
- (6) The Department for Local Government shall require that any funds granted under this section include an agreement that the recipient agency shall certify that the funds were expended for the purpose intended. The department shall determine whether the certification should be an independent annual audit or an internal certification, taking into account the size of the agency and the financial burden an independent annual audit may impose on the agency. In the case of an independent annual audit, the audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit or certification of compliance shall be forwarded to the Department for Local Government within eighteen (18) months after the end of the fiscal year.

➔Section 3. The General Assembly hereby approves and ratifies Executive Order 2021-093 dated February 11, 2021, previously extended by the General Assembly for 60 days from its effective date of February 11, 2021, and declares that the order shall be further extended for the limited purpose of facilitating the receipt of federal funds related to that emergency. Nothing in this section shall be construed to limit the extension of an emergency order under KRS 39A.090(2)(b), as amended by Acts Chapter 6.

➔Section 4. 2021 Regular Session House Bill 320/EN is amended as follows:

- (1) On page 2, line 14, after "*assets*", insert "***upon a finding the proposal is in the public interest***";
- (2) On page 3, beginning on line 9, and continuing through page 4, line 17, delete Section 2 in its entirety and that section shall have no effect on the laws of the Commonwealth of Kentucky and renumber the subsequent section accordingly;
- (3) On page 4, between lines 20 and 21, insert the following language:

"(2) (a) In addition to the appropriation in subsection (1) of this section, there is hereby appropriated Federal Funds from the State Fiscal Recovery Fund of the American Rescue Plan Act in the amount of \$50,000,000 in fiscal year 2020-2021. Notwithstanding KRS 45.229, the Federal Fund appropriation in fiscal year 2020-2021 shall not lapse and shall carry forward for use in fiscal year 2021-2022.

(b) The appropriation in paragraph (a) of this subsection shall be used for projects that provide broadband service in furtherance of securing economic development opportunities for commercial and industrial customers, excluding the broadband service provider itself.";

- (4) On page 4, line 21, delete "(2)", and insert "(3)" in lieu thereof;
- (5) On page 4, line 23, after "(a)", insert "Related to the appropriation in subsection (1) of this section," and make "The" lower case;
- (6) On page 4, line 25, delete "available", and insert "designated" in lieu thereof;
- (7) On page 5, line 2, after "(b)", insert, "Related to the appropriations in subsections (1) and (2) of this section," and make "A" lower case;
- (8) On page 5, line 3, after "(c)", insert, "Notwithstanding KRS 224A.1121(5)(f) and (10), and related to the appropriations in subsections (1) and (2) of this section," and make "Projects" lower case;
- (9) On page 5, line 9, after "(d)", insert, "Related to the appropriations in subsections (1) and (2) of this section," and make "Project" lower case;
- (10) On page 5, line 9, delete "(3)", and insert "(4)" in lieu thereof;
- (11) On page 5, after line 10, insert:

"(5) (a) The agency administering the broadband deployment fund shall promulgate administrative regulations to develop a process for:

1. Receiving complaints related to insufficient broadband service;
2. Incorporating forms for the collection of data related to the complaints;
3. Reporting the information collected; and
4. Referring complaints to the Office of Attorney General, Federal Communications Commission, or Federal Trade Commission, as appropriate.

(b) The agency shall report to the Legislative Research Commission on a quarterly basis, beginning October 1, 2021, and the first day of each calendar quarter thereafter, the following information:

1. The location, by county, for each consumer complaint received related to insufficient broadband service;
2. A brief description of the complaint;
3. The broadband provider related to the complaint received;
4. The response of the broadband provider regarding the complaint received;
5. Whether the complaint was resolved to the satisfaction of the consumer; and
6. Whether a referral was made to the Office of Attorney General, Federal Communications Commission, or Federal Trade Commission."

➔Section 5. There is hereby appropriated General Fund moneys in the amount of \$140,000,000 in fiscal year 2021-2022 to the Support Education Excellence in Kentucky (SEEK) budget unit to provide full-day kindergarten. Notwithstanding 2021 HB 208/EN or any other statute or regulation to the contrary, for the school year 2021-2022, the Kentucky Department of Education shall use the school district attendance data selected by the district pursuant to 2020 Ky. Acts ch. 26, adjusted to count each kindergarten pupil in full for that respective school year, for the purpose of determining SEEK funds and any other state funding based in whole or in part on average daily attendance for the district, except that a district shall receive an amount equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level for each student who graduated early under the provisions of KRS 158.142.

➔Section 6. There is hereby appropriated Federal Funds from the Coronavirus State Fiscal Recovery Fund of the American Rescue Plan Act in the amount of \$575,000,000 in fiscal year 2021-2022 to the Employment Services budget unit for payment of interest and principal, in that order, for advances under Title XII of the Social Security Act during calendar year 2021.

➔Section 7. There is hereby appropriated Restricted Funds in the amount of \$801,500 and Federal Funds in the amount of \$40,900 in fiscal year 2021-2022 to the Office of Kentucky Nature Preserves.



➔Section 8. There is hereby appropriated General Fund moneys in the amount of \$50,000 in fiscal year 2021-2022 to the Kentucky Heritage Council for the Kentucky African American Heritage Commission.

➔Section 9. There is hereby appropriated General Fund moneys in the amount of \$1,800,000 in fiscal year 2021-2022 to the Justice Administration budget unit for one-time costs to re-establish the Northern Kentucky Regional Medical Examiner's Office. There is hereby appropriated General Fund moneys in the amount of \$1,506,300 in fiscal year 2021-2022 to the Justice Administration budget unit for the operations of the Northern Kentucky Regional Medical Examiner's Office.

➔Section 10. Whereas Section 4 of this Act requires an appropriation to be made in the current fiscal 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 April 7, 2021.**

## CHAPTER 197

### ( HB 574 )

AN ACT relating to elections and making an appropriation therefor.

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

➔Section 1. KRS 83A.045 is amended to read as follows:

- (1) Except as provided in KRS 83A.047, partisan elections of city officers shall be governed by the following provisions, regardless of the form of government or classification of the city:
  - (a) A candidate for party nomination to city office shall file his or her nomination papers with the county clerk of the county not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the first Friday following the first Monday in January before the day fixed by KRS Chapter 118 for holding a primary for the office sought. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed;
  - (b) An independent candidate for nomination to city office shall not participate in a primary, but shall file his or her nomination papers with the county clerk of the county not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the first Tuesday after the first Monday in June before the day fixed by KRS Chapter 118 for holding a regular election for the office. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed; and
  - (c) A candidate for city office who is defeated in a partisan primary shall be ineligible as a candidate for the same office in the regular election. However, if a vacancy occurs in the party nomination for which he or she was an unsuccessful candidate in the primary, his or her name may be placed on the ~~ballot~~~~voting machines~~ for the regular election as a candidate of that party if he or she has been duly made the party nominee after the vacancy occurs, as provided in KRS 118.105.
- (2) Except as provided in KRS 83A.047, nonpartisan elections of city officers shall be governed by KRS 83A.050, 83A.170, 83A.175, and the following provisions, regardless of the form of government or classification of the city:
  - (a) A candidate for city office shall file his or her nomination papers with the county clerk of the county not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the first Friday following the first Monday in January before the day fixed by KRS Chapter 118 for holding a primary for nominations for the

office. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed;

- (b) Any city of the home rule class may by ordinance provide that the nomination and election of candidates for city office in a nonpartisan election shall be conducted pursuant to the provisions of this subsection:
1. A city may forgo conducting a nonpartisan primary for the nomination of candidates to city office, regardless of the number of candidates running for each office, and require all candidates to file their nomination papers with the county clerk of the county not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the first Tuesday after the first Monday in June before the day fixed by KRS Chapter 118 for holding a regular election for the office. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot;
  2. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which the papers are permitted to be filed;
  3. If a city does not conduct a primary pursuant to this subsection, the election of candidates to city office shall be governed by the provisions of this subsection, KRS 83A.175(2) to (6), and KRS Chapters 116 to 121;
  4. In the absence of a primary pursuant to this subsection, the number of candidates equal to the number of city offices to be filled who receive the highest number of votes cast in the regular election for each city office shall be elected;
  5. Candidates shall be subject to all other applicable election laws pursuant to this chapter and KRS Chapters 116 to 121;
  6. If a vacancy occurs in a candidacy for city office in any city which has not held a primary pursuant to this subsection after the expiration of time for filing nomination papers, or if there are fewer candidates than there are offices to be filled, the vacancy in candidacy shall be filled by write-in voting; and
  7. At the regular election, the voters shall be instructed to vote for one (1) candidate, except when there is more than one (1) candidate for which voters may vote, the instruction "vote for up to .... candidates" shall be used on the ballot; and
- (c) A candidate for city office who is defeated in a nonpartisan primary shall be ineligible as a candidate for the same office in the regular election.

➔Section 2. KRS 116.045 is amended to read as follows:

- (1) Any person may register as a voter during the period registration is open if he or she possesses, or will possess on the day of the next regular election, the qualifications set forth in KRS 116.025.
- (2) The county clerk shall cause all registration to be closed the fourth Tuesday preceding through the first Monday following any primary or general election, and the twenty-eight (28) days prior to and seven (7) days following any special election. If the last day of registration falls on a state or federal holiday, the period runs until the end of the next day which is not a Saturday or Sunday nor a state or federal holiday. During the period that registration is closed, the county clerk may accept and process registrations. Any voter who registers during the period that registration is closed, except for any registered voter who transfers his or her registration pursuant to KRS 116.085(2) or (3), shall not be permitted to vote in the upcoming election.
- (3) In all counties, the county clerk shall receive registrations, transfers, or changes of party affiliation at branch offices at any place in the county during those periods that the registration books are open except for those transfers pursuant to KRS 116.085(2) or 116.085(3). However, notice in the manner provided by KRS Chapter 424 shall be given at least three (3), but not more than fourteen (14), days in advance of the time and place of any branch registration, and ten (10) days' written notice shall be given to the county executive committee of each major political party in the county in which the branch registration is to be held.
- (4) Any person may register to vote or may change his or her party affiliation in any of the following ways:

- (a) In person;
  - (b) By mail;
  - (c) By means of the federal post card application, if the person is a resident of Kentucky and a member of the Armed Forces, or a dependent of members of the Armed Forces, or overseas citizen;
  - (d) By mail-in application form prescribed by the *Election Assistance*~~[Federal Election]~~ Commission pursuant to the National Voter Registration Act of 1993; or
  - (e) By other methods of registration, or reregistration, approved by the State Board of Elections, including the use of voluntary interested groups and political parties, under the proper supervision and directions of the county clerk, which may include door to door canvassing.
- (5) Upon receipt of the form prescribed by the State Board of Elections or the *Election Assistance*~~[Federal Election]~~ Commission pursuant to the National Voter Registration Act of 1993, properly filled out and signed by the applicant, the county clerk shall register the applicant.
  - (6) Any individual or group shall have access to a reasonable number of voter registration forms including the mail-in application form prescribed by the *Election Assistance*~~[Federal Election]~~ Commission pursuant to the National Voter Registration Act of 1993 in the county clerk's office. The individual or group shall act under the proper supervision and directions of the county clerk and shall return these completed forms to the county clerk for official registration by the county clerk.
  - (7) No later than December 31, 1994, the Transportation Cabinet shall equip all driver's license agencies to comply with the provisions of the National Voter Registration Act of 1993. The Secretary of State shall provide assistance and interpretation to the Transportation Cabinet in determining the requirements of the National Voter Registration Act of 1993.
  - (8) The county clerk shall enter the specific party identification of the voter with a political party, political organization, or political group as defined in KRS 118.015, or independent status, as indicated by the voter on the voter registration form, into the statewide voter registration system. The State Board of Elections shall promulgate regulations under KRS Chapter 13A to provide for tracking of the registration of voters identifying with political organizations and political groups as defined in KRS 118.015, and voters of independent status.

➔Section 3. KRS 116.046 is amended to read as follows:

- (1) The county clerk shall provide voter registration forms **annually** to each principal or assistant principal of every public high school, each area *technology center*~~[vocational school]~~, and~~[upon request]~~ private schools, **and each school shall have a designated person**~~[who shall designate a person in each school]~~ who shall be responsible for informing students and school personnel of the availability of the registration forms and assist them in properly registering. The completed forms shall be returned to the county clerk, for official registration by the county clerk.
- (2) Any person designated to assist in registration in subsection (1) of this section shall fulfill this responsibility in an impartial and fair manner and shall not recruit a registrant for any particular party.
- (3) The State Board of Education shall implement **annual** programs of public education regarding elections, voting procedures, and election fraud, which shall include an audio-visual presentation for high school juniors and seniors. The State Board of Education, after consultation with the State Board of Elections, shall update the public education programs required by this section as relevant statutory changes occur, as different types of voting ~~systems~~~~[machines]~~ are used, or as more effective methods of presentation shall be developed.

➔Section 4. KRS 116.112 is amended to read as follows:

- (1) The State Board of Elections shall establish a voter registration purge program using the change-of-address information supplied by the United States Postal Service through its licensees or other sources to identify voters whose addresses may have changed.
- (2) (a) If it appears from information provided by the postal service or other sources that a voter has moved to a different address in the same county in which the voter is currently registered, the State Board of Elections shall provide to the county board of elections the information necessary to change the registration records to show the new address and the State Board of Elections shall send to the new address a notice of the change by forwardable mail on a form prescribed by the State Board of Elections and a postage prepaid, pre-addressed return form by which the voter may verify or correct the address information.

- (b) If the county board of elections requests authorization from the State Board of Elections to send address confirmation notices as provided in this subsection, the State Board of Elections shall grant the request.
- (3) (a) If it appears from information provided by the postal service or other sources that a voter has moved to a different address not in the same county, the State Board of Elections shall send to the address from which the voter was last registered, by forwardable mail, a notice on a form prescribed by the State Board of Elections, with a postage prepaid and pre-addressed return card on which the voter may state his current address.
- (b) If a county board of elections requests authorization from the state board to send address confirmation notices as provided in this subsection, the state board shall grant the request.
- (4) The state or county boards of elections shall not remove the name of a voter from the registration records on the ground that the voter has changed his residence unless the voter:
  - (a) Confirms in writing that the voter has changed residence to a place outside the county; or
  - (b)
    1. Has failed to respond to the notice described in subsection (3) of this section; and
    2. Has not voted or appeared to vote and, if necessary, correct the registration records of the voter's address in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

If a county board of elections requests authorization from the state board to conduct purges of voters in its county in accordance with the provisions of this subsection, the state board shall grant the request.

- (5) The State Board of Elections shall establish an inactive list of all voters who fail to respond to the notice described in subsection (3) of this section and do not vote or appear to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for ~~federal~~~~Federal~~ office that occurs after the date of the notice. If a county board of elections requests authorization from the state board to establish an inactive list of voters for its county, the state board shall grant the request.
- (6) The State Board of Elections shall complete, not later than ninety (90) days prior to the date of a primary or ~~regular~~~~general~~ election, any program the purpose of which is to systematically remove the names of ineligible voters from the registration records.
- (7) Voters placed on an inactive list are to be counted only for purposes of voting and not for purposes of establishing or modifying precincts, calculating the amount of reimbursement of county clerks by the State Board of Elections for certain election-related expenses, or reporting official statistics, except as provided by the *Election Assistance*~~Federal Election~~ Commission's regulations promulgated pursuant to the National Voter Registration Act of 1993.
- (8) (a) The State Board of Elections and county boards of elections shall maintain for at least two (2) years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of the registration records, except to the extent that the records relate to the declination to register to vote or the identity of a voter registration agency through which any particular voter is registered.
- (b) The records maintained pursuant to paragraph (a) of this subsection shall include lists of the names and addresses of all persons to whom notices described in subsection (3) are sent, and information concerning whether each person has responded to the notice as of the date that inspection of the records is made.

➔Section 5. KRS 116.113 is amended to read as follows:

- (1) Upon receipt of notification from the Cabinet for Health and Family Services or other reliable sources of the death of a person, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, except that no voter's name may be removed during the period of time the registration books are closed for any primary, general, or special election.
- (2) Upon receipt of notification from the circuit clerk that a person has been declared incompetent, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, except that no voter's name may be removed during the period of time the registration books are closed for any primary, general, or special election.

- (3) Upon receipt of notification from the Administrative Office of the Courts that a person has been convicted of a felony offense, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, except that no voter's name may be removed during the period of time the registration books are closed for any primary, general, or special election.
- (4) *Upon receipt of notification from a local or state jurisdiction that a voter has registered to vote in the new local or state jurisdiction outside of the Commonwealth, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records that it maintains, except that no voter's name may be removed during the period of time the registration books are closed for any primary, regular election, or special election.*
- (5)~~(4)~~ Following the purge of a name from the records of the State Board of Elections, the state board shall notify the clerk of the county in which the voter lived of the action; and the county clerk shall within ten (10) days update the county voter registration files to reflect the necessary change. If a protest is filed by the voter, the county board shall hear it at its next regular monthly meeting. If the county board decides in favor of the protesting voter, the voter's registration record shall be restored, including his voting record. If the protest is filed while the registration books are closed and the county board decides in favor of the protesting voter, the county board shall issue the voter an "Authorization to Vote" for the upcoming election and the voter's record shall be restored when the registration books open following the election.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 117 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall knowingly collect, gain possession of, deliver, or exercise control over a mail-in absentee ballot, except for:*
- (a) *A voter personally casting his or her ballot by means of mail-in absentee ballot;*
  - (b) *An election official engaged in official duties as prescribed in KRS Chapters 116 to 120;*
  - (c) *A United States Postal Service worker or any other person who is allowed by law to transmit United States mail if the worker or other person is engaged in official duties;*
  - (d) *A family member of the voter:*
    - 1. *Who shall be related to the voter as set forth in KRS 6.611(16)(a), or as established by marriage, adoption, or legal guardianship; and*
    - 2. *Who is designated by the voter to assist in the mail-in absentee voting process;*
  - (e) *A person:*
    - 1. *Who shares the same residence of the voter; and*
    - 2. *Is designated by the voter to assist in the mail-in absentee voting process; and*
  - (f) *A caregiver:*
    - 1. *Who provides medical or healthcare assistance to the voter in a residence, nursing care institution, hospice facility, assisted living center, assisted living facility, assisted living home, residential care institution, adult day healthcare facility, or adult foster home; and*
    - 2. *Who is designated by the voter to assist in the mail-in absentee voting process.*
- (2) *For paragraphs (d), (e), and (f) of subsection (1) of this section, the person designated by the voter shall not have been:*
- (a) *Declared mentally disabled by a court of competent jurisdiction, which adjudication has not been set aside; or*
  - (b) *Convicted of an election law offense whose civil rights have not been restored by the Governor.*

➔Section 7. KRS 117.035 is amended to read as follows:

- (1) There shall be a county board of elections, which shall, at the direction and under the supervision of the State Board of Elections, administer the election laws and the registration and purgation of voters within the county.
- (2) (a) The board shall consist of the county clerk, the sheriff, and two (2) members appointed by the State Board of Elections *under paragraph (d) of this subsection. Appointments shall occur not later than July 2021, and every four (4) years thereafter*~~not later than July 1 following the election of persons to~~

~~statewide office,]~~ for a term of four (4) years and until their successors are appointed. **All appointments under this paragraph shall be made no later than July 1 of the year in which the term expires.**

- (b) The sheriff shall not serve on the board during any year in which he or she is a candidate, but shall recommend to the board a temporary replacement to serve in his or her place. If the sheriff cannot serve because he or she is sick, injured, or otherwise incapacitated, he or she may recommend a temporary replacement to serve in his or her place until the sheriff may resume his or her duties or a vacancy in office is declared.
- (c) The county clerk may, at his or her option, continue to serve on the board during a year in which he or she is a candidate. If the clerk elects not to serve, he or she shall recommend a temporary replacement to serve in his or her place. If the county clerk cannot serve because he or she is sick, injured, or otherwise incapacitated, he or she may recommend a temporary replacement to serve in his or her place until the county clerk may resume his or her duties or a vacancy in office is declared.
- (d)
  1. Notwithstanding the provisions of KRS 61.080, service on the board of elections shall be compatible with the holding of any other county or city office.
  2. The members shall be at least twenty-one (21) years of age, qualified voters in the county from which they are appointed, and shall not have been convicted of any election law offense.
  3. One (1) member shall be appointed from a list of five (5) names submitted by the county executive committee of each political party as defined in KRS 118.015. If there are two (2) or more contending executive committees of the same political party in any county, the one recognized by the written certificate of the chair of the state central committee of the political party shall be the one authorized to submit the lists.
  4. If the State Board of Elections does not receive the list as required by subparagraph 3. of this paragraph for each political party for each county by the deadline established in paragraph (a) of this subsection or within one (1) month of a vacancy, then the chair of the state central committees for the political parties may submit lists of five (5) names of qualified residents from the remaining counties by August 1 **of the year in which the term expires**~~following the election of persons to statewide office]~~ or within two (2) months of a vacancy.
  5. If the State Board of Elections does not receive a list from either the county executive committee under subparagraph 3. of this paragraph or the chair of the state executive committee under subparagraph 4. of this paragraph, then the State Board of Elections shall appoint a qualified resident from the county at its next regularly scheduled meeting in September **of the year in which the term expires**~~following the election of persons to statewide office]~~ or within three (3) months of a vacancy.
  6. A member appointed by the State Board of Elections may be removed by the State Board of Elections for cause.
  7. A member appointed by the State Board of Elections may be removed by the State Board of Elections upon a request approved by a two-thirds (2/3) vote of the full membership of the county executive committee that submitted the member's name. The county executive **committee** shall provide conclusive evidence of the committee's membership and evidence of the committee's two-thirds (2/3) vote before the State Board of Elections removes any member appointed by the State Board of Elections.
  8. If an appointee is temporarily unable to act, a temporary appointee shall be named by the State Board of Elections. A temporary appointee shall serve until the original appointee notifies the State Board of Elections that he or she is able to resume his or her term.
  9. A member appointed by the State Board of Elections shall not serve on the board if he or she is a candidate for public office, and the member shall resign upon filing papers to become a candidate for public office or shall be removed from office by the State Board of Elections. A member who resigns or is removed because of his or her candidacy shall not resume his or her term following the completion of the candidacy.
  10. Vacancies and temporary vacancies shall be filled in the same manner as provided for original appointments, and the person appointed to fill the vacancy or temporary vacancy shall be of the same political party as his or her predecessor.

- (e) Compensation and payment of actual expenses of members shall be set by the fiscal court either as an amount payable on an annual basis, or as an amount payable on a per diem basis of not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100) for each day the board meets.
- (3) A majority of the board shall constitute a quorum. The county clerk shall serve as chair of the meetings and may vote. In case of a tie, the chair may cast an additional vote. Records shall be kept of all proceedings, and the records shall be public and kept at the office of the county clerk.
- (4) The board shall meet as follows:
  - (a) During years in which a primary or regular election is scheduled, the board shall meet at least once every other month and may meet more frequently if necessary upon the call of the chair or upon written agreement of two (2) or more members of the board. The call shall provide notice as prescribed by KRS 61.823.
  - (b) During years in which no primary or regular election is scheduled, the board shall meet at the call of the chair or upon written agreement of two (2) or more members of the board. The call shall provide notice as prescribed by KRS 61.823.
  - (c) The board shall meet and stay in session on primary, regular election, and special election days to correct clerical errors, to rule on questions regarding voter registration, ~~and~~ proof of identification, **and the curing of signatures relative to mail-in absentee ballots**, and may make to the election officers such certifications as may be necessary. On primary, regular election, and special election days, appeals may be made to a Circuit Judge, but a ruling of the board shall be reversed only upon a finding that it was arbitrary and capricious.
- (5) The board may employ, on a bipartisan basis, a staff sufficient to carry out the duties assigned to the board.

➔Section 8. KRS 117.045 is amended to read as follows:

- (1) (a) The county board of elections shall in the manner prescribed by this section, not later than March 20 each year, except in a year in which no primary and regular elections are scheduled, appoint for each precinct in the county two (2) judges, one (1) clerk and one (1) sheriff of election. They shall serve in all elections held in the county during the year, except for minors seventeen (17) years of age who will become eighteen (18) years of age on or before the day of the regular election who may only serve as election officers for the primary and regular elections as provided in subsection (9) of this section.
- (b) If a special election is ordered to be held in a year in which no elections are scheduled, the county executive committee of each political party in each county in the territory affected by the special election shall, not later than twenty-eight (28) days preceding the date of the special election, submit a written list of nominees for precinct election officers to serve in the special election in a manner consistent with the provisions of subsection (2) of this section. The county board of elections in each county in the territory affected by the special election shall, not later than twenty-one (21) days preceding the date of the special election, appoint precinct election officers to serve in the special election in a manner consistent with the provisions of subsections (4), (5), and (6) of this section.
- (c) The State Board of Elections shall promulgate an administrative regulation **under KRS Chapter 13A** establishing evaluation procedures which county boards of elections may use to qualify persons nominated to serve as precinct election officers.
- (2) The county executive committees of the two (2) political parties having representation on the State Board of Elections may, on or before March 15 each year, designate in writing to the county board of elections a list of not less than four (4) names for each precinct; except that, in any precinct where there are not as many as four (4) persons possessing the qualifications of an election officer belonging to the political party filing the list, a lesser number may be designated. If there are two (2) or more contending executive committees of the same party in any county, the one recognized by the written certificate of the ~~chair~~ ~~chairman~~ of the state central committee of the party shall be the one authorized to submit the lists. The lists shall contain the full name, address, phone number, and Social Security number, if available, of each person listed. The lists shall be accompanied by a signed statement from each person stating that he **or she** is willing to serve, has not failed to serve without excuse in the past, and has not been convicted of an election law offense or any felony, unless the person's civil rights have been restored by the Governor. The State Board of Elections shall prescribe **the form of the list** by administrative regulation **promulgated under KRS Chapter 13A** ~~[the form of the list]~~.
- (3) The Attorney General shall notify each party state central committee of the duties of the party.

- (4) (a) If lists are submitted **by the county executive committees under subsection (2) of this section**, the county board of elections shall select one (1) judge at each voting place from each political party's list, and the county board shall select the sheriff from one (1) political party's list and the clerk from the other.
- (b) If no lists are submitted **by the county executive committees under subsection (2) of this section**, the two (2) members of the county board of elections who are appointed by the State Board of Elections may submit lists; and the county board **of elections** shall select the sheriff and one (1) judge from one (1) list and the clerk and the other judge from the remaining list.
- (c) If no lists are submitted **by the county executive committees under subsection (2) of this section, or by the county board of elections under paragraph (b) of this subsection**, the county ~~clerk~~~~board~~ shall select the sheriff and one (1) judge from the membership of one (1) party and the clerk and the other judge from the membership of the remaining party. **If no members of one (1) of the two (2) political parties are available or willing to serve as a judge, the county clerk shall select any qualified and registered voter within the county to serve as a judge at a voting place.**
- (d) The county board **of elections** shall, when possible, also appoint an adequate number of alternate precinct election officers from names on the lists which were submitted but which were not selected by the county board as precinct election officers. If alternate precinct election officers are not appointed from the lists of nominees who were not selected as precinct election officers, the county board of elections shall submit its method of selecting alternate precinct election officers to the State Board of Elections for its approval. **If no lists are submitted to the county board of elections as provided in this subsection, the county clerk shall select an adequate number of alternate precinct election officers.**
- (e) **The names of all precinct election officers and alternate precinct election officers selected by the county clerk shall be submitted to the county board of elections for its approval.**
- (f) **Nothing in this subsection shall prevent the selection of any registered and qualified voter who is not registered with either of the two (2) political parties to serve as a precinct election officer in a precinct in which the officer resides or as otherwise provided in this subsection.**
- (5) If, after all reasonable efforts have been made, **neither** the county board of elections **nor the county clerk are able**~~is unable~~ to find two (2) qualified officers for each precinct who are affiliated with the two (2) political parties having representation on the State Board of Elections **or any other qualified and registered voter within the county**, the county board **of elections** shall submit a list of emergency election officer appointments to the State Board of Elections. The county board **of elections** shall also present, in writing, its efforts to recruit and appoint election officers as prescribed in subsection (4) of this section.~~The list of emergency appointments may include qualified voters not affiliated with the two (2) parties represented on the state board.~~ The **State Board of Elections**~~state board~~, after its review, may approve any or all of the emergency appointments submitted by the county board **of elections** or may direct the county board to take other action. Any emergency appointment shall be made for the next ensuing election only.
- (6) In addition to precinct election officers appointed under subsection (1) of this section, a county board of elections **or the county clerk** may appoint up to two (2) additional precinct election officers per precinct with the approval of the State Board of Elections. The **State Board of Elections**~~state board~~ shall promulgate an administrative regulation **under KRS Chapter 13A** establishing conditions under which additional precinct officers may be approved.
- (7) The county board of elections shall, not less than ten (10) days before the next ensuing election, send to each election officer written notice of his **or her** appointment. The **county board of elections** may direct the sheriff of the county to serve the notice of appointment, if it deems the action is necessary.
- (8) The State Board of Elections may require the county board of elections to submit its list of precinct officers for review. The State Board of Elections may, after a hearing, direct the removal of any election officer who the board finds would not fairly administer the state election laws. The **State Board of Elections shall provide for the method and manner of the hearing by administrative regulation promulgated under KRS Chapter 13A, and**~~state board~~ shall replace any officer so removed.~~The board shall provide for the method and manner of the hearing by administrative regulation.~~
- (9) (a) An election officer shall be a qualified voter of the precinct; except that, where no qualified voter of the required political party is available within the precinct, the election officer shall be a qualified voter of the county.



- (b) A minor seventeen (17) years of age who will become eighteen (18) years of age on or before the day of the regular election may serve as an election officer for the primary and regular elections in which he or she is qualified to vote; however, no precinct shall have more than one (1) person serving as an election officer who is a minor seventeen (17) years of age.
  - (c) An election officer shall not be a candidate for office during the election year.
  - (d) An election officer shall not be the spouse, parent, brother, sister, or child of a candidate who is to be voted for at the election in the precinct in which the election officer will serve on election day.
  - (e) An election officer shall not have changed his *or her* voter registration party affiliation *after December 31 immediately preceding* ~~for one (1) year prior to~~ his *or her* appointment *to serve for the primary, or after the second Tuesday in August to serve for the regular election.*
  - (f) An election officer may be removed, for cause, at any time up to five (5) days before an election. Vacancies shall be filled by the county board *of elections or the county clerk* with alternate precinct election officers and *if the vacancy occurs in the appointment of a judge*, the person appointed to fill the vacancy shall be of the same political ~~party~~ *affiliation* as the vacating officer, except for emergency appointments made as provided in subsection (5) of this section.
- (10) If the county board of elections *or the county clerk* fails to appoint election officers, or if any officer is not present at the precinct at the time for commencing the election, or refuses to act, and if no alternate is available, the officer in attendance representing the political party of the absentee shall appoint a suitable person to act in his *or her* place for that election. If both representatives of the same political party are absent, qualified voters present affiliating with that party shall elect, viva voce, suitable persons to act in their places .
- (11) Each election officer shall be paid a minimum of sixty dollars (\$60) per election day served, and such an additional amount as compensation as may be determined by the county board of elections, with the approval of the governing body which would be responsible for funding the election officers' pay, for each election in which the election officer serves, to be paid by the county. For delivering the election packets to the polls, the precinct election officers shall *additionally* receive ~~in addition~~ the mileage reimbursement provided for state employees, for each mile necessarily traveled in the delivery of the packets to the polls, or a flat fee if the fee equals or exceeds that amount. For delivering election returns, the precinct election judges shall *additionally* receive ~~in addition~~ the mileage reimbursement provided for state employees for each mile necessarily traveled ~~in the~~ *from the place of voting to and from the place of* delivery *of election returns*, or a flat fee if the fee equals or exceeds that amount. The fee paid to the precinct election judges for delivering election returns shall be paid by the county.

➔Section 9. KRS 117.055 is amended to read as follows:

Subject to KRS 117.0551 to 117.0555:

- (1) Each county shall be divided into election precincts by the county board of elections. Each election precinct shall be composed of contiguous and, as nearly as practicable, compact areas having clearly definable boundaries and wholly contained within any larger district. The county board of elections shall establish precincts so that no boundary of a precinct crosses the boundary of:
  - (a) The Commonwealth;
  - (b) A county or urban-county;
  - (c) A congressional district;
  - (d) A state senatorial district;
  - (e) A state representative district;
  - (f) A justice of the peace or county commissioner's district established under KRS Chapter 67; or
  - (g) An aldermanic ward established under KRS 83.440.
- (2) The county board of elections shall have the authority to draw precinct lines so as to enable more than one (1) precinct to vote at one (1) location. The county board of elections shall review election precinct boundaries as often as necessary. Without exception, they shall review the boundaries of all election precincts exceeding seven hundred (700) votes cast in the last regular election prior to each primary election, and the State Board of Elections may require a written report at least sixty (60) days prior to the candidate filing deadline set forth in KRS 118.165(1) and (2) on each election precinct exceeding seven hundred (700) votes cast in the last

regular election. Consideration to the division of said election precincts should be based on the anticipated growth factor within the specified boundaries; however, the county board of elections shall not be prohibited from dividing election precincts in excess of seven hundred (700) votes cast in the last regular election or less than seven hundred (700) votes cast in the last regular election if they elect to do so. However, the State Board of Elections may, in its discretion, withhold from a county the expenses of an election under KRS 117.345 for any precinct containing more than one thousand five hundred (1,500) registered voters, excluding those precincts utilizing optical scan voting ~~equipment[machines]~~ and those periods of time in which the precinct boundaries have been frozen under KRS 117.056.

- (3) No election precinct shall be created, divided, abolished, or consolidated or the boundaries therein changed prior to any primary~~[election]~~ to comply with the provisions of KRS 117.055 to 117.0555 and KRS 117.0557 later than the last date prescribed by election law generally for filing notification and declaration forms with the county clerk or Secretary of State. No election precinct shall be created, divided, abolished, or consolidated or the boundaries therein changed prior to any *regular*~~[general]~~ election to comply with the provisions of KRS 117.055 to 117.0555 and KRS 117.0557 later than the last date prescribed by election law generally for filing certificates or petitions of nomination with the county clerk or Secretary of State.
- (4) The county board of elections shall designate the name or number and the boundaries of the election precincts. Each precinct shall contain, as nearly as practicable, an equal number of voters, based on the number of registered voters in the county.
- (5) A map and listing of the exact election precinct boundaries shall be filed by the county board of elections with the State Board of Elections, and any changes in boundaries thereafter made shall also be filed with the State Board of Elections. A copy of this map indicating all precinct boundaries within the county shall be included in the election supplies of each precinct.
- (6) If the county board of elections fails to perform any of the duties required by KRS 117.055 to 117.0555 and KRS 117.0557:
  - (a) The State Board of Elections or any citizen and voter of the county may apply to the Circuit Court of the county for a summary mandatory order requiring the board to perform the duty. Appeals may be taken to the Court of Appeals by either party; and
  - (b) The State Board of Elections shall not submit claims for payments to the county under KRS 117.343 and 117.345 until the State Board of Elections determines in writing that the duty has been performed.
- (7) The county board of elections shall coordinate all precinct boundary changes with the affected school board, magisterial, and municipal boundaries.

➔Section 10. KRS 117.066 is amended to read as follows:

- (1) ~~[In the case of a precinct comprised of a small number of registered voters,]~~The county board of elections may, pursuant to KRS 117.055 *and subsection (3) of this section, designate a single voting location for more than one (1) precinct if the voting location is equipped with voting equipment capable of providing or accepting separate ballots without endangering the integrity of the ballots or without violating any other election law* ~~[utilize the facilities of another precinct as a voting location. Additionally, the county board of elections may petition the State Board of Elections to allow the precinct election officers of the larger precinct to serve as precinct election officers for the precinct that is the subject of the petition. The petition shall designate both the smaller precinct and the larger precinct with which it is to be included, the type of voting machine or machines to be used, and whether supplemental paper ballots are to be used. The petition shall contain a full explanation of the reasons why inclusion is desirable].~~
- (2) *If a single voting location for more than one (1) precinct is approved under subsection (3) of this section* ~~[the petition submitted pursuant to subsection (1) of this section is approved by the State Board of Elections], the primary or election shall be conducted as follows~~~~[according to the following provisions]:~~
  - (a) One (1) voting ~~equipment[machine]~~ may be ~~used~~~~[utilized]~~ *for more than one (1) precinct if ballots are tabulated for each separate precinct, and if* ~~[both precincts if the State Board of Elections certifies that]~~ separate ballots may be placed upon ~~any~~~~[the]~~ voting ~~equipment[machine]~~ to be used without endangering the integrity of the ballots or without violating any other election law. Otherwise, separate voting ~~equipment[machines]~~ shall be used for each precinct. In the instance of a precinct which has a small number of voters such that the use of ~~[a]~~ separate voting ~~equipment[machine]~~ would be cost-prohibitive, the county clerk may make application to the State Board of Elections to use supplemental paper ballots under KRS 118.215 to conduct the voting for the small precinct on *any primary or*

election day. If the use of supplemental paper ballots is approved by the State Board of Elections, at the close of voting on **any primary or** election day, the locked supplemental paper ballot box shall be transported to the county board of elections along with the federal provisional ballot receptacle, and ballots shall be counted by the county board of elections as provided by KRS 117.275(10) to (14);

- (b) Separate precinct voter rosters shall be maintained for each precinct, and steps shall be taken to ~~ensure~~<sup>insure</sup> that voters cast their ballot in their duly authorized precinct; and
  - (c) A separate set of ~~election~~<sup>elections</sup> forms and reports required by this chapter and the State Board of Elections shall be maintained for each precinct.
- (3) ***The county board of elections may petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. The petition shall be on a form prescribed by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A and shall include:***
- (a) ***A list of all precincts designated to vote at the voting location;***
  - (b) ***The address and type of facility of the voting location;***
  - (c) ***The number and type of voting systems or voting equipment to be used at the voting location;***
  - (d) ***The number of registered voters in each precinct designated to vote at the voting location;***
  - (e) ***An explanation of the reasons why the consolidation is desirable;***
  - (f) ***The plan for additional precinct officers at the voting location, the manner in which they will be assigned, and whether the voting location will be fully staffed with election officials;***
  - (g) ***The plan for how the county clerk will publicize the location for where the voting shall occur, in addition to how each location shall be noted conspicuously to residents of the county as a "Vote Center"; and***
  - (h) ***The plan for how the voting location will serve as a focal point to meet the needs of a diverse community.***
- (4) ***If the petition submitted under subsection (3) of this section is approved by the State Board of Elections, the precinct election officers designated to serve as election officers for more than one (1) precinct shall meet the eligibility requirements of Section 8 of this Act.***

➔Section 11. KRS 117.085 is amended to read as follows:

- (1) (a) ***All requests for a mail-in absentee ballot shall be requested through a secure online portal established by the State Board of Elections, except for:***
1. ***Voters identified in KRS 117.077;***
  2. ***Disabled voters; and***
  3. ***Covered voters in paragraph (i) of this subsection;***
- who have the additional option of requesting a mail-in absentee ballot application through the county clerk.***
- (b) ***Acquiring a mail-in absentee ballot by means of the online portal shall require the voter to input personally identifiable information for verification.***
  - (c) ***For those voters who do not have the means of accessing the online portal, the county clerk shall fulfill a request for a mail-in absentee ballot by taking the voter's information over the telephone or in person and directly inputting that information into the secure online portal.***
  - (d) ***The online portal shall have the capacity to ensure the identity of the voter through proof of identification as required under Section 30 of this Act or by means of Section 31 of this Act.***
  - (e) ***If a voter qualifies to receive a mail-in absentee ballot, the online portal shall transmit the mail-in absentee ballot request to the county clerk of the county in which the voter is registered to vote.***
  - (f) ***The online portal shall not be open or permit any mail-in ballot requests to occur more than forty-five (45) days immediately preceding the day of a primary or an election. The online portal shall close at 11:59 p.m. local time, fourteen (14) days immediately preceding the day of a primary or an***

~~*election.* [All requests for an application for a mail-in absentee ballot may be transmitted by telephone, facsimile machine, by mail, by electronic mail, or in person. The county clerk shall transmit all applications for a mail-in absentee ballot to the voter by mail, electronic mail, or in person at the option of the voter, except as provided in paragraph (b) of this subsection.]~~

(g) Except as otherwise provided in KRS 117.077, the mail-in absentee ballot ~~application~~ may be requested by the voter or the spouse, parents, or children of the voter, but shall be restricted to the use of the voter.

~~(h)(a)~~ Except as otherwise provided in KRS 117.077 *and covered voters in paragraph (i) of this subsection*, a qualified voter may apply to cast his or her vote by mail-in absentee ballot if the completed application is received *fourteen (14) days* ~~[not later than the close of business hours seven (7) days]~~ before the election, and if the voter is:

1. A resident of Kentucky who is a covered voter as defined in KRS 117A.010;
2. A student who temporarily resides outside the county of his or her residence;
3. Incarcerated in jail and charged with a crime, but has not been convicted of the crime;
4. Changing or has changed his or her place of residence to a different state while the registration books are closed in the new state of residence before an election of electors for President and Vice President of the United States, in which case the voter shall be permitted to cast a mail-in absentee ballot for electors for President and Vice President of the United States only;
5. Temporarily residing outside the state but still eligible to vote in this state;
6. Prevented from voting in person at the polls on election day and from casting an in-person absentee ballot ~~[in the county clerk's office]~~ on all days in-person absentee voting is conducted because his or her employment location requires him or her to be absent from the county of his or her residence all hours and all days in-person absentee voting is conducted ~~[in the county clerk's office]~~;
7. A participant in the Secretary of State's crime victim address confidentiality protection program as authorized by KRS 14.312; or
8. Not able to appear at the polls on election day *or the days in-person absentee voting is conducted* on the account of age, disability, or illness, and who has not been declared mentally disabled by a court of competent jurisdiction.

~~(i)(b)~~ Residents of Kentucky who are covered voters as defined in KRS 117A.010 may apply for a mail-in absentee ballot by means of the federal post-card application, which may be transmitted to the county clerk's office by mail, by facsimile machine, or by means of the electronic transmission system established under KRS 117A.030(4). The federal post-card application may be used to register, reregister, and to apply for a mail-in absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his or her seal to the application form upon receipt.

(j) *Any voter who is disabled may use an accessible mail-in absentee ballot portal to request a mail-in absentee ballot, the standards of which shall be set by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A.*

~~(2)(c)~~ In-person absentee voting shall be conducted in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections during normal business hours *on the Thursday, Friday, and Saturday immediately preceding the day of a primary or an election. Any voter who is qualified to vote on election day in the county of his or her residence may choose to cast an in-person absentee ballot while in-person absentee voting is being conducted during the days listed in this subsection.* ~~[for at least the twelve (12) working days before the election. A county board of elections may permit in-person absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election.]~~

~~(d)~~ A qualified voter may, at any time during normal business hours on those days in person absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. *The voter who elects to vote in-person absentee shall provide* ~~[if the voter~~

~~provides~~ proof of identification as defined in *Section 41 of this Act* ~~[KRS 117.375]~~ or ~~meet~~ ~~[meets]~~ the requirements of KRS 117.228 and 117.229 ~~and the voter:~~

- ~~1. Is a resident of Kentucky who is a covered voter as defined in KRS 117A.010, who will be absent from the county of his or her residence on any election day;~~
  - ~~2. Is a student who temporarily resides outside the county of his or her residence;~~
  - ~~3. Has surgery, or whose spouse has surgery, scheduled that will require hospitalization on election day;~~
  - ~~4. Temporarily resides outside the state, but is still eligible to vote in this state and will be absent from the county of his or her residence on any election day;~~
  - ~~5. Is a resident of Kentucky who is a uniformed service voter as defined in KRS 117A.010 confined to a military base on election day, learns of that confinement within seven (7) days or less of an election, and is not eligible for a mail-in absentee ballot under this subsection;~~
  - ~~6. Is in her last trimester of pregnancy at the time she wishes to vote under this paragraph. The application form for a voter under this subparagraph shall be prescribed by the State Board of Elections, which shall contain the woman's sworn statement that she is in fact in her last trimester of pregnancy at the time she wishes to vote;~~
  - ~~7. Has not been declared mentally disabled by a court of competent jurisdiction and, on account of age, disability, or illness, is not able to appear at the polls on election day; or~~
  - ~~8. Is not permitted to vote by a mail-in absentee ballot under paragraph (a) of this subsection, but who will be absent from the county of his or her residence on election day.~~
- ~~(e) Voters who change their place of residence to a different state while the registration books are closed in the new state of residence before a presidential election shall be permitted to cast an in-person absentee ballot for President and Vice President only, by making application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections, up to the close of normal business hours on the day before the election.~~
- ~~(f) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he or she is registered, any alternate precinct election officer, any deputy county clerk, any staff for the State Board of Elections, and any staff for the county board of elections may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he or she is registered receives his or her appointment while in-person absentee voting is being conducted in the county, the officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. Precinct election officers' verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.~~
- ~~(3)(g)~~ The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all in-person absentee voting ~~conducted~~ ~~[performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections]~~. If the members of the county board of elections or their designees serve as precinct election officers for ~~the~~ in-person absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for in-person absentee voting, the county clerk or deputy county clerks shall supervise the in-person absentee voting.
- ~~(4)(h)~~ Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all in-person absentee voting ~~performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections]~~, and those challengers may exercise

the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.

- (5)~~(2)~~ ***For those voters who are eligible to receive a mail-in absentee ballot by means other than the secure online portal pursuant to subsection (1) of this section,*** the county clerk shall type the name of the voter permitted to vote by mail-in absentee ballot on the mail-in absentee ballot application~~[form]~~ for that person's use and no other. The mail-in absentee ballot application~~[form]~~ shall be in the form prescribed by the State Board of Elections, which shall include the voter affirmation form as prescribed in KRS 117.228(1)(c)~~[, shall bear the seal of the county clerk,]~~ and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, an instructional statement prescribing the requirements for providing a copy of the voter's proof of identification or voter affirmation when applicable, and the voter's mailing address for a mail-in absentee ballot. The mail-in absentee ballot application form shall be verified and signed by the voter, and the voter shall provide a copy of his or her proof of identification, as defined in ***Section 41 of this Act***~~[KRS 117.375],~~ or the executed voter affirmation as described in KRS 117.228(1)(c). A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the mail-in absentee ballot application form.
- (6)~~(3)~~(a) ***For those voters eligible to receive a mail-in absentee ballot,*** if the county clerk finds that the voter ***has completed and submitted an application for a mail-in absentee ballot as provided in this section,*** is properly registered as stated in his or her mail-in absentee ballot application~~[form]~~ and qualifies to receive a mail-in absentee ballot by mail, ***the county clerk***~~he or she~~ shall mail to the voter a mail-in absentee ballot, two (2) official envelopes for returning the mail-in absentee ballot, and instructions for voting.
- (7)~~(b)~~ ***Mail-in absentee ballots shall be mailed to a voter's residential address located in the county in which the voter is registered, except for:***
- (a) ***Qualified voters who apply pursuant to the requirements of paragraph (h)1. to 6. of subsection (1) of this section; or***
  - (b) ***Qualified voters covered under KRS 117.077.***
- (8) The county clerk shall:
- (a) ***Transmit a mail-in absentee ballot to the voter who is eligible to receive a mail-in absentee ballot within four (4) days of receipt or within four (4) days of the ballots being available;***
  - (b) ***Cause mail-in absentee ballots to be printed fifty (50) days prior to each primary or regular election, and forty-five (45) days prior to a special election; and***
  - (c) Complete a postal form for a certificate of mailing for mail-in absentee ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the mail-in absentee ballots are mailed. ***Unless a postal form for a certificate of mailing is required, the county clerk may use methods of tracking the mail-in absentee ballots by means of a printed barcode or other label that is unique to the individual voter issued by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A.***
- (9) A mail-in absentee ballot may be transmitted by facsimile machine or by the electronic transmission system established under KRS 117A.030(4) to a covered voter as defined in KRS 117A.010. The covered voter shall be notified of the options for transmittal of the mail-in absentee ballot, and the mail-in absentee ballot shall be transmitted by the method chosen for receipt by the resident of Kentucky who is a covered voter.
- ~~(4) Mail-in absentee ballots which are requested prior to the printing of the mail-in absentee ballots shall be mailed or otherwise transmitted as provided in subsection (3) of this section by the county clerk to the voter within three (3) days of the receipt of the printed ballots. Mail-in absentee ballots requested after the receipt of the ballots by the county clerk shall be mailed or otherwise transmitted as provided in subsection (3) of this section to the voter within three (3) days of the receipt of the request.~~
- ~~(5) The county clerk shall cause mail-in absentee ballots to be printed fifty (50) days prior to each primary or regular election, and forty-five (45) days prior to a special election.~~
- (10)~~(6)~~ The outer envelope ***of the mail-in absentee ballot*** shall bear the words "Absentee Ballot",~~[and]~~ the address and official title of the county clerk, ***a printed barcode or other label that is unique to the individual voter issued by the State Board of Elections,*** and ***adequate***~~[shall provide]~~ space for the voter's signature, voting address, precinct number, and signatures of two (2) witnesses if the voter signs the form with the use of

a mark instead of the voter's signature. A detachable flap on the secrecy envelope shall provide space for the voter's signature, voting address, precinct number, signatures of two (2) witnesses if the voter signs the form with the use of a mark instead of the voter's signature and notice of penalty provided in KRS 117.995(5). The county clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the secrecy envelope immediately below the blank space for the voter's signature. The secrecy envelope shall be blank. ***If applicable***, the county clerk shall retain the voter's mail-in ballot application ~~[form]~~, which shall include the photographed copy of the voter's proof of identification or the voter affirmation as prescribed by KRS 117.228(1)(c), and the postal form required by subsection ~~(8)~~~~(3)~~ of this section for twenty-two (22) months after the primary or election.

~~(11)~~~~(7)~~ ***Except as otherwise provided in subsection (13) of this section***, any person who has received a mail-in absentee ballot ~~[by mail]~~ but who knows at least seven (7) days before the date of the election that he or she will be in his or her county of residence on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his or her mail-in absentee ballot and vote in person. The voter shall return the mail-in absentee ballot to the county clerk's office ***by mail or hand delivery*** no later than seven (7) days prior to the date of the election. Upon the return of the mail-in absentee ballot, the county clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The county clerk shall remove the voter's name from the list of persons who were sent mail-in absentee ballots, and the voter may vote in the precinct in which he or she is properly registered.

~~(12)~~~~(8)~~ Any voter qualified for a mail-in absentee ballot who does not receive a requested mail-in absentee ballot within a reasonable amount of time shall contact the county clerk, who shall reissue a second mail-in absentee ballot. The county clerk shall keep a record of the mail-in absentee ballots issued and returned by mail, ***hand-delivered, or placed in a secure drop-box or receptacle***, and the in-person absentee voting and federal in-person provisional absentee voting that is ***conducted*** ~~[performed on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections]~~, to verify that only the first voted ballot ~~[to be returned by the voter]~~ is counted. Upon the return of any mail-in absentee ballot after the first mail-in absentee ballot is returned, the county clerk shall mark on the outer envelope of the sealed ballot the words "Canceled because ballot reissued."

~~(13)~~~~(9)~~ Any covered voter as defined in KRS 117A.010 who has received a mail-in absentee ballot but who knows that he or she will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his or her mail-in absentee ballot and vote in person. The voter shall return the mail-in absentee ballot to the county clerk's office on or before election day. Upon the return of the mail-in absentee ballot, the county clerk shall mark on the outer envelope of the sealed mail-in absentee ballot or the unmarked mail-in absentee ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. If the covered voter is unable to return the mail-in absentee ballot to the county clerk's office on or before election day, at the time he or she votes in person, he or she shall sign a written oath as to his or her qualifications on the form prescribed by the State Board of Elections pursuant to KRS 117.245. The county clerk shall remove the voter's name from the list of persons who were sent mail-in absentee ballots, provide the voter with written authorization to vote at the precinct, and the voter may vote in the precinct in which he or she is properly registered.

~~(14)~~ ***The State Board of Elections shall promulgate administrative regulations to:***

- ~~(a)~~ ***Ensure election officials have real-time knowledge of which voters have requested mail-in absentee ballots; and***
- ~~(b)~~ ***Provide procedures to be followed if a voter attempts to vote more than once at a primary or an election.***

~~(15)~~~~(10)~~ Notwithstanding the provisions of the Kentucky Open Records Act, KRS 61.870 to 61.884, ***and except for when the identification of the voter is provided to the county board of elections under Section 14 of this Act***, the information contained in an application for a mail-in absentee ballot shall not be made public until after the close of business hours on the election day for which the application applies. ***Except for necessary election officials and for election-related duties as prescribed by law, the name of the person who votes by means of a mail-in absentee ballot shall not be disclosed.*** This subsection shall not prohibit at any time the disclosure, upon request, of the total number of applications for mail-in absentee ballots that have been filed, or the disclosure to the Secretary of State or the State Board of Elections, if requested or if otherwise required by law, of any information in an application for a mail-in absentee ballot.

➔Section 12. KRS 117.086 is amended to read as follows:

- (1) (a) The voter returning his or her absentee ballot *to the county clerk* by mail, *hand delivery, or to a secure drop-box or receptacle*, shall mark his or her ballot, seal it in the secrecy envelope, and then seal the outer envelope ~~and mail it to the county clerk as provided in this chapter.~~
- (b) The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. A person having power of attorney for the voter and who signs the detachable flap and outer envelope for the voter shall complete the voter assistance form as required by KRS 117.255. The signatures of two (2) witnesses are required if the voter signs the form with the use of a mark instead of the voter's signature. A resident of Kentucky who is a covered voter as defined in KRS 117A.010 who has received an absentee ballot transmitted by facsimile machine or by means of the electronic transmission system established under KRS 117A.030(4) shall transmit the voted ballot to the county clerk by mail only, conforming with ballot security requirements that may be promulgated by the State Board of Elections by administrative regulation under KRS Chapter 13A. In order to be counted, *all mail-in absentee* ~~the~~ ballots shall be received by the county clerk *no later than* ~~by at least~~ the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.
- (2) (a) *The county clerk shall provide a minimum of one (1) secure ballot drop-box to receive voted mail-in absentee ballots for each primary, regular election, or special election. Public notice of all secure ballot drop-box locations shall be given in the same manner as provided under subsection (5) of this section, and posted to the Web site of the county clerk.*
- (b) *The county board of elections may seek the State Board of Elections' approval of a ballot receptacle to receive voted mail-in absentee ballots for each primary, regular election, or special election. Public notice of all secure ballot receptacle locations shall be given in the same manner as provided under subsection (5) of this section, and posted to the Web site of the county clerk. Before any mail-in absentee ballot shall be allowed to be deposited inside a receptacle, the county board of elections shall inform the State Board of Elections of:*
1. *The number of receptacles to be used;*
  2. *The type of each receptacle to be used; and*
  3. *The receptacle location.*
- (c) *Any drop-box or receptacle located outside of the county clerk's office shall be:*
1. *Placed in a well-lit and easily accessible location;*
  2. *Secured to ensure immobility while in use;*
  3. *Under video surveillance at all times;*
  4. *Tamper-resistant; and*
  5. *Conspicuously noted as a mail-in absentee ballot drop-off location.*
- (d) *A drop-box or receptacle located inside the county clerk's office shall be under direct supervision of the staff of the county clerk at all times and be accessible to the public.*
- (e) *Each receptacle or drop-box shall be emptied by the county clerk and at least one (1) member of the county board of elections who is not of the same political affiliation as the county clerk at least once each business day or more frequently, as needed, to reasonably secure and accommodate the volume of the voter-delivered mail-in absentee ballots. The ballots deposited in the drop-box or receptacle shall be removed with a record of the date and time ballots were removed, and the names of the persons removing them. If the drop-box or receptacle is located outside the county clerk's office, the ballots shall be returned to the county clerk in locked transport containers, and the county clerk shall transfer the ballots upon receipt in accordance with subsection (7) of this section.*
- (f) *Except for those times ballots are being removed and transported from a secure ballot drop box to the county clerk as provided in this subsection, the county clerk and at least one (1) member of the county board of elections who is not of the same political affiliation as the county clerk shall retain the keys to all secure ballot drop-boxes, receptacles, and transport containers in use in the county.*
- (g) *The State Board of Elections may establish additional security measures and procedures for the use of the ballot drop-box or receptacle through administrative regulations promulgated under KRS Chapter 13A.*



- (3)(2) Any voter who shall be absent from the county on election day, but who does not qualify to receive a mail-in absentee ballot under the provisions of KRS 117.085, and all voters qualified to vote prior to the election under the provisions of KRS 117.085, shall vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election **in accordance with Section 11 of this Act**. The county clerk may provide for ~~such~~ voting by the voting equipment in general use in the county ~~either at the precinct, the equipment as may be used to tabulate absentee ballots,~~ or any other voting equipment approved by the State Board of Elections for use in Kentucky, except as follows:
- (a) Any voter qualifying to vote ~~in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections,~~ who receives assistance to vote shall complete the voter assistance form required by KRS 117.255;
  - (b) Any voter qualifying to vote ~~in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections,~~ whose qualifications are challenged on grounds other than inability to provide proof of identification by any clerk or deputy shall complete an "Oath of Voter" affidavit; and
  - (c) Any voter qualifying to vote ~~in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections,~~ who is unable to provide proof of identification as defined in **Section 41 of this Act** ~~[KRS 117.375]~~, may cast an in-person absentee ballot or federal provisional in-person absentee ballot in accordance with KRS 117.228 or 117.229.
- (4)(3) When the county clerk uses general voting equipment as provided for in subsection (3)(2) of this section, each voter casting his **or her** vote **in-person absentee** ~~at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections,~~ shall sign an "**In-Person** Absentee Ballot Signature Roster."
- (5)(4) The county clerk shall designate a location within **the clerk's** ~~his or her~~ office where the ballots shall be cast secretly. The county clerk, with the approval of the State Board of Elections, may establish locations other than **the clerk's** ~~his or her~~ main office in which the voters may execute their ballots. Public notice of the locations shall be given pursuant to KRS Chapter 424, and similar notice by mail shall be given to the county chairs of the two (2) political parties whose candidates polled the largest number of votes in the county at the last regular election.
- (6)(5) The State Board of Elections shall promulgate administrative regulations under KRS Chapter 13A to provide for casting ballots in accordance with subsection (3)(2) of this section.
- (7)(6) **Upon receipt of a mail-in ballot**, the county clerk shall **scan the barcode or label that is unique to the individual voter to note the receipt of the mail-in absentee ballot**, and deposit all of the mail-in absentee ballots in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by **at least** ~~the~~ three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are **processed, reviewed or** counted **under Section 14 of this Act**. All voting equipment on which ballots are cast as permitted in subsection (3)(2) of this section shall also remain locked and the keys shall be retained by **at least** ~~the~~ three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.
- (8)(7) The county clerk shall keep separate lists for each election of all persons who:
- (a) Return their **mail-in** absentee ballots ~~by mail~~;
  - (b) Cast their **in-person absentee** ballots ~~in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections,~~; and
  - (c) Cast their federal provisional in-person absentee ballots under subsection (3)(2)(c) of this section.

The county clerk shall send a copy of each list to the State Board of Elections after any primary or election day. Notwithstanding the provisions of the Kentucky Open Records Act, KRS 61.870 to 61.884, each list of all persons who return their **mail-in** absentee ballots ~~by mail~~ or who cast their ballots in the clerk's office or other designated and approved place shall not be made public until after the close of business hours on the primary or election day for which the list applies, **except when provided to the county board of elections under Section 14 of this Act**. The county clerk and the Secretary of State shall keep a record of the number of

votes cast by each method listed in paragraphs (a) to (c) of this subsection, which are cast in any primary or election as a part of the official returns of the primary or election.

- ~~(9)~~~~(8)~~ The county board of elections shall report to the State Board of Elections within ten (10) days after any primary or regular election as to the number of rejected absentee ballots, including rejected mail-in absentee ballots and ballots cast under subsection ~~(3)~~~~(2)~~ of this section, and the reasons for rejecting the ballots on a form prescribed and furnished by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A.

➔Section 13. KRS 117.0863 is amended to read as follows:

- (1) Except for those voters who have been certified as requiring assistance in voting on a permanent or annual basis, any person voting by means of a mail-in absentee ballot or *in-person absentee ballot* ~~on the voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, as provided in this chapter~~ who receives assistance in voting shall be required to complete the voter assistance form required by KRS 117.255.
- (2) Any person who assists another person in voting by use of an mail-in absentee ballot or *in-person absentee ballot* ~~on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections,~~ shall complete the voter assistance form required by KRS 117.255.
- (3) The detachable flap on all mail-in absentee ballot envelopes shall have printed upon it the voter assistance form required by KRS 117.255, ~~as well as a~~ notice of the penalty for failure to complete the form, **and notice of the penalty under KRS 117.0865.**
- (4) The State Board of Elections shall promulgate by administrative regulations under KRS Chapter 13A a voter assistance form which shall be in a form acceptable to the Attorney General.

➔Section 14. KRS 117.087 is amended to read as follows:

- (1) The challenge of *a mail-in* ~~an~~ absentee ballot ~~returned by mail~~ shall be in writing and in the hands of the county clerk before 8 a.m. on **the day preceding any primary, regular election, or special** election day.
- (2) The county board of elections ~~shall count the absentee ballots returned by mail and the votes cast on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. Federal provisional in-person absentee ballots shall be processed in accordance with KRS 117.229. The board~~ may appoint a central ballot counting board of not less than three (3) members, who shall be qualified voters and no more than two-thirds (2/3) of whom shall be members of the same political party, to **process, review, and** count the ballots at the direction of the county board of elections.
- (3)
  - (a) Beginning at 8 a.m. on **any primary, regular election, or special** election day, the **county board of elections or central counting board** shall meet at the county clerk's office to **process and review** ~~count~~ the **mail-in** absentee ballots returned ~~by mail and the ballots cast on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections~~. Candidates or their representatives shall be permitted to be present. **The county board of elections or central counting board may meet up to fourteen (14) days prior to the day of a primary or election to review and process the mail-in absentee ballots cast in the county. No person shall publicize any tallies or counts of these ballots, or any partial election results, until 6 p.m. local time, on the day of a primary or an election. The county board of elections or central counting board shall meet as often as necessary during these fourteen (14) days to process and review returned mail-in absentee ballots, including expediting any signature cures.**
  - (b) **The county board of elections or counting board chair or the chair's designee shall provide each board member with a list of all voters who have returned a mail-in absentee ballot by mail. If a list of all voters who have returned a mail-in absentee ballot by mail is not provided to the board, the name of each voter who cast an absentee ballot by mail shall be read aloud.** The county board of elections shall authorize representatives of the news media to observe the **processing and review** ~~counting~~ of the ballots **to determine their acceptance or rejection.**
  - (c) **Acceptance or rejection of the mail-in absentee ballots shall be determined as follows:**
    - I. The **county board of elections or the central counting board** shall open the boxes containing absentee ballots returned by mail, **hand delivered, or deposited in a drop box or receptacle,** and

remove the envelopes one (1) at a time. *All mail-in absentee ballots returned shall have their barcode or unique label scanned to note official receipt;*~~;~~

2. As each envelope is removed, it shall be examined to ascertain whether the outer envelope and the detachable flap are in proper order and have been signed by the voter, *except if:*~~;~~
  - a. ~~[A person having power of attorney for the voter and who signs.]~~The detachable flap and outer envelope for the voter *have been signed by a person having power of attorney for the voter, and that person has completed*~~[shall complete]~~ the voter assistance form required by KRS 117.255; *or*~~;~~
  - b. *The voter has signed the detachable flap and outer envelope with the use of a mark instead of the voter's signature, the county board of elections or the central counting board shall verify that the mark was made in the presence*~~[signatures]~~ of two (2) witnesses;~~;~~~~[are required if the voter signs the form with the use of a mark instead of the voter's signature.]~~
3. *Ballots with unsigned detachable flaps or outer envelopes*~~[All unsigned mail-in absentee ballots]~~ shall be rejected automatically;~~;~~
4. *Ballots that have not been sent by the county clerk to a qualified voter, but are received by the county board of elections or the central counting board shall be rejected automatically;*
5. The *members*~~[chair]~~ of the county board of elections, *or the members of the central counting board*, shall compare the signatures on the outer envelope *and*~~;~~ the detachable flap with the signature of the voter that appears on the *voter's signature of record, which record shall include the signature on the voter's identity document as defined in KRS 186.010, the voter's mail-in absentee ballot application, or the voter's* registration card. *If a signature match cannot be made, the county board of elections, central counting board, or the county clerk shall make a reasonable effort to contact the voter and provide notice to the voter with a timeframe and manner in which the voter may cure his or her signature relative to the mail-in absentee ballot signature. All signature cures shall be completed before the closing of the polls on the day of a primary or an election;*
6. If the outer envelope and the detachable flap are found to be in order, the *members of the county board of elections or the members of the central counting board shall verify the voter's name from the list of persons who were sent mail-in absentee ballots, but if a list has not been provided to the board, the name of the voter shall be read aloud;*~~[chair shall read aloud the name of the voter.]~~
7. If the vote of the voter is not rejected on a challenge~~[then made]~~ as provided in *subparagraph 8. of this paragraph or as otherwise provided in this subsection*~~[subsection (4) of this section]~~, the *members of the county board of elections or the members of the central counting board*~~[chair]~~ shall remove the detachable flap and place the secrecy envelope unopened in a ballot box which has been provided for the purpose;~~;~~
- 8.~~[(4)]~~ When the name of a voter who cast a mail-in absentee ballot is *processed and reviewed*~~[read aloud]~~ by the *members of the county board of elections or the members of the central counting board*~~[chair]~~, the vote of the voter may be challenged by any board member or by the written challenge provided in subsection (1) of this section and the challenge may be determined and the vote accepted or rejected by the board as if the voter was present and voting in person; but if the outer envelope and the detachable flap are regular, and each substantially comply with the provisions of this chapter, they shall be considered as showing that the voter is prima facie entitled to vote. If the vote of a voter is rejected pursuant to the challenge, the secrecy envelope shall not be opened, but returned to the outer envelope upon which the chair *or member* shall write on the envelope the word "rejected"~~;~~;
9. *If irregularities are discovered in the review and processing of the mail-in absentee ballot, the county board of elections or the central counting board shall immediately report to the county attorney or the Office of the Attorney General; and*
10. *The ballot box into which all accepted mail-in absentee ballots are placed shall be locked with three (3) locks and the keys to the box shall be retained by at least three (3) members of the*

*central counting board, if one (1) has been appointed, or by the members of the county board of elections. The box shall remain locked until the ballots are counted.*

- (d) *The State Board of Elections shall promulgate administrative regulations under KRS Chapter 13A establishing the form of the notice required under this subsection for the curing of signatures.*
- (4) (a) *Beginning at 8 a.m. local time on any primary, regular election, or special election day, the county board of elections or a central counting board shall meet in the county clerk's office to:*
1. *Review and process any mail-in absentee ballots returned using the procedures in subsection (3) of this section; and*
  2. *Count, or the county board of elections may oversee the count by the central counting board, the accepted mail-in absentee ballots and total and record the in-person absentee votes cast.*
- (b) *During the review, processing, and counting of the absentee ballots and votes, candidates or their representatives shall be permitted to be present, and the county board of elections shall authorize representatives of the news media to observe.*
- (c) *No person shall publicize any tallies or counts of these ballots, or any partial election results, until 6 p.m. local time, on the day of a primary or an election.*
- (5) After the challenges have been made and all the blank secrecy envelopes have been placed in a ballot box, the box shall be thoroughly shaken *or shuffled* to redistribute the absentee ballots in the box *to ensure secrecy of the vote*. The board shall open the ballot box, remove the absentee ballots from the secrecy envelopes, and count the ballots.
- (6) The board shall unlock any voting equipment used to cast *in-person absentee* ballots ~~in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections~~, as provided for in KRS 117.086, and a total of all *in-person absentee* ballots shall be made and recorded on the form provided by the State Board of Elections.
- (7) The county board of elections, the county clerk, and all individuals permitted to be present for the counting of absentee ballots pursuant to subsection ~~(4)(2)~~ of this section shall not make public the absentee ballot results determined as provided in this section until ~~after~~ 6 p.m. prevailing time *on the day of a primary or an election*.

➔Section 15. KRS 117.088 is amended to read as follows:

- (1) For purposes of this section, "blind or visually impaired individual" means an individual who:
- (a) Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees;
  - (b) Has a medically indicated expectation of visual deterioration;
  - (c) Has a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability;
  - (d) Has been certified as requiring permanent assistance to vote under KRS 117.255(5) for reason of blindness; or
  - (e) Qualifies to receive assistance to vote under KRS 117.255(2) for reason of blindness.
- (2) For purposes of this section, "pilot program" means a program in a county containing a consolidated local government or containing a city of the first class for unassisted voting by blind or visually impaired individuals.
- (3) A county board of elections in a county containing a consolidated local government or containing a city of the first class may establish a pilot program. As part of this pilot program, the State Board of Elections shall approve the use of voting equipment under KRS 117.379 that is designed to permit blind and visually impaired individuals to vote without assistance, for use beginning in the 2002 general election. No county board of elections in a county containing a consolidated local government or containing a city of the first class shall be required to operate a pilot program.
- (4) The State Board of Elections, if it approves the voting equipment under KRS 117.379, may approve the use of voting equipment designed to permit blind and visually impaired individuals to vote without assistance in as

many locations within a county containing a consolidated local government or containing a city of the first class as are designated by the county board of elections.

- (5) A county board of elections in a county containing a consolidated local government or containing a city of the first class shall provide a report to the State Board of Elections after every primary or **regular**~~general~~ election regarding the number of blind or visually impaired individuals that have utilized the voting equipment during the pilot program.
- (6) Notwithstanding the provisions of KRS 116.025, or any other statute to the contrary, a blind or visually impaired voter residing in a county containing a consolidated local government or containing a city of the first class that is operating a pilot program shall be permitted to vote at a location outside the precinct of his or her registration by voting at a location within the county of his or her registration on ~~a~~ voting **equipment**~~machine~~ designed to permit blind or visually impaired individuals to vote without assistance, which may include voting at the county clerk's office, or other place designated by the county board of elections, and approved by the State Board of Elections.
- (7) Notwithstanding the provisions of KRS 117.085, 117.086, or 117.0863 or any other statute to the contrary, a blind or visually impaired individual residing in a county containing a consolidated local government or containing a city of the first class that is operating a pilot program shall be permitted to vote in the location within the county of his or her registration as provided under subsection (6) of this section, on ~~a~~ voting **equipment**~~machine~~ designed to permit blind or visually impaired individuals to vote without assistance, at any time during which absentee voting is conducted ~~in the clerk's office or other place designated by the county board of elections during normal business hours on at least any of the twelve (12) working days before the election, and The county board of elections may permit the voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election prescribed above. An application for those blind or visually impaired individuals wishing to vote on a voting machine approved for use by blind or visually impaired individuals shall be prescribed by the State Board of Elections and shall include the individual's sworn statement that the individual is blind or visually impaired.~~
- (8) ~~Notwithstanding the requirements of KRS 117.381, or any other statute to the contrary,~~ The State Board of Elections may certify, as a part of the pilot project of a county containing a consolidated local government or containing a city of the first class, voting equipment which utilizes audio recordings, voice-activated technology, or vocal recognition technology to record a vote, and may require such accommodations as would permit a blind or visually impaired voter to cast a vote in secret, **provided the voting equipment produces a voter-verified paper audit trail.**
- (9) Notwithstanding the provisions of KRS 117.255, a blind or visually impaired voter residing in a county containing a consolidated local government or containing a city of the first class that is operating a pilot project may cast his or her vote alone and without assistance on ~~a~~ voting **equipment**~~machine~~ approved for use by blind or visually impaired individuals. However, the blind or visually impaired voter shall be instructed by the officers of election, with the aid of the instruction cards and the model, in the use of the **equipment**~~machine~~, if the voter so requests.
- (10) Nothing in this section shall impair the right of any qualified voter under KRS 117.255 to receive assistance and vote according to the procedures specified in that section.

➔Section 16. KRS 117.105 is amended to read as follows:

- (1) The ~~fiscal court of any county~~ **legislative body of any county, urban-county government, charter county, consolidated local government, or unified local government** shall purchase or lease, from available funds or from the proceeds of bonds which may be issued for that purpose, voting **systems**~~machines, including extra or reserve machines.~~ for use in **primaries, regular elections, and special**~~and primary~~ elections. ~~The fiscal court may, prior to any election, authorize the use of additional voting machines in any particular precinct.~~
- (2) **Any voting system purchased, leased, or otherwise acquired by the legislative body of any county, urban-county government, charter county, consolidated local government, or unified local government on or after the effective date of this Act shall comply with the requirements of Section 18 of this Act.**
- (3) **Nothing in this section shall prohibit a county board of elections from performing maintenance on voting equipment that has been previously certified by the State Board of Elections and is in use on the effective date of this Act.**

➔Section 17. KRS 117.115 is amended to read as follows:

The *legislative body*~~[fiscal court]~~ of any county, *urban-county government, charter county, consolidated local government, or unified local government* may select, in its discretion, any type and make of voting system~~[machine]~~ that complies with the specifications and requirements of this chapter. The *legislative body*~~[fiscal court]~~ may employ engineers and other skilled persons to advise and aid in the selection of *voting systems*~~[the machines]~~ and in determining *compliance with the specifications and requirements of this chapter*~~[thereof]~~.

➔Section 18. KRS 117.125 is amended to read as follows:

*Except for voting equipment that has been certified and in use on or before the effective date of this Act, no ~~make of~~ voting system~~[machine]~~ shall be approved for use after the effective date of this Act by the State Board of Elections, either upon initial examination or reexamination, unless the system has been certified under Section 43 of this Act and ~~it~~ is so constructed that it shall:*

- (1) *Ensure ~~it will insure~~ secrecy to the voter in the act of voting so that no person can see or know for whom any other voter has voted or is voting, except for those voters requiring assistance under Section 34 of this Act;*~~;~~
- (2) ~~It provides facilities that will~~ Permit votes to be cast for any candidate entitled to have his *or her* name printed upon the ballots at any *primary, regular election, or special*~~[or primary]~~ election, and for or against any public question entitled to be placed upon the ballots;~~;~~
- (3) ~~It will,~~ Except at a *primary*~~[elections]~~, permit a voter to vote for all the candidates of one (1) party or for one (1) or more candidates of every party having candidates entitled to be voted for, or for one (1) or more independent, *political organization, or political group* candidates;~~;~~
- (4) ~~It will~~ Permit a voter to vote for as many persons for an office as *the voter*~~he~~ is lawfully entitled to vote for, and no more;~~;~~
- (5) ~~It will~~ Prevent a voter from voting *for more persons for any office than the voter is entitled to vote for, and from voting* for the same person, or for or against the same question, more than once;~~;~~
- (6) ~~It will~~ Permit a voter to vote for or against any question *the voter*~~he~~ may have the right to vote on, but no other;~~;~~
- (7) *Provide for a nonpartisan ballot;*
- (8)~~(7)~~ *Be capable of being ~~it may be~~ adjusted for use in a primary*~~[elections]~~ so that a voter may not vote for any person except those seeking nomination as candidates of *the voter's*~~his~~ party, *as candidates for a nonpartisan office*, or as candidates for an office of the Court of Justice;~~;~~
- (9)~~(8)~~ *Permit each voter to vote for all the candidates for presidential electors of any party by one (1) operation;*
- (10) *Permit each voter to vote, in any regular or special election, for any person for whom the voter desires to vote whose name does not appear upon the ballot by providing a method of write-in voting;*
- (11) *Be safe, efficient, and accurate in the conduct of elections, and ~~it will~~ correctly register and accurately count all votes cast for each person, and for or against each public question;*~~;~~
- (12) (a) *Provide each voter an opportunity to verify votes recorded on the permanent paper ballot, either visually or using assistive voting technology, by producing a voter-verified paper audit trail;*  
 (b) *Provide each voter an opportunity to change votes or correct any error before the voter's ballot is cast and counted; and*  
 (c) *Provide a voter who spoils his or her ballot another ballot as provided under this chapter;*
- (13) *Use an individual, discrete, permanent, paper ballot cast by the voter for tabulating purposes;*
- (14) *Preserve the paper ballot as an official record available for use in any audit or recount;*
- (15) *Be suitably designed for the purpose used, constructed of a durable material, and safely transportable;*
- (16) ~~(9) — It can~~ *Be capable of determining ~~determined~~ whether the voting equipment~~[machine]~~ has been unlocked and operated or adjusted in any manner after once being locked;*~~;~~
- (17)~~(10)~~ *Have a public counter with a register which is visible from the outside of the counter or device that ~~it~~ will show at all times during an election how many persons have voted; ~~by a device hereinafter referred to as a public counter.~~*

- (18)~~(11)~~ **Have a protective cumulative**~~[The]~~ counter indicating the number of votes cast for each person, **and the votes cast**~~[and]~~ for or against each public question **which** cannot be seen, **reset**, or tampered with without unlocking a covering device~~[that cannot be unlocked]~~ by a key **or other security apparatus** that **cannot unlock**~~[unlocks]~~ any other part of the **equipment, and which prevents changes to the cumulative counter once the system has been put into operation on the day of any election;**~~[machine. When such counters are so exposed the machine can no longer be placed into condition for operation without the use of a special key, which key shall not have been in the possession of the election officers at the polling places; but if this requirement has the effect of eliminating from consideration any other make of machine such requirement shall not apply.]~~
- (19) **Provide for the tabulating of votes at the precinct as required under Section 36 of this Act;**
- (20)~~(12)~~ **Provide locks or other security apparatus by which the operation of the voting equipment**~~[The operating device and operating mechanism]~~ may be locked before the time for opening the polls and after the time for closing the polls;~~[-]~~
- (21)~~(13)~~ **Permit a voter to readily learn the method of operating it, to expeditiously cast a vote for all candidates and on all questions of the voter's choice, and when operated properly, register and record correctly and accurately every vote cast;**~~[It is accompanied by a mechanical model illustrating the manner of voting on the machine, suitable for the instruction of voters.]~~
- ~~(14) It will permit a voter to vote for all the candidates for presidential electors of any party by one (1) operation.~~
- ~~(15) It will permit a voter to vote, in any regular or special election, for any person desired to be voted for whose name does not appear upon the voting machine.]~~
- (22)~~(16)~~ **Bear**~~[It bears]~~ a number **or other unique designation** that will distinguish it from any other **voting equipment or voting system;**
- (23) **Produce a real-time audit log record for the voting system, and produce a paper record with a manual audit capacity which shall be available as an official record for any recount conducted related to any primary or election in which the system is used;**
- (24) **Be accessible for individuals with impairments, including nonvisual accessibility for the blind or visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters;**
- (25) **Meet or exceed the standards for a voting system established by the Election Assistance Commission, as amended from time to time, and those approved under Section 43 of this Act; and**
- (26) **Meet such other requirements as may be established by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A to reflect changes in technology to ensure the integrity and security of voting systems**~~[machine.]~~
- ~~(17) The frames in which ballot labels are placed shall be constructed with transparent protective devices, in order that the names thereon cannot be mutilated or altered.]~~

→Section 19. KRS 117.135 is amended to read as follows:

When voting **equipment is**~~[machines are]~~ acquired by any county, **the voting equipment**~~[they]~~ shall be immediately placed in the custody of the county clerk, and shall remain in his **or her** custody at all times except when in use at an election or when in the custody of a court or court officer during contest proceedings. The clerk shall see that the **voting equipment is**~~[machines are]~~ properly protected and preserved from damage or unnecessary deterioration, and shall not permit any unauthorized person to tamper with the **voting equipment**~~[machines]~~.

→Section 20. KRS 117.145 is amended to read as follows:

- (1) At least **forty-five (45)**~~[fifteen (15)]~~ days before any special election, and at least fifty (50) days before any primary or regular election, the county clerk of each county shall cause to be printed and ready for use **ballots listing**~~[ballot labels for]~~ each candidate who, and each question which, is entitled to be voted upon in such **primary or** election. The **ballots**~~[ballot labels]~~ shall be printed on clear white paper or other material,~~[which shall be furnished by the printer. They shall be printed]~~ in black ink, in plain, clear type clearly legible to a person with normal vision, and~~[ shall be of a size to fit the ballot frames. The labels]~~ shall include the necessary party designations. **The quality of the paper and the size of the ballots shall be established by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A.**

- (2) Each county clerk shall have printed a sufficient number of paper absentee ballots, voter affirmations, and election official affirmations. ~~The voter affirmation, if applicable, and the absentee ballot shall be used for voting by absent voters; by precinct officers who have been assigned to a precinct other than their own; by members of a county board of elections; by voters so disabled by age, infirmity, or illness as to be unable to appear at the polls; and for voting in an emergency situation.~~ The *ballots* ~~[ballot stubs]~~ shall be consecutively numbered and the county board shall keep a record, by number, of all absentee ballots used for any of the purposes listed in this subsection.
- (3) Each county clerk shall have printed a sufficient number of federal provisional ballots, which, except for the candidates listed, shall have the same form as the absentee ballots. A federal provisional ballot shall indicate that the ballot is a federal provisional ballot. The federal provisional ballot stubs shall be consecutively numbered, and the county board of elections shall keep a record, by number, of all federal provisional ballots used for votes cast by provisional voters in federal elections.
- (4) ***Each county clerk shall have printed a sufficient number of paper ballots to be used for voting for any primary or election. The methods of securing the integrity of the ballots from the time of certification of each candidate and each question to be voted upon in any primary or election until the conclusion of the primary or election, and the method of tracking all voted, unvoted, or spoiled ballots shall be established by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A.***
- (5) ~~(4)~~ No later than the Friday preceding a special or regular election, the county clerk shall equip the voting *equipment* ~~[machines]~~ with the necessary supplies for the purpose of write-in votes. The county clerk shall also ~~provide~~ ~~[attach]~~ a pencil, ~~or~~ pen, ***or ballot marking device for*** ~~[to]~~ the voting *equipment* ~~[machine]~~ for write-in purposes.
- (6) ~~(5)~~ If supplemental paper ballots have been approved as provided in KRS 118.215, the county clerk shall cause to be printed a sufficient number of ***supplemental*** paper ballots for the registered voters of each precinct. The ***supplemental*** paper ballots shall have stubs which are numbered consecutively. ~~The quality of paper on which the supplemental paper ballots are printed shall be determined by administrative regulations promulgated under KRS Chapter 13A by the secretary of the Finance and Administration Cabinet.~~

➔Section 21. KRS 117.155 is amended to read as follows:

~~[Upon receiving the printed ballot labels,]~~ The county clerk shall place ***all ballots required to be placed upon voting equipment*** ~~[them in the ballot frames upon the machines,]~~ in such a manner as will most nearly conform to the plan of arrangement prescribed by the Secretary of State ~~under~~ ~~[in the manner prescribed in]~~ KRS 118.215. ***The county clerk*** ~~[He]~~ shall then see that the counters referred to in subsections ***(17) and (18) of Section 18 of this Act*** ~~[(10) and (11) of KRS 117.125]~~ are set at zero, and shall lock the operating device and mechanism and the devices protecting the counters and ***ballots*** ~~[ballot labels]~~. ***The county clerk*** ~~[He]~~ shall then enter in an appropriate book, opposite the number of each precinct the distinguishing number of the ***voting equipment or the unique designation*** ~~[machine]~~ to be used in that precinct.

➔Section 22. KRS 117.165 is amended to read as follows:

- (1) Upon completing the preparation of the ***voting systems, including any voting equipment*** ~~[machines]~~ ***in operation***, in accordance with ~~[the provisions of]~~ KRS 117.155, and not later than the Thursday preceding the day of the election, the county clerk shall notify the members of the county board of elections that the ***voting equipment is*** ~~[machines are]~~ ready for use. The board shall thereupon convene at the office of the county clerk, not later than the Friday preceding the day of the election, and examine the ***voting equipment*** ~~[machines]~~ to determine whether the requirements of KRS 117.155 have been met. The county board of elections shall publish notice, in accordance with KRS 424.130(1)(d), at least twenty-four (24) hours in advance of the time when the ***voting equipment is*** ~~[machines are]~~ to be examined by the board. If found in proper order, the members of the county board of elections shall endorse their approval in the book in which the county clerk has entered the numbers ***or the unique designation*** of the ***voting equipment*** ~~[machines]~~ opposite the numbers of the precincts. The clerk shall then deliver all of the keys to the ***voting equipment*** ~~[machines]~~ to the county board of elections who shall give a receipt for the keys which shall contain identification of the keys. Not later than one (1) hour before the time set for the opening of the polls, the board shall deliver all election supplies including the precinct list, tabulation sheets, and the key to the device covering the registering counters and other keys necessary for the operation of the ***voting equipment*** ~~[machine]~~ in registering votes, to the election officers of the precinct in which the ***voting equipment*** ~~[machine]~~ is being used, who shall give the board a receipt containing identification of the keys. The master key and all other keys shall remain in the possession of the county board of elections.



- (2) Not later than four (4) business days preceding the date set ~~[by the county board of elections]~~ to conduct *in-person* absentee voting in accordance with KRS 117.085~~[(1)(e)]~~, the county clerk shall notify the members of the county board of elections that the voting *equipment*~~[machines]~~ designated for use during *in-person* absentee voting are ready for use. The board shall thereupon convene at the office of the county clerk, not later than three (3) business days preceding the date set ~~[by the county board of elections]~~ to conduct absentee voting, and examine the *voting equipment*~~[machines]~~ to determine whether the requirements of KRS 117.155 have been met. The county board of elections shall publish notice, in accordance with KRS 424.130(1)(d), at least twenty-four (24) hours in advance of the time when the absentee voting *equipment is*~~[machines are]~~ to be examined by the board. If found in proper order, the members of the county board of elections shall endorse their approval in the book in which the county clerk has entered *the unique designation or* the identification number of the *voting equipment*~~[machines]~~ designated for use during *in-person* absentee voting.
- (3) Any candidate, one (1) representative of each political party having candidates to be voted for at the election, and representatives of the news media may be present when the examination of the *voting equipment*~~[machines]~~ is made by the county board of elections.

➔Section 23. KRS 117.175 is amended to read as follows:

The county clerk shall, with the county attorney, prepare a sufficient number of instruction cards containing ~~[a diagram showing the front of the voting machine as it will appear on the day of the election,]~~ instructions as to the proper method of voting by the use of the *voting equipment*~~[machine]~~, and instructions as to the proper method of casting a write-in vote. For federal provisional ballots and supplemental paper ballots, if approved as provided in KRS 118.215, the instruction cards shall indicate the offices, candidates, and questions which will appear on the *federal provisional or* supplemental paper ballots, the offices that will appear on the federal provisional *or supplemental* ballot, the instructions for marking and depositing the *federal provisional or* supplemental paper ballots, instructions for filling out the federal provisional *or supplemental* ballot, and instructions on how to properly execute the voter affirmations. The *instruction* cards shall be examined and approved by the county board of elections at the time the *voting equipment is*~~[machines are]~~ examined and approved. The *instruction* cards shall be delivered to each election clerk by the county clerk at the time that other election supplies are delivered and the election clerk shall post the *instruction* card at the polling place.

➔Section 24. KRS 117.187 is amended to read as follows:

- (1) The State Board of Elections shall regularly provide special training regarding the election laws and methods of enforcement to all members of county boards of elections, county attorneys, Commonwealth's attorneys, and certain members of the Department of Kentucky State Police.
- (2) The county board of elections shall provide special training before each primary,~~[and]~~ regular election, and any special election~~[held during a year in which no elections are scheduled,]~~ to all election officers, alternates, and certified challengers regarding their duties and the penalties for failure to perform. Election officers, including alternates, and certified challengers shall attend the training session, unless excused by the county board of elections for reason of illness or other emergency. Any person who fails to attend a training session without being excused shall be prohibited from serving as an election officer or challenger for a period of five (5) years. The training provided by the county board of elections shall include but not be limited to the following:
- (a) Operation of the voting *equipment, and voting system as applicable*~~[machine or ballot cards];~~
  - (b) Posting of necessary signs and notices at the polling place;
  - (c) Voter assistance;
  - (d) Maintaining precinct rosters;
  - (e) Confirmation of a voter's identity;
  - (f) Challenge of a voter;
  - (g) Completing changes of address or name at the polling place;
  - (h) Qualifications for voting in a primary;
  - (i) Electioneering and exit polling;
  - (j) Write-in voting procedures;
  - (k) Persons who may be in the voting room;

- (l) Election violations and penalties;
- (m) Assistance which may be provided by law enforcement officers;
- (n) Election reports;
- (o) Disability awareness;
- (p) Provisional voting and provisional absentee voting;
- (q) Election emergency contingency plan;
- (r) Elections, *voting equipment*, and voting ~~systems~~~~equipment~~ security plan;~~and~~
- (s) Proof of identification; *and*
- (t) ***Information concerning the secure online portal to request a mail-in absentee ballot.***

- (3) The county attorney *or the county attorney's designee may*~~shall~~ attend the training session for election officers to assist in explaining the duties and penalties for failure to perform.
- (4) Compensation in the minimum amount of ten dollars (\$10) for reimbursement of actual expenses shall be paid by the county to the election officers for attending the training session.

➔Section 25. KRS 117.195 is amended to read as follows:

- (1) At least one (1) hour prior to the opening of the polls, the county clerk shall deliver ***the voting equipment***~~each machine~~, with the operating device and mechanism and the device covering the registering counters securely locked, to the clerk of the precinct in which it is to be used, and shall take a receipt indicating the distinguishing number *or the unique designation* of the ***voting equipment***~~machine~~. The clerk of the precinct shall cause ***any voting equipment***~~the machine~~ to be arranged in the voting place so that the front of the ***equipment***~~machine~~, on which ~~appear~~ the ***ballots appear, if applicable***~~ballot labels~~ and the operating devices, will not be visible, when being operated, to any person other than the voter.
- (2) In polling places in which ***voting equipment***~~machines~~ for multiple precincts are located, the county clerk shall post a sign near ***the voting equipment***~~each machine~~ identifying the precinct for which the ***voting equipment***~~machine~~ has been designated.
- (3) For federal provisional ballots, and supplemental paper ballots if approved as provided in KRS 118.215, the county clerk shall, at least one (1) hour prior to the opening of the polls, deliver ***or confirm that there is available:***
  - (a) A sufficient number of ballots, and supplemental paper ballots if approved, for the registered voters of each precinct;
  - (b) A sufficient number of voting booths for voting federal provisional ballots, and supplemental paper ballots if approved;
  - (c) A sufficient amount of string and rubber stamps for marking "Spoiled" and "Unused" ballots;
  - (d) A locked ballot box or receptacle for federal provisional ballots, and a separate locked ballot box for supplemental paper ballots if approved, for each precinct; and
  - (e) A sufficient number of federal provisional voter ballots, voter affirmations, and election official affirmations.

The county clerk shall take a receipt for the number of federal provisional ballots, and supplemental paper ballots if approved, issued and the ballot boxes or ballot receptacles for each precinct. The county clerk shall retain the keys to all ballot boxes and ballot receptacles.

➔Section 26. KRS 117.205 is amended to read as follows:

***Before the polls are open, and*** before permitting any person to vote on the day of the election, the election officers shall examine the ***voting equipment***~~machine~~ to ascertain whether it has been operated since the counters referred to in subsections ***(17) and (18) of Section 18 of this Act***~~(10) and (11) of KRS 117.125~~ were set at zero, and to ascertain whether the ***ballots***~~ballot labels~~ are arranged as ***previously*** specified~~on the printed instruction cards~~. If the ***voting equipment***~~machine~~ indicates that it has been operated or if the ***ballots***~~ballot labels~~ are not ***properly***~~so~~ arranged, the officers shall not unlock the operating device or mechanism, but shall immediately secure the attendance of the county clerk and one (1) member of the county board of elections other than the county clerk, who shall reset the counters at zero and relock the device covering the counters, or properly arrange the ***ballots***~~ballot~~

~~labels~~], as the case may be, in the presence of the election officers. If the attendance of members of the board of elections cannot be obtained before the opening of the polls or within one (1) hour thereafter, the election officers shall notify the county clerk of the foregoing facts and obtain from the county clerk ~~[a]~~ reserve voting ~~equipment~~~~[machine]~~, and proceed to conduct the election. Any reserve ~~voting equipment~~~~[machine]~~ shall have been certified for use at the election by the county board of elections and prepared for use at the election by the election officers in the precinct in the same manner as the original ~~voting equipment~~~~[machine]~~ was prepared for the election. The ~~voting equipment~~~~[machine]~~ found to have been so operated shall be returned immediately to the custody of the county clerk, whose duty it shall be to promptly repair same ~~so~~~~[in order]~~ that it may be used as ~~[a]~~ reserve ~~voting equipment~~~~[machine]~~ in the election if needed.

➔Section 27. KRS 117.215 is amended to read as follows:

- (1) If, during the conduct of an election, ~~[a]~~ **voting equipment, or any part of a voting system, no longer operates**~~[machine becomes in a state of disrepair so that it cannot be operated]~~ in a manner that will comply with the provisions of this chapter, the election officers shall lock or seal the **voting equipment**~~[machine in such a manner as]~~ to prevent further voting thereon and record the numbers shown by the public counter. Then the election officers shall secure from the county clerk ~~[a]~~ reserve voting **equipment**~~[machine]~~, ~~[which shall be]~~ prepared and made ready for use as provided in KRS 117.205, and ~~[thereupon]~~ proceed to conduct the election. When the polls are closed both the original and reserve voting ~~equipment~~~~[machines]~~ shall be examined and the votes thereon registered shall be counted as provided in KRS 117.275, and the aggregate number of votes cast on **all voting equipment**~~[both machines]~~ for each candidate and on each question shall be certified as the result of the **primary or** election in that precinct.
- (2) If an emergency should arise due to the malfunction of the voting ~~equipment~~~~[machine]~~, the county clerk shall provide ~~[a]~~ backup voting **equipment**~~[machine]~~ or ~~[supplemental]~~ paper ballots for use at the precinct and a ballot box in which to deposit the voted ballots. The ballot box shall be locked with two (2) locks and the judges of the precinct shall each hold the key to one (1) lock. At the close of voting, the **paper** ballots shall be counted at the precinct or a central counting center and added to the votes cast **using voting equipment**~~[by machine]~~. The aggregate of these votes shall be certified as the result of the election in that precinct.

➔Section 28. KRS 117.225 is amended to read as follows:

- (1) Any person desiring to vote on election day shall give his or her name and address to the clerk of the election and shall provide proof of identification as defined in **Section 41 of this Act**~~[KRS 117.375]~~.
- (2) A voter who votes in person at a precinct polling place that is located at a state-licensed care facility where the voter resides is not required to provide proof of identification, as defined in **Section 41 of this Act**~~[KRS 117.375]~~, before voting in a primary or an election.
- (3) If the voter's name is listed on the precinct list furnished by the State Board of Elections as provided in KRS 117.025, the voter provides proof of identification, the voter is exempt pursuant to subsection (2) of this section, or the voter otherwise satisfies the requirements of KRS 117.228, and if no challenge is made, then he or she shall sign his or her name on the precinct list in the space opposite his or her printed name. The voter's signature shall constitute the voter's verification that the voter is a properly registered and qualified voter. The voter shall then retire alone to cast his or her vote on the **ballot provided**~~[voting machine]~~. The county board of elections may provide to each precinct the original registration form of each voter entitled to vote in that precinct. These forms shall be used to compare signatures in those precincts to which the forms are provided.
- (4) If supplemental paper ballots are used, as provided in KRS 118.215, after voting **using the voting equipment**~~[on the voting machine]~~ the voter shall take the supplemental paper ballot with the stub intact and retire alone to the voting booth provided for voting paper ballots. After voting the supplemental paper ballot, the voter shall remove the numbered stub, hand the stub to an election officer and deposit the voted **supplemental paper** ballot in the locked supplemental paper ballot box in the presence of a precinct election officer.

➔Section 29. KRS 117.235 is amended to read as follows:

- (1) No person, other than the election officers, challengers, person assisting voters in accordance with KRS 117.255(3), and a minor child in the company of a voter, shall be permitted within the voting room while the vote is being polled, except as follows:
  - (a) For the purpose of voting;
  - (b) By authority of the election officers to keep order and enforce the law;

- (c) With the express approval of the county board of elections to repair or replace voting equipment that is malfunctioning, and to provide additional voting equipment; or
  - (d) At the voter's discretion, a minor child in the company of a voter may accompany the voter into a voting booth or other private area provided for casting a vote.
- (2) No officer of election shall do any electioneering on election day.
- (3) (a) No person shall electioneer at the polling place on the day of any election, as established in KRS 118.025, **or** within a distance of one hundred (100) feet of any entrance to a building in which ~~[-a]~~ voting ~~[-machine]~~ is **conducted** ~~[-located]~~ if that entrance is unlocked and is used by voters on **any primary or** election day.
- (b) No person shall electioneer within the interior of a building or affix any electioneering materials to the exterior or interior of a building where the county clerk's office is located, or any building designated by the county board of elections and approved by the State Board of Elections for **in-person** absentee voting, during the hours **in-person** absentee voting is being conducted in the building ~~[-by the county clerk pursuant to KRS 117.085(1)(c)]~~.
- (c) **No person shall electioneer within one hundred (100) feet of a mail-in absentee drop-box or drop-receptacle.**
- ~~(d)(e)~~ Electioneering shall include the displaying of signs, the distribution of campaign literature, cards, or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question, but shall not include exit polling, bumper stickers affixed to a person's vehicle while parked within or passing through a distance of one hundred (100) feet of any entrance to a building in which ~~[-a]~~ voting ~~[-machine]~~ is **conducted** ~~[-located]~~, private property as provided in subsection (7) of this section, or other exceptions established by the State Board of Elections through the promulgation of administrative regulations **under KRS Chapter 13A.**
- (4) No voter shall be permitted to converse with others while in any room in which voting, including **in-person** absentee voting, is conducted concerning their support or nonsupport of any candidate, party, or issue to be voted on, except as provided in KRS 117.255.
- (5) Any precinct election officer, county clerk, deputy county clerk, or any law enforcement official may enforce the election laws and maintain law and order at the polls and within one hundred (100) feet of any entrance to the building in which **voting is conducted** ~~[-the voting machine is located]~~ if that entrance is unlocked and is used by voters. Assistance may be requested of any law enforcement officer.
- (6) Notwithstanding the provisions of subsection (1) of this section, the State Board of Elections may establish a program designed to instill in school children a respect for the democratic principles of voting by conducting in any county a mock election for school children in conjunction with any primary, ~~[-or]~~ regular, or special election. The State Board of Elections shall promulgate administrative regulations **under KRS Chapter 13A** regarding the mock elections to **ensure** ~~[-insure]~~ that the regular voting process will not be impaired.
- (7) Notwithstanding the provisions of subsection (3) of this section, nothing in this section shall prohibit the displaying of political campaign signs on private property or private establishments by a person having a leased or ownership interest in that private property or private establishment within the campaign-free zone, regardless of the distance from the polling place. In the case of a polling location being on private property that is leased or otherwise under contract for the purpose of serving as a polling location, the provisions of subsection (3) of this section shall be applicable to that leased or contracted-for private property.

➔Section 30. KRS 117.227 is amended to read as follows:

Except as otherwise provided, election officers shall confirm the identity of each voter by proof of identification as defined in **Section 41 of this Act** ~~[-KRS 117.375]~~. The election officer confirming the identity shall sign the precinct voter roster and list the method of proof of identification.

➔Section 31. KRS 117.228 is amended to read as follows:

- (1) Except as provided in subsection (4) of this section, on the day of a primary, an election, or during in-person absentee voting, if a voter is unable to provide proof of identification as required under KRS 117.225, and as defined under **Section 41 of this Act** ~~[-KRS 117.375]~~, a voter may cast a ballot if the individual:

- (a) Is eligible to vote under KRS 116.025;
- (b) Is entitled to vote in that precinct; and
- (c) In the presence of the election officer, executes a voter's affirmation, on a form prescribed and furnished by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A, affirming:
  - 1. The voter is a citizen of the United States;
  - 2. The voter's date of birth to the best of the voter's knowledge and belief;
  - 3. The voter is qualified to vote in this precinct under KRS 116.025;
  - 4. The voter's name, and that the voter is generally known by that name, or the name is as stated on his or her voter registration card;
  - 5. The voter has not voted and will not vote in any other precinct;
  - 6. The voter's current residential address, including the street address number and, if different from the voter's current address, the voter's residential address prior to the close of the registration books under KRS 116.045, and the date the voter moved;
  - 7. The voter understands that making a false statement on the affirmation is punishable under penalties of perjury; and
  - 8. The voter has one (1) of the following impediments to procure proof of identification as defined in **Section 41 of this Act** ~~KRS 117.375~~:
    - a. Lack of transportation;
    - b. Inability to obtain his or her birth certificate or other documents needed to show proof of identification;
    - c. Work schedule;
    - d. Lost or stolen identification;
    - e. Disability or illness;
    - f. Family responsibilities;
    - g. The proof of identification has been applied for, but not yet received; or
    - h. The voter has a religious objection to being photographed.
- (2) In addition to the requirements of subsection (1) of this section, to cast a ballot, the voter who is unable to provide proof of identification shall provide to an election officer:
  - (a) The voter's Social Security Card;
  - (b) Any identification card issued by a county in this state which has the name of the voter stated and has been approved in writing by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A;
  - (c) Any identification card with the voter's photograph and the name of the voter stated;
  - (d) Any food stamp identification card, electronic benefit transfer card, or supplemental nutrition assistance card, that is issued by this state and has the name of the voter stated; or
  - (e) A credit or debit card with the name of the voter stated.
- (3) After the election officer obtains the affirmation from the voter required by subsection (1) of this section, and after the voter provides the documents under subsection (2) of this section, the voter shall sign the precinct signature roster and shall proceed to cast his or her vote in a ballot completion area.
- (4) If the voter is personally known to the election officer, the election officer may execute an election officer affirmation, on a form prescribed and furnished by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A, affirming the voter's identification as being personally known to him or her. Once the affirmation is executed by the election officer, the voter shall sign the precinct signature roster and shall proceed to cast his or her vote in a ballot completion area. For purposes of this

subsection, "personally known" means that the election officer knows the voter's name and that the voter is a resident of the community.

- (5) The voter affirmation and the election officer affirmations executed under this section shall be processed in the same manner as an oath of voter affidavit as prescribed by KRS 117.245(3) and (4).

➔Section 32. KRS 117.229 is amended to read as follows:

On the day of a primary, an election, or during in-person absentee voting when a federal elective office is on the ballot, if a voter is unable to provide proof of identification, as required under KRS 117.225 and as defined under **Section 41 of this Act**~~(KRS 117.375)~~, or the voter fails to meet the requirements of KRS 117.228, the voter may cast a provisional ballot for the federal elective office of President, Vice President, United States Senator, and United States House of Representative if the individual conforms to the provisional voting requirements in accordance with the Help America Vote Act of 2002.

➔Section 33. KRS 117.245 is amended to read as follows:

- (1) The fact that a person is registered constitutes only prima facie evidence of his or her right to vote and does not prevent the officers of any election from refusing to allow him or her to vote for cause.
- (2) When the officers of an election disagree as to the qualifications of a voter or if his or her right to vote is disputed by a challenger, other than for failure to provide proof of identification as defined in **Section 41 of this Act**~~(KRS 117.375)~~, the voter shall sign a written oath as to his or her qualifications before he or she is permitted to vote. The oath shall be in such form prescribed and furnished by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A. Twenty (20) printed copies of these oaths shall be included in the election supplies of each precinct.
- (3) The subscribed oaths shall be returned to the county clerk who shall deliver them to the Commonwealth's attorney.
- (4) The Commonwealth's attorney and county attorney shall investigate each of the oaths and cause to be summoned before the grand jury the witnesses they or either of them, deem proper, and the grand jury shall make a thorough investigation of all votes so cast, and return indictments against all persons illegally voting. The foreman of the grand jury shall return to the county clerk all of the oaths upon which no indictments are found. The county clerk shall safely keep them as a part of the records of his or her office, and shall produce any or all of them, when required, to any subsequent grand jury.

➔Section 34. KRS 117.255 is amended to read as follows:

- (1) The voter shall be instructed by the officers of election, with the aid of the instruction cards and ~~any~~~~(the)~~ model **if applicable**, in the use of the **voting equipment**~~(machine)~~, if the voter so requests.
- (2) Except for those voters who have been certified as requiring assistance on a permanent basis **under this section**, no voter shall be permitted to receive any assistance in voting at the polls unless the voter makes and signs an oath that, because of blindness, other physical disability, or an inability to read English, the voter is unable to vote without assistance. **The voter shall indicate in the oath the specific reason that requires the voter to receive assistance.** The oath shall be upon a voter assistance form prescribed and furnished by the State Board of Elections pursuant to administrative regulations promulgated under KRS Chapter 13A. Any person assisting a voter shall complete the voter assistance form.
- (3) Upon making and filing the oath with the precinct clerk, the voter requiring assistance shall retire to the voting ~~booth~~~~(machine)~~ or ballot completion area with the precinct judges, and one (1) of the judges shall, in the presence of the other judge and the voter, ~~operate the machine or~~ complete the ballot as the voter directs. A voter requiring assistance in voting may, if the voter prefers, be assisted by a person of the voter's own choice who is not an election officer, except that the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union shall not assist a voter.
- (4) The precinct election clerk shall swear a person assisting a voter in voting to ~~operate the voting machine or~~ complete the ballot in accordance with the directions of the voter, and the person sworn shall enter the voting booth or ballot completion area and ~~operate the machine or~~ complete the ballot for the voter as the voter directs.
- (5) A voter who requires voting assistance on a permanent basis because of blindness or other physical disability may apply to the county board of elections for certification. Application may be made when registering to vote or completing the voter assistance form by indicating that the reason for obtaining assistance is permanent. The county board of elections shall determine whether the applicant requires assistance on a permanent basis.

The county board of elections shall notify the county clerk of persons certified as requiring permanent voting assistance and the county clerk shall enter the certification on the voter's registration record. The State Board of Elections shall indicate on the precinct roster of voters those voters who are certified to receive assistance permanently without signing the voter assistance form at the precinct.

- (6) ~~["Voting booth" or "ballot completion area" means an area in which a voter casts his or her vote or completes his or her ballot which is designed to insure the secrecy of the vote. No voter shall be assisted under this subsection unless the judges and the sheriff of election are satisfied of the truth of the facts stated in the oath. The voter shall state in his or her oath the specific reason that requires him or her to receive assistance.~~
- (7) ~~]~~No voter shall be permitted to occupy the voting **booth or ballot completion area**~~[machine]~~ more than **four** ~~(4)[two (2)]~~ minutes if other voters are waiting to use it, except that those voters who because of a disability need extra time to cast a ballot shall be given a reasonable amount of time to vote.
- (7)~~(8)~~ In primaries, before a voter is permitted to use the voting **equipment**~~[machine]~~, a judge of the election shall adjust the **voting equipment**~~[machine]~~ so that the voter will only be able to vote for the persons for whom the voter is qualified to vote.
- (8)~~(9)~~ If the **voting equipment**~~[machine]~~ is so constructed as to require adjustment after one (1) person has voted before another person may vote, the judges of election shall adjust it after each person has voted.
- (9)~~(10)~~ The election officers shall constantly maintain a watch in order to prevent any person from voting more than once.
- (10)~~(11)~~ For voters voting as federal provisional voters, or if supplemental paper ballots have been approved as provided in KRS 118.215, the voter shall vote his or her federal provisional or supplemental ballot in privacy in a voting booth provided for that purpose by the county clerk. If the voter spoils his or her **federal provisional or supplemental** ballot, the voter shall return the spoiled **federal provisional or supplemental** paper ballot to an election officer who shall stamp the ballot "Spoiled," initial, and place the spoiled **federal provisional or supplemental** ballot in an envelope provided for that purpose. The voter shall be issued a second federal provisional or supplemental paper ballot. Upon completion of voting, the voter shall remove the numbered stub from the **federal provisional or supplemental** ballot, hand the stub to an election officer and deposit the voted **federal provisional or supplemental** ballot in the appropriate locked ballot box or locked receptacle in the presence of an election officer.
- (11)~~(12)~~ The election sheriff shall be responsible for reporting violations of this section.

➔Section 35. KRS 117.265 is amended to read as follows:

- (1) A voter may, at any regular or special election, cast a write-in vote for any person qualified as provided in subsection (2) or (3) of this section, whose name does not appear upon the ballot~~[label]~~ for any office, by writing the name of his or her choice upon the appropriate **ballot**~~[device]~~ for the office being voted on ~~provided on the voting machine]~~ as required by KRS 117.125. Any candidate for city, county, urban-county, consolidated local government, charter county government, or unified local government office who is defeated in a partisan or nonpartisan primary shall be ineligible as a candidate for the same office in the regular election. Any voter utilizing a federal provisional ballot, a federal provisional in-person absentee ballot, or a mail-in absentee ballot for a regular or special election may write in a vote for any eligible person whose name does not appear upon the ballot, by writing the name of his or her choice under the office.
- (2) Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate with the Secretary of State or county clerk, depending on the office being sought, on or before the fourth Friday in October preceding the date of the regular election and not later than the second Friday before the date of a special election. In the case of a special election administered under KRS 118.730, a declaration of intent to be a write-in candidate shall be filed at least twenty-eight (28) days before the day of the election. The declaration of intent shall be filed no earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot, and no later than 4 p.m. local time at the place of filing when filed on the last date on which papers may be filed. The declaration of intent shall be on a form prescribed and furnished by the Secretary of State.
- (3) A person shall not be eligible as a write-in candidate:
- (a) For more than one (1) office in a regular or special election; or

- (b) If his or her name appears upon the ballot ~~[label]~~ for any office, except that the candidate may file a notice of withdrawal prior to filing an intent to be a write-in candidate for office when a vacancy in a different office occurs because of:
1. Death;
  2. Disqualification to hold the office sought;
  3. Severe disabling condition which arose after the nomination; or
  4. The nomination of an unopposed candidate.
- (4) Persons who wish to run for President and Vice-President shall file a declaration of intent to be a write-in candidate, along with a list of presidential electors pledged to those candidates, with the Secretary of State on or before the fourth Friday in October preceding the date of the regular election for those offices. The declaration of intent shall be filed no earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot, and no later than 4 p.m. local time at the place of filing when filed on the last date on which papers may be filed. Write-in votes cast for the candidates whose names appear on the ballot shall apply to the slate of pledged presidential electors, whose names shall not appear on the ballot.
- (5) The county clerk shall provide to the precinct election officers certified lists of those persons who have filed declarations of intent as provided in subsections (2) and (3) of this section. Only write-in votes cast for qualified candidates shall be counted.
- (6) Two (2) election officers of opposing parties shall upon the request of any voter instruct the voter on how to cast a write-in vote.

➔Section 36. KRS 117.275 is amended to read as follows:

- (1) At the count of the votes in any precinct, any candidate or slate of candidates and any representatives to witness and check the count of the votes therein, who are authorized to be appointed as is provided in subsection (9) of this section, shall be admitted and ~~be~~ permitted to be present and witness the count.
- (2) As soon as the polls are closed, and the last voter has voted, the judges *at that time* shall immediately lock and seal the voting equipment so that the voting and counting *mechanisms* ~~[mechanism]~~ will be prevented from *operating* ~~[operation]~~, and they shall sign a certificate stating:
  - (a) That the voting equipment has been locked against voting and sealed;
  - (b) The number of voters, as shown on the public counters;
  - (c) The number registered on the protective or *cumulative* ~~[accumulative]~~ counter or device ~~[, if any]~~; and
  - (d) The number or other designation of the voting equipment. ~~[.]~~

~~The~~ ~~[which]~~ certificate, *with any additional certificate previously prepared under Section 7 of this Act*, shall be returned by the judges of election to the officials authorized by law to receive it. The judges shall compare the number of voters, as shown by the counter of the voting equipment, with the number of those who have voted as shown by the protective or *cumulative* ~~[accumulative]~~ counter or device ~~[, if any]~~.

- (3) Where voting equipment is used which does not print the candidates' names along with the total votes received on a general return sheet or record for that equipment, the procedure to be followed shall be as follows:
  - (a) The judges, in the presence of the representatives mentioned in subsection (1) of this section, if any, and of all other persons who may be lawfully within the polling place, shall give full view of all the counter numbers;
  - (b) The judges shall enter, in ink, the total votes cast for each candidate, and slate of candidates, and for and against each question on the return sheets; and
  - (c) Each precinct election officer shall sign the return sheets, and a copy of the return sheets shall be posted on the precinct door.
- (4) Where voting equipment is used that prints the candidates' names along with the total votes received on a return sheet or record for that equipment, the precinct election officers shall sign the return sheets or record for the voting equipment, which shall be posted on the door of the precinct.



- (5) If any officer shall decline to sign the return sheets, he or she shall state the reason in writing, and a copy thereof, signed by the officer, shall be enclosed with the return sheets.
- (6) Each of the return sheets, if applicable, and the record of the voting equipment shall be enclosed in an envelope. One (1) copy of the return sheets, if applicable, one (1) copy of the record of the voting equipment, and the write-in roll, if any write-in votes were cast in the precinct, shall be directed to the county board of elections of the county in which the election is being held. One (1) copy of the return sheets or record of the voting equipment shall be given to the county clerk of the county in which the election is being held and to each of the local governing bodies of the two (2) dominant political parties, but a local governing body of a dominant political party may decline a copy of the precinct election return by filing a written declination with the county board of elections prior to the election, and upon this declination, a printed copy shall not be issued to the political party so declining. The declination on file shall be effective for that election and any subsequent elections until revoked by the local governing body of a dominant political party by filing a written revocation with the county board of elections. The envelope shall have endorsed thereon a certificate of the election officers, stating the number *or unique designation* of the *voting equipment*~~[machine]~~, the precinct where it has been used, the number on the seal, and the number on the protective or *cumulative*~~[accumulative]~~ counter or device at the close of the polls.
- (7) Following the tabulation of all votes cast in the election, including absentee votes and write-in votes, the county board shall mail a copy of the precinct-by-precinct summary of the tabulation sheets showing the results from each precinct to the State Board of Elections and the county clerk shall mail or deliver the precinct signature rosters from each precinct to the State Board of Elections during the period established by KRS 117.355(3).
- (8) As soon as possible after the completion of the count, the two (2) judges shall return to the county board of elections the keys to the voting *equipment*~~[machine]~~ received and receipted for by them, and the county clerk in which the precinct is located shall have the voting *equipment*~~[machine]~~ properly boxed or securely covered and removed to a proper and secure place of storage.
- (9) In primaries, each candidate or group of candidates may designate to the county board of elections a representative to witness and check the vote count. In regular elections, the governing authority of each political party, each candidate for member of board of education, nonpartisan candidate, *political group candidate, political organization candidate*, independent candidate, or independent ticket may designate a representative to the county board of elections to witness and check the vote count. The county board of elections shall authorize representatives of the news media to witness the vote count.
- (10) For all federal provisional ballots, if applicable, and supplemental paper ballots if approved as provided in KRS 118.215, after the polls are closed, the two (2) judges shall return to the county clerk's office the locked federal provisional ballot receptacle and the supplemental paper ballot box, all ballot stubs, spoiled ballots, and unvoted ballots at the same time as the tabulation of votes from the voting *equipment*~~[machine]~~ is delivered. The county clerk shall issue a receipt for the number of ballot stubs, unvoted ballots, spoiled ballots, and the ballot boxes or ballot receptacle.
- (11) The county board of elections, or its designee, shall count and tally the supplemental paper ballots *that have not been tabulated by automatic tabulating equipment at the precinct, either* manually or with the use of tabulating equipment *that has been certified by the State Board of Elections for use for that purpose in the county clerk's office*~~[which does not involve an additional voting system]~~. The results of the vote tally shall be certified by the county board of elections to the county clerk and to the Secretary of State.
- (12) The county board of elections shall tabulate the valid federal provisional ballots. The results of the vote tally shall be certified by the county board of elections to the county clerk and to the Secretary of State. The county board shall mail a copy of the precinct-by-precinct summary of the valid federal provisional ballot tabulation sheets showing the results from each precinct to the State Board of Elections.
- (13) The county board of elections shall authorize the candidates, slates of candidates, or their representatives, and representatives of the news media to be present during the counting of the supplemental and federal provisional paper ballots.
- (14) Except as otherwise required in this chapter, *all*~~[that certain]~~ records and papers relating to specified elections *shall* be retained for twenty-two (22) months, the county clerk shall retain the voted federal provisional ballots, voter affirmations, election official affirmations, and the supplemental paper ballots for twenty-two (22) months and the unvoted federal provisional ballots, the voter affirmations, election official affirmations, and the supplemental paper ballots for sixty (60) days after each election day, after which time they shall be

destroyed in a manner to render them unreadable by the county board of elections if no contest or recount action has been filed.

➔Section 37. KRS 117.295 is amended to read as follows:

- (1) For a period of ten (10) days following any primary ~~[election]~~, and for a period of thirty (30) days following any **regular** ~~[general]~~ or special election, the voting **equipment** ~~[machine]~~ shall remain locked against voting and the ballot boxes containing all paper ballots shall remain locked, except that the voting **equipment** ~~[machines]~~ and the ballot boxes may be opened and all the data and figures therein examined: ~~[;]~~
  - (a) Upon the order of any court of competent jurisdiction, or judge thereof; ~~[; or]~~
  - (b) By direction of any legislative committee **or board** authorized and empowered to investigate and report upon contested elections; ~~[;]~~
  - (c) **By a county board of elections under the direction of the State Board of Elections pursuant to a risk-limiting audit; or**
  - (d) **As required to conduct a recount under Section 80 of this Act.** ~~[and]~~

All the data and figures shall be examined by the court, judge, **county board of elections, State Board of Elections**, or committee in the presence of the officer having the custody of the **voting equipment, ballots,** ~~[machine]~~ and ballot boxes. In the event of a contest of election, the court in which the contest is pending or the committee before which the contest is being heard may, upon motion of any party to the contest, issue an order requiring that the voting **equipment, ballots,** ~~[machines]~~ and ballot boxes shall remain continuously locked for further time as may be reasonable or necessary, with due regard for the preparation of the **voting equipment** ~~[machines]~~ for a succeeding primary, regular **election**, or special election, but in no event shall the order compel that the **voting equipment** ~~[machines]~~ remain locked to a time within thirty (30) days next preceding any approaching primary, regular **election**, or special election.

- (2) During the period when the **voting equipment** ~~[machine]~~ and the ballot boxes are required to be kept locked, the keys thereto shall remain in the possession of the county board of elections. After that period, it shall be the duty of the county board of elections to return the keys to the custody of the county clerk.

➔Section 38. KRS 117.305 is amended to read as follows:

- (1) The canvass and returns provided for in KRS 117.275 shall constitute the official returns of the precinct, unless before 4 p.m. on the Tuesday following a primary or regular election, or before 4 p.m. on the day following a special election held for the purpose of filling a vacancy, the county clerk or county board of elections takes notice of a discrepancy in the tally of votes cast in any precinct or number of precincts, or a candidate makes a written request to the county board of elections in the case of a candidate who has filed with the county clerk, or the Secretary of State in the case of a candidate who has filed with the Secretary of State, to check and recanvass the voting **equipment** ~~[machines]~~, valid federal provisional ballots, valid federal provisional absentee ballots, and absentee ballots of any precinct or any number of precincts involving **the candidate's** ~~[his or her]~~ race. **A candidate's written request for a recanvass shall be insufficient to compel the recanvass unless the difference between the number of votes received by the requesting candidate and the number of votes received by any other candidate or candidates for the same office is less than one percent (1%) of the total votes which were cast for such office.**
- (2) **The county board of elections shall, immediately upon notice of any discrepancy as described in subsection (1) of this section, or upon receipt of a request for a recanvass, notify each candidate for the office of the time and place of the recanvass. At the recanvass, each political party represented on the board may appoint a representative there to be its governing body, and also each candidate to be voted for may be present, either in person or by a representative or both. The county board of elections shall authorize representatives of the news media to observe the recanvass of the voting equipment in each precinct.**
- (3) After ~~the~~ ~~[this]~~ time period has elapsed and notice is taken **as provided under subsections (1) and (2) of this section**, the county board of elections shall assemble at 9 a.m. on the Thursday following the filing deadline to request a recanvass **under this section**, and not sooner, and recheck and recanvass **the voting equipment** ~~[each machine]~~ and make a proper return thereof to the county clerk, and the canvass and return shall become the official returns for the **primary or** election. In making the recanvass, the board shall make a record of the number of the seal **or the unique designation** upon the voting **equipment** ~~[machine]~~ and, without unlocking the **voting equipment** ~~[machine against voting]~~, recanvass the vote cast ~~[thereon]~~.

- (4) If, after a recanvass, it is found that the original canvass of the returns has been correctly made from the **voting equipment**~~(machine)~~, and that there still remains a discrepancy unaccounted for, this discrepancy shall be noted. If, upon recanvass, it appears that the original canvass of the returns by the election officers was incorrect, the returns and all papers being prepared by the board shall be corrected accordingly. ~~The county board of elections shall, immediately upon receipt of a request for a recanvass, notify each candidate for the office of the time and place of the recanvass. At the recanvass, each political party represented on the board may appoint a representative there to be its governing body, and also each candidate to be voted for may be present, either in person or by a representative or both. The county board of elections shall authorize representatives of the news media to observe the recanvass of the votes cast on the voting machine in each precinct.~~ Nothing in this section shall prohibit an individual from requesting, in addition to a recanvass, a recount as authorized by KRS Chapter 120.
- (5)~~(2)~~ The State Board of Elections shall prescribe and furnish *the* forms to be used by county boards of election to report all recanvassed votes. The form, *promulgated through administrative regulations under KRS Chapter 13A*, shall include the following information:
- (a) The name of the county in which the recanvass was conducted;
  - (b) The date of the report;
  - (c) The date of the *primary or* election;
  - (d) The office for which the recanvass was conducted;
  - (e) The names of each candidate for the office being recanvassed; and
  - (f) The~~(machine)~~ votes *cast at the polls*, absentee votes, valid federal provisional votes, valid federal provisional absentee votes, and vote totals for each candidate, as well as write-in votes cast in a regular or special election for candidates whose names did not appear on the ballot.

The report shall be signed by each member of the county board of elections.

- (6)~~(3)~~ The county board of elections shall file its recanvass report as prescribed in administrative regulations promulgated by the State Board of Elections in conformity with KRS Chapter 13A.
- (7)~~(4)~~ The State Board of Elections shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the proper procedures for conducting a recanvass for each type of voting system approved by the State Board of Elections and in use in Kentucky.
- ➔Section 39. KRS 117.345 is amended to read as follows:
- (1) The cost of all elections held in any county shall be allowed by the fiscal court *or legislative body of any urban-county government, charter county, consolidated local government, or unified local government* and paid by the county treasurer, except as otherwise provided by law.
  - (2) When the cost of any election has been allowed by the fiscal court *or legislative body of any urban-county government, charter county, consolidated local government, or unified local government* and paid by the county treasurer,~~and~~ within sixty (60) days following the date of the election, the county treasurer shall certify a statement of the number of precincts in the county, the date, and kind of election to the State Board of Elections, including an election that was delayed or postponed in accordance with KRS 39A.100. The certification shall be filed within ninety (90) days after the election. Upon receipt of the certification and upon being satisfied as to the correctness thereof, the State Board of Elections shall issue its warrant upon the State Treasurer in favor of the county treasurer for the amount of two hundred fifty-five dollars (\$255) for each precinct in the county.
  - (3) Payments to any county under the provisions of subsection (2) of this section shall be terminated if and whenever it fails to renew a lease, contract, or lease and option with the *Finance and Administration Cabinet*~~(State Property and Buildings Commission)~~ executed in connection with the acquisition of voting systems~~(machines)~~ by the *cabinet*~~(commission)~~ for the use of the county; and payments to any county shall be terminated whenever the county fails to pay any part of the rentals required for any effective period of the lease or if a county board of elections fails to provide training to precinct election officers required by KRS 117.187(2). *As used in this subsection, "county" includes urban-county government, charter county government, consolidated local government, and unified local government.*

➔Section 40. KRS 117.355 is amended to read as follows:

- (1) Within three (3) days after any primary or general election, the precinct election sheriff shall file a report with the ~~chair~~~~chairman~~ of the county board of elections and with the local grand jury. The report shall include any irregularities observed and any recommendations for improving the election process.
- (2) Within ten (10) days after any primary or general election, the county board of elections shall file a report with the State Board of Elections and the local grand jury. The report shall include any irregularities of which the county board has knowledge and any recommendations for improving the election process. The report shall also include a breakdown by precinct of the number of voters requiring assistance to vote and the reasons therefor; the number of special ballots cast by category; and any other information required by the state board.
- (3) Within thirty (30) days after any primary or general election, the county board of elections shall transmit the information required by KRS 117.275(4) to (7).
- (4) The State Board of Elections shall issue administrative regulations *under KRS Chapter 13A* to prescribe the forms required by this section.

➔Section 41. KRS 117.375 is repealed, reenacted, amended, and renumbered as KRS 117.001 to read as follows:

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

- (1) **"Audit log" means a detailed record of all actions and events that have occurred on the voting system, including:**
  - (a) **Log-in attempts with username and time stamp;**
  - (b) **Election definition and setup;**
  - (c) **Ballot preparation and results processing;**
  - (d) **Diagnostics of any type; and**
  - (e) **Error and warning messages and operator response;**

~~["Electronic or electromechanical voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.]~~

- (2) "Automatic tabulating equipment" means apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results;~~[-]~~
- (3) ~~["Voting device" means either an apparatus in which paper ballots or ballot cards are used in connection with an implement by which a voter registers his or her votes with ink or other substance or by punching, or an apparatus by which such votes are registered electronically, so that in either case the votes so registered may be computed and tabulated by means of automatic tabulating equipment.]~~
- (4) ~~"Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device.~~
- (5) ~~"Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines.~~
- (6) ~~]"Ballot" or "official ballot" means the *official presentation of offices and candidates to be voted for, including write-in candidates, and all public questions submitted for determination, and shall include a voting machine ballot*~~[label, ballot cards], a paper ballot~~~~[ballots], an absentee ballot, a federal provisional ballot, a federal provisional absentee ballot, or a supplemental paper ballot which has been authorized for the use of voters in any primary,~~~~[-or]~~ *regular election*, or special election by the Secretary of State or the county clerk;~~[-]~~~~
- (7) ~~"Voting punch device" means an apparatus in which ballots or ballot cards are inserted for the piercing of ballots by the voter. The hole may be in the form of a round dot, rectangle, square, or any other shape that will clearly indicate the intent of the voter.]~~
- (4) **"Ballot box" means any box, bag, or other container that can be locked, sealed, or otherwise rendered tamper-resistant, for receiving ballots;**
- (5)~~(8)~~ **"Ballot**~~[Vote]~~ marking device" means any approved device for marking a~~[paper]~~ ballot~~[with ink or other substance]~~ which will enable the ballot to be tabulated *manually or* by means of automatic tabulating equipment;~~[-]~~

- (6) *"Election" or "elections" means any primary, regular election, or special election;*
- (7) *"Federal provisional voter" means a person:*
- (a) *Who does not appear to be registered to vote;*
  - (b) *Whose name does not appear on the precinct roster;*
  - (c) *Who has not provided proof of identification to the precinct election officer before voting in a federal election; and*
  - (d) *Who elects to proceed with voting a federal provisional ballot under Section 32 of this Act;*
- (8) *"Federal provisional ballot" or "federal provisional absentee ballot" means ballots which have been authorized by the Secretary of State or the county clerk to be used by federal provisional voters in any federal primary or election;*
- (9) *"Inner envelope" or "secrecy" ~~Secrecy~~ envelope" means the envelope provided ~~handed~~ to the voter with a ~~his or her~~ ballot into which the voter shall place his or her voted ballot; ~~cards.~~*
- (10) *"Political group" has the same meaning as in Section 47 of this Act;*
- (11) *"Political organization" has the same meaning as in Section 47 of this Act;*
- (12)~~(10)~~ *"Precinct ballot counter" means an automatic tabulating device used at the precinct to tabulate and process ballots; ~~;~~*
- (13) *"Proof of identification" means a document that was issued by:*
- (a) *The United States or the Commonwealth of Kentucky, and the document contains:*
    - 1. *The name of the individual to whom the document was issued; and*
    - 2. *A photograph of the individual to whom the document was issued;*
  - (b) *The United States Department of Defense, a branch of the uniformed services, the Merchant Marine, or the Kentucky National Guard, and the document contains:*
    - 1. *The name of the individual to whom the document was issued; and*
    - 2. *A photograph of the individual to whom the document was issued;*
  - (c) *A public or private college, university, or postgraduate technical or professional school located within the United States, and the document contains:*
    - 1. *The name of the individual to whom the document was issued; and*
    - 2. *A photograph of the individual to whom the document was issued; or*
  - (d) *Any city government, county government, urban-county government, charter county government, consolidated local government, or unified local government, which is located within this state, and the document contains:*
    - 1. *The name of the individual to whom the document was issued; and*
    - 2. *A photograph of the individual to whom the document was issued;*
- (14) *"Risk-limiting audit" means an audit protocol that makes use of statistical principles and methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome;*
- (15) *"Voting booth" or "ballot completion area" means an area in which a voter casts his or her vote or completes his or her ballot which is designed to ensure the secrecy of the vote;*
- (16) *"Vote center" means a consolidated precinct of the county;*
- (17) *"Voting equipment" means any physical component of a voting system and includes voting machines where voting machines are in operation;*
- (18)~~(11)~~ *"Voting machine" or "machine" means a part of a voting system that consists of:*
- (a) *A direct recording electronic voting machine that:*

1. *Records votes by means of a ballot display provided with mechanical or electro-operated components that may be actuated by the voter;*
  2. *Processes the data by means of a computer program;*
  3. *Records voting data and ballot images in internal and external memory components; and*
  4. *Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or*
- (b) *One (1) or more electronic devices that operate independently or as a combination of a ballot marking device and an electronic or automatic vote tabulation device;*
- (19) *"Voting system" means:*
- (a) *The total combination of physical, mechanical, electromechanical, or electronic equipment, including the software, hardware, firmware, and documentation required to program, control, and support that equipment, that is used to:*
    1. *Define ballots;*
    2. *Cast and count votes;*
    3. *Report or display election results; and*
    4. *Maintain and produce any audit trail information; and*
  - (b) *The practices and associated documentation used to:*
    1. *Identify system components and versions of those components;*
    2. *Test the system during its development and maintenance;*
    3. *Maintain records of system errors and defects;*
    4. *Determine specific system changes to be made to a system after the initial qualification of the system; and*
    5. *Make available any materials to the voter, such as notices, instructions, forms, or paper ballots; and*
- (20) *"Voter-verified paper audit trail" means a contemporaneous paper record of a ballot printed for the voter to confirm his or her votes before the voter casts his or her ballot that:*
- (a) *Allows the voter to verify the voter's ballot choices before the casting of the voter's ballot;*
  - (b) *Is not retained by the voter;*
  - (c) *Does not contain individual voter information;*
  - (d) *Is produced on paper that is sturdy, clean, and resistant to degradation; and*
  - (e) *Is readable in a manner that makes the voter's ballot choices obvious to the voter or any person without the use of computer or electronic code* ~~shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his votes in an election.~~
- ~~(12) "Proof of identification" means a document that was issued by:~~
- ~~(a) The United States or the Commonwealth of Kentucky, and the document contains:~~
    - ~~1. The name of the individual to whom the document was issued; and~~
    - ~~2. A photograph of the individual to whom the document was issued;~~
  - ~~(b) The United States Department of Defense, a branch of the uniformed services, the Merchant Marines, or the Kentucky National Guard, and if the document contains:~~
    - ~~1. The name of the individual to whom the document was issued; and~~
    - ~~2. A photograph of the individual to whom the document was issued;~~
  - ~~(c) A public or private college, university, or postgraduate technical or professional school located within the United States, and contains:~~

1. ~~The name of the individual to whom the document was issued; and~~
  2. ~~A photograph of the individual to whom the document was issued; or~~
- (d) ~~Any city government, county government, urban county government, charter county government, consolidated local government, or unified local government, which is located within this state, and the document contains:~~
1. ~~The name of the individual to whom the document was issued; and~~
  2. ~~A photograph of the individual to whom the document was issued.~~
- (13) ~~"Federal provisional voter" means a person:~~
- (a) ~~Who is registered to vote;~~
  - (b) ~~Whose name appears on the precinct roster;~~
  - (c) ~~Who has not provided proof of identification to the precinct election officer before voting in a federal election; and~~
  - (d) ~~Who elects to proceed with voting a federal provisional ballot under KRS 117.229.~~
- (14) ~~"Federal provisional ballot" or "federal provisional absentee ballot" means ballots which have been authorized by the Secretary of State or the county clerk to be used by federal provisional voters in any federal primary or election].~~

➔Section 42. KRS 117.377 is amended to read as follows:

- (1) The *legislative body*~~[fiscal court]~~ of any county,~~[-or any]~~ urban-county *government, charter county government, consolidated local government, or unified local* government, may acquire by purchase or lease or lease-purchase agreement, or *may* abandon, any *voting equipment or* voting system covered by this chapter, if the *voting equipment or voting system* has been approved by the State Board of Elections. The *legislative body*~~[fiscal court]~~ shall notify the State Board of Elections that *new voting equipment or* a new voting system is being installed in the county.
- (2) The county clerk of any county may petition the State Board of Elections to allow *new voting equipment or* a new voting system in the county if an emergency exists. The petition must state the reasons why the present *voting equipment or voting system* is inadequate. Within sixty (60) days of the receipt of the petition the State Board of Elections shall notify the county clerk whether the permission to obtain *new voting equipment or* a new voting system is granted or denied. The letter of approval shall be presented to the *legislative body*~~[fiscal court]~~ for its approval before any new *voting equipment or* voting system is acquired.

➔Section 43. KRS 117.379 is amended to read as follows:

- (1) Any person or corporation owning, manufacturing, or selling any~~[-electronic]~~ voting system, may request the State Board of Elections to examine the *voting* system. Before requesting an examination or reexamination, any person, persons, or corporation shall pay to the State Treasurer *a nonrefundable deposit*~~[an examination fee]~~ of five hundred dollars (\$500) and submit a test report from an independent testing authority approved by the State Board of Elections. The report shall demonstrate that the *voting* system meets all *Election Assistance*~~[Federal Election]~~ Commission voting system standards. *Notwithstanding any other provision of law to the contrary, if these voting system standards have been amended less than thirty-six (36) months prior to the request for examination under this subsection, the State Board of Elections may approve and certify a voting system that meets the prior standards after determining:*
  - (a) *The effect that such approval would have on the integrity and security of elections; and*
  - (b) *The procedure and cost involved to bring the voting system into compliance with the amended standards.*

The State Board of Elections may, at any time, reexamine any *voting* system already approved. The State Board of Elections shall approve or disapprove any voting system within sixty (60) days after the date of its initial submission. *Any or all costs associated with the voting system being examined or reexamined shall be paid to the State Treasurer by the person or corporation once the approval or disapproval of the voting machine is complete.*

- (2) Upon receipt of a request for examination or reexamination of a~~[-an electronic]~~ voting system, the State Board of Elections shall require that such *voting* system be examined or reexamined by three (3) examiners. The

State Board of Elections shall appoint one (1) examiner who is an expert in computer science or ~~electronic~~ voting systems; ~~and~~ one (1) person who is knowledgeable in election procedures, *election security*, and *election law* in Kentucky; ~~and~~ and one (1) person who is a present or former county clerk. The three (3) examiners shall submit one (1) written report on each *voting* system examined or reexamined to the State Board of Elections. The members of the State Board of Elections shall also examine or reexamine the *voting* system. A *voting* system shall be approved *and certified* if the examiners' report states that the *voting* system meets all the requirements of *Section 18 of this Act and applicable federal law*, ~~KRS 117.381~~ and the State Board of Elections finds that the *voting* system meets all of the requirements of *Section 18 of this Act and applicable federal law*, ~~KRS 117.381~~. The report and a letter of approval shall be filed in the office of the State Board of Elections.

- (3) Any ~~electronic~~ voting system not approved by the State Board of Elections shall not be used at any *primary or* election.
- (4) When a ~~an electronic~~ voting system has been approved, any improvement or changes in the *voting* system shall render necessary the examination or approval of such *voting* system or improvement.
- (5) Neither the members of the State Board of Elections, nor any examiner appointed by the State Board of Elections, nor any member of a county board of elections shall have any pecuniary interest in any ~~electronic~~ voting system.
- (6) Each examiner appointed by the State Board of Elections shall receive fair compensation to be established by the State Board of Elections.

➔Section 44. KRS 117.383 is amended to read as follows:

The State Board of Elections shall ~~prescribe rules and~~ promulgate administrative regulations under KRS Chapter 13A which shall ~~include but not be limited to the following:~~

- ~~(1)~~ Achieve ~~and~~ maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting *and shall provide methods to:* ~~;~~
  - ~~(1)~~~~(2)~~ Count, tabulate, and record votes;
  - ~~(2)~~~~(3)~~ *Place* ~~Establish a method for placing~~ items on *any ballot* ~~the electronic voting device,~~ which shall, as closely as possible, follow the requirements pertaining to *ballots* ~~ballot labels~~;
  - ~~(3)~~~~(4)~~ Design the *ballots to include a* ~~ballot cards and federal provisional ballot cards, including a numerical~~ system to ensure an accurate record of all voting activities;
  - ~~(4)~~~~(5)~~ Instruct voters in the use of the voting *system, including any ballot marking* device;
  - ~~(5)~~~~(6)~~ Provide for checking the accuracy of the *voting system* ~~equipment~~;
  - ~~(6)~~~~(7)~~ Provide necessary supplies, including those necessary for a write-in vote, *to ensure* ~~and secrecy envelopes for punch cards or data processing cards to insure~~ voter privacy;
  - ~~(7)~~~~(8)~~ As part of the official canvass, provide for a manual recount of randomly selected precincts representing three percent (3%) to five percent (5%) of the total ballots cast in each election;
  - ~~(8)~~~~(9)~~ *Provide for the conducting and review of an audit of any component of a voting system or any voting equipment, and a review of any audit log;*
  - ~~(9)~~ *Provide for the conducting and review of an election audit, including a risk-limiting audit, and risk-limiting audit pilot program;*
  - ~~(10)~~ Provide a method for maintaining sufficient documents, *including ballots* and records, so that votes can be recounted; ~~Such documents and records shall include any material other than a ballot card which is imprinted with the names of candidates and issues voted upon. Records shall be maintained in such a manner that a specific piece of printed material listing issues and candidates can be matched with the specific ballot cards which were marked in reliance upon such printed material.~~
  - ~~(11)~~ Except as otherwise required in this chapter, *all* ~~that certain~~ records and papers relating to specified elections be retained for twenty-two (22) months, such documents and records shall be maintained for thirty (30) days following an election; and
  - ~~(12)~~~~(10)~~ Unless contrary to the Help America Vote Act of 2002, ensure that all federal provisional voting shall be conducted in a manner as prescribed by KRS Chapters 116 to 120.



➔Section 45. KRS 117.385 is amended to read as follows:

~~{(1)}~~ A voter who spoils or defaces a ballot~~{-card}~~ or marks it erroneously shall return the **ballot**~~{-card}~~ to an election officer. The election officer shall deliver to the voter another ballot~~{-card}~~, but no voter may receive more than three ~~(3)~~ **ballots**~~{-ballot cards}~~ including the one originally delivered to the voter. Upon return of a defective ballot~~{-card}~~, an election officer shall cancel it by writing in ink on the back the word "spoiled." The canceled ballot~~{-card}~~ shall be placed with spoiled ballots to be returned with the election returns.

~~{(2)}~~ (a) ~~After marking the ballot card, the voter shall place it inside the secrecy envelope and return it to an election officer, who shall deposit the ballot in the appropriate ballot box.~~

~~(b)~~ When precinct ballot counters are used, the voter, unless voting a federal provisional ballot, may either:

1. ~~Insert his or her ballot contained in the secrecy envelope provided and deposit the emptied ballot container envelope with the election officer presiding over the ballot counter; or~~

2. ~~Deposit the ballot in the ballot box;~~

~~for processing by a precinct election officer after the polls close.}~~

➔Section 46. KRS 117.995 is amended to read as follows:

- (1) Any person appointed to serve as an election officer but who shall knowingly and willfully fail to serve and who is not excused by the county board of elections for the reasons specified in this chapter shall be guilty of a violation and shall be ineligible to serve as an election officer for a period of five (5) years.
- (2) Any county clerk or member of the county board of elections who knowingly and willfully violates any of the provisions of this chapter, including furnishing applications for absentee ballots, **applications for**~~{-and}~~ federal provisional absentee ballots, **and mail-in absentee ballots** to persons other than those specified by the provisions of this chapter, and failure to type the name of the voter on the application form as required by the provisions of this chapter, shall be guilty of a Class D felony.
- (3) Any officer who willfully fails to prepare or furnish **ballots**~~{-ballot labels}~~, federal provisional ballots, federal provisional absentee ballots, or absentee ballots or fails to allow a qualified voter to cast his or her vote **using voting equipment**~~{-on the machine}~~ as required of the voter by this chapter shall be guilty of a Class A misdemeanor.
- (4) Any election officer who knowingly and willfully violates any of the provisions of this chapter, including failure to enforce the prohibition against electioneering established by KRS 117.235, shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
- (5) Any person who **violates Section 6 of this Act, or who** signs a name other than his or her own on an application for an absentee ballot, the verification form for the ballot, an emergency absentee ballot affidavit, a voter or election official affirmation, or any person who votes an absentee ballot other than the one issued in his or her name, or any person who applies for the ballot for the use of anyone other than himself or herself or the person designated by the provisions of this chapter, or any person who makes a false statement on an application for an absentee ballot or on an emergency absentee ballot affidavit shall be guilty of a Class D felony.
- (6) Any person who violates any provision of KRS 117.235 or 117.236 related to prohibited activities during absentee voting or on election day, after he or she has been duly notified of the provisions by any precinct election officer, county clerk, deputy county clerk, or other law enforcement official, shall, for each offense, be guilty of a Class A misdemeanor.
- (7) Any person who knowingly and willfully prepares or assists in the preparation of an inaccurate or incomplete voter assistance form or fails to complete a voter assistance form when required shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense; however, if a voter has been permanently certified as requiring voting assistance, there shall be no offense for the failure of the voter to complete the form.
- (8) The members of a county board of elections who fail to provide the training to precinct election officers required by KRS 117.187(2) shall be subject to removal by the State Board of Elections.
- (9) Any local or state election official, including the Secretary of State, employees of the Secretary, and members of the State Board of Elections and their staff, who knowingly and willfully uses the voter registration roster in violation of KRS 117.025(3)(a) shall, for each offense, be guilty of a Class A misdemeanor.

➔Section 47. KRS 118.015 is amended to read as follows:

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

- (1) A "political party" is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and whose candidate received at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for;
- (2) The word "election" used in reference to a state, district, county, or city election, includes the decisions of questions submitted to the qualified voters as well as the choice of officers by them;
- (3) A "ballot" or "official ballot" means the *official presentation of offices and candidates to be voted for, including write-in candidates, and all public questions submitted for determination, and shall include a voting machine ballot*~~[label, ballot cards]~~, a paper *ballot*~~[ballots]~~, an absentee ballot, a federal provisional ballot, a federal provisional absentee ballot, or a supplemental paper ballot which has been authorized for the use of the voters in any primary,~~[or]~~ regular *election*, or special election by the Secretary of State or the county clerk;
- (4) *"Ballot box" means any box, bag, or other container that can be locked, sealed, or otherwise rendered tamper-resistant, for receiving ballots;*
- (5) *"Voting equipment" means any physical component of a voting system and includes voting machines where voting machines are in operation*~~["Ballot label" means the cards, papers, booklet, pages, or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines;~~
- ~~(5) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device;~~
- (6) "Voting machine" or "machine" *means a part of a voting system that consists of:*
  - (a) *A direct recording electronic voting machine that:*
    1. *Records votes by means of a ballot display provided with mechanical or electro-operated components that may be actuated by the voter;*
    2. *Processes the data by means of a computer program;*
    3. *Records voting data and ballot images in internal and external memory components; and*
    4. *Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or*
  - (b) *One (1) or more electronic devices that operate independently or as a combination of a ballot marking device and an electronic or automatic vote tabulating device*~~[shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his or her votes in an election];~~
- (7) *"Voting system" means:*
  - (a) *The total combination of physical, mechanical, electromechanical, or electronic equipment, including the software, hardware, firmware, and documentation required to program, control, and support that equipment, that is used to:*
    1. *Define ballots;*
    2. *Cast and count votes;*
    3. *Report or display election results; and*
    4. *Maintain and produce any audit trail information; and*
  - (b) *The practices and associated documentation used to:*
    1. *Identify system components and versions of those components;*
    2. *Test the system during its development and maintenance;*
    3. *Maintain records of system errors and defects;*

4. *Determine specific system changes to be made to a system after the initial qualification of the system; and*
5. *Make available any materials to the voter, such as notices, instructions, forms, or paper ballots;*

- (8) The word "resident" used in reference to a candidate in a state, district, county, or city election shall mean actual resident, without regard to the residence of the spouse of the candidate;
- ~~(9)(8)~~ "Political organization" means a political group not constituting a political party within the meaning of subsection (1) of this section but whose candidate received two percent (2%) or more of the vote of the state at the last preceding election for presidential electors; and
- ~~(10)(9)~~ "Political group" means a political group not constituting a political party or a political organization within the meaning of subsections (1) and ~~(9)(8)~~ of this section.

➔Section 48. KRS 118.025 is amended to read as follows:

- (1) Except as otherwise provided by law, voting in all primaries and elections shall be by secret *paper* ballot ~~on voting machines~~.
- (2) The general laws applying to primaries, regular *elections*, and special elections shall apply to primaries, regular *elections*, and special elections conducted with the use of voting *equipment* ~~(machines)~~, and all provisions of the general laws applying to the custody of ballot boxes shall apply, as far as applicable, to the custody of the voting *system or voting equipment* ~~(machine)~~.
- (3) *A primary* ~~(Primaries)~~ for the nomination of candidates to be voted for at the next regular election shall be held on the first Tuesday after the third Monday in May of each year.
- (4) The election of all officers of all governmental units shall be held on the first Tuesday after the first Monday in November.
- (5) If the law authorizes the calling of a special election on a day other than the day of the regular election in November, the election shall be held on a Tuesday.
- (6) If the law requires that a special election be held within a period of time during which the voting *equipment* ~~(machines)~~ must be locked as required by KRS 117.295, the special election shall be held on the fourth Tuesday following the expiration of the period during which the voting *equipment is* ~~(machines are)~~ locked.

➔Section 49. KRS 118.105 is amended to read as follows:

- (1) Except as provided in subsections (3) and (4) of this section and in KRS 118.115, every political party shall nominate all of its candidates for elective offices to be voted for at any regular election at a primary held as provided in this chapter, and the governing authority of any political party shall have no power to nominate any candidate for any elective office or to provide any method of nominating candidates for any elective office other than by a primary as provided in this chapter.
- (2) Any political organization not constituting a political party as defined in KRS 118.015 may make its nominations as provided in KRS 118.325.
- (3) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the certification of candidates for the regular election made under KRS 118.215, because of death, *withdrawal*, disqualification to hold the office sought, or severe disabling condition which arose after the nomination, the governing authority of the party may provide for filling the vacancy, but only following certification to the governing authority, by the Secretary of State, that a vacancy exists for a reason specified in this subsection. When such a nomination has been made, the certificate of nomination shall be signed by the chair and secretary of the governing authority of the party making it, and shall be filed in the same manner as certificates of nomination at a primary.
- (4) If a vacancy occurs in the nomination of an unopposed candidate or in a nomination made by the primary before the certification of candidates for the regular election, and if that party's nominee was the only political party candidate for the office sought, the governing authority of each party may nominate a candidate for the regular election, provided that no person has sought that party's nomination by filing a notification and declaration.

- (5) If a vacancy occurs in the nomination of a candidate under the conditions of subsection (3) or (4) of this section prior to September 15 preceding the day of the regular election, certificates of nomination for replacement candidates shall be filed in the same manner as provided in subsections (3) and (4) not later than 4 p.m. ten (10) days after the vacancy occurs, excluding weekends and legal holidays. If a vacancy occurs in the nomination of a candidate under the conditions of subsection (3) or (4) of this section on or after September 15 preceding the date of the regular election, certificates of nomination for replacement candidates shall be filed in the same manner as provided in subsections (3) and (4) not later than 4 p.m. five (5) days after the vacancy occurs, excluding weekends and legal holidays.
- (6) If a vacancy in candidacy described in subsection (5) of this section occurs later than the second Thursday preceding the date of the regular election, no certificates of nomination shall be filed and any candidate whose name does not appear on the ballot may seek election by write-in voting pursuant to KRS 117.265.
- (7) This section does not apply to candidates for members of boards of education, or presidential electors, nor to candidates participating in nonpartisan elections. However, regardless of the number of days served by a judge acting as a Senior Status Special Judge, a judge who elected to retire as a Senior Status Special Judge in accordance with KRS 21.580 shall not become a candidate for any elected office during the five (5) year term prescribed in KRS 21.580(1)(a)1.

➔Section 50. KRS 118.215 is amended to read as follows:

- (1) After the order of the names has been determined as provided in KRS 118.225, the Secretary of State shall certify, to the county clerks of the respective counties entitled to participate in the nomination or election of the respective candidates, the name, place of residence, and party of each candidate or slate of candidates for each office, as specified in the nomination papers or certificates and petitions of nomination filed with him or her, and shall designate the device with which the candidate groups, slates of candidates, or lists of candidates of each party shall be printed, in the order in which they are to appear on the ballot, with precedence to be given to the party that polled the highest number of votes at the preceding election for presidential electors, followed by the political party which received the second highest number of votes, with the order of any other political parties and independents to be determined by lot. Candidates for county offices and local state offices shall be listed in the following order: Commonwealth's attorney, circuit clerk, property valuation administrator, county judge/executive, county attorney, county clerk, sheriff, jailer, county commissioner, coroner, justice of the peace, and constable. The names of candidates for President and Vice President shall be certified in lieu of certifying the names of the candidates for presidential electors. The names shall be certified as follows:
  - (a) Not later than the second Monday after the filing deadline for the primary as established in KRS 83A.045, 118.165, and 118A.060;
  - (b) Not later than the second Monday following the filing deadline for the regular election, except as provided in paragraph (c) of this subsection; and
  - (c) Not later than the Monday after the Friday following the first Tuesday in September preceding a regular election, for those years in which there is an election for President and Vice President of the United States.
- (2) Except as otherwise provided in subsection (3) of this section, all independent candidates or slates of candidates whose nominating petitions are filed with the county clerk or the Secretary of State shall be listed under the title and device designated by them as provided in KRS 118.315, or if none is designated, under the word "independent," and shall be placed on the ballot in a separate column or columns or in a separate line or lines according to the office which they seek. The order in which independent candidates or slates of candidates shall appear on the ballot shall be determined by lot by the county clerk. If the same device is selected by two (2) groups of petitioners, it shall be given to the first selecting it and the county clerk shall permit the other group to select a suitable device. This section shall not apply to candidates for municipal offices which come under subsection (3) of this section.
- (3) The ballots used at any election in which city officers are to be elected as provided in subsection (2) of this section shall contain the names of candidates for the city offices grouped according to the offices they seek, and the candidates shall be immediately arranged with and designated by the title of office they seek. The order in which the names of the candidates for each office are to be printed on the ballot shall be determined by lot. Each group of candidates for each separate office for which the candidates are to be elected shall be clearly separated from other groups on the ballot and spaced to avoid confusion on the part of the voter.

- (4) The Secretary of State shall not knowingly certify to the county clerk of any county the name of any candidate or slate of candidates who has not filed the required nomination papers, nor knowingly fail to certify the name of any candidate or slate of candidates who has filed the required nomination papers.
- (5) If the county clerk determines that the number of certified candidates or slates of candidates cannot be placed on a ballot which can be accommodated by the voting ~~equipment[machines]~~ currently in use by the county, he or she shall so notify the State Board of Elections not later than the last Tuesday in February preceding the primary or the last Tuesday in August preceding the regular election. The State Board of Elections shall meet within five (5) days of the notice, review the ballot conditions, and determine whether supplemental paper ballots are necessary for the election. Upon approval of the State Board of Elections, supplemental paper ballots may be used for nonpartisan candidates or slates of candidates for an office or offices and public questions submitted for a yes or no vote. All candidates or slates of candidates for any particular office shall be placed either on the ~~[machine]~~ ballot or on the *supplemental* paper ballot. Supplemental paper ballots may also be used to conduct the voting, in the instance of a small precinct as provided in KRS 117.066.
- (6) The ballot position of a candidate or slate of candidates shall not be changed after the ballot position has been designated by the county clerk.

➔Section 51. KRS 118.225 is amended to read as follows:

- (1) For the purpose of determining the order in which the names of candidates or slates of candidates to be voted for by the electors of the entire state shall be certified and printed on the ballots with the designation of the respective offices, the Secretary of State shall prepare lists of the counties of each congressional district of the state. The Secretary of State shall arrange the surnames of all candidates or slates of candidates for each office in alphabetical order for the First Congressional District, and the names shall be certified in this order to the county clerks of all the counties comprising that district. For each succeeding congressional district, taken in numerical order, the name appearing first for each office in the last preceding district shall be placed last, and the name appearing second in the last preceding district shall be placed first, and each other name shall be moved up one (1) place. The lists shall be certified accordingly.
- (2) For all other offices for which nomination papers and petitions are filed with the Secretary of State, the order of names of candidates for each office shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the filing deadline for the primary as established in KRS 83A.045, 118.165, and 118A.060 or the Thursday following the first Tuesday after the first Monday in June preceding the regular election.
- (3) For all offices for which nomination papers and petitions are filed in the office of the county clerk, the order in which the names of candidates for each office are to be printed on the ballot shall be determined by lot at a public drawing in the office of the county clerk at 2 p.m., standard time, on the Thursday following the filing deadline for the primary as established in KRS 83A.045, 118.165, and 118A.060 or the Thursday following the first Tuesday after the first Monday in June preceding the regular election.
- (4) For all offices for which the deadline for filing nomination papers and petitions is governed by KRS 83A.165(4)(c) or 118.375(2), the order in which the names of candidates for each office are to be printed shall be determined by lot at a public drawing in the office at the place of filing at 2 p.m., standard time, on the Thursday following the second Tuesday in August preceding the regular election.
- (5) If the number of certified candidates or slates of candidates cannot be placed on a ballot which can be accommodated on voting ~~equipment[machines]~~ currently in use in the county, the county clerk shall notify the State Board of Elections, as provided in KRS 118.215.

➔Section 52. KRS 118.305 is amended to read as follows:

- (1) Except as provided in KRS 118.345, and subject to the provisions of subsections (2), (3), and (4) of this section, the county clerk of each county shall cause to be printed *on all ballots, including* ~~for the voting machines and on~~ the absentee ballots, for the regular election the names of the following persons:
  - (a) Candidates of a political party, as defined in KRS 118.015, who have received certificates of nomination at the preceding primary, or certificates of nomination under KRS 118.185, and whose certificates of nomination have been filed with the Secretary of State or the appropriate county clerk;
  - (b) Candidates of a political party, as defined in KRS 118.015, who have been nominated for an unexpired term in a manner determined by the governing authority of the party, as provided in KRS 118.115, and whose evidences of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;

- (c) Candidates of a political party, as defined in KRS 118.015, who have been nominated by the governing authority of the party to fill a vacancy in the candidacy of a person nominated at the preceding primary, as provided in KRS 118.105, and whose certificates of nomination have been filed with the Secretary of State or the appropriate county clerk, by at least the date provided by the election law generally for such filing;
  - (d) Candidates who have been nominated by a political organization as provided in KRS 118.325 and whose certificates or petitions of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;
  - (e) Independent candidates who have been nominated by petition as provided in KRS 118.315, and whose petitions of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;
  - (f) Successful nominees of all nonpartisan primaries which shall have been conducted;
  - (g) Candidates who have filed a petition of candidacy as shall be required to fill a vacancy which shall appear on the ballot;
  - (h) The county clerk shall determine whether the name of any replacement candidate who has been nominated as provided in KRS 118.105(5) may be placed on the ~~machine~~ ballot ~~or ballot cards~~ and whether ~~any~~ ~~the~~ voting ~~equipment~~ ~~machine~~ may be reprogrammed to count the votes cast for that candidate, or whether the ballot ~~or ballot cards~~ must be reprinted to accommodate votes cast for any replacement candidate, and shall take the appropriate action to accommodate the replacement of any candidate. If the county clerk determines that the name of any replacement candidate cannot be accommodated on the existing ballot ~~or ballot cards~~ and if there is insufficient time before the election to reprint the entire ballot, the county clerk shall request approval to use supplemental paper ballots for voting for that office only in the same manner as permitted for other situations ~~as provided~~ in KRS 118.215(5), and, if approved, shall have an adequate number of supplemental paper ballots printed for voting for that office and only votes cast for that office by means of the supplemental paper ballots shall be tabulated and recorded by the precinct election officers and county board of elections. All actions by a county clerk, the State Board of Elections, and the Secretary of State which are necessary to provide for voting at a regular election for candidates nominated pursuant to KRS 118.105(5) shall be carried out with all possible speed. When a candidate has been replaced as provided in KRS 118.105(5) after absentee and federal provisional absentee ballots have been printed and distributed for the regular election, neither the precinct election officers nor the county board of elections shall tabulate or record any absentee or federal provisional absentee votes cast for the candidate who was replaced. If ballots are reprinted or supplemental paper ballots are printed, or if voting ~~equipment~~ ~~machines~~ must be reprogrammed to count the votes cast for a replacement candidate, the costs for the printing and reprogramming shall be paid by the political party who has nominated a replacement candidate, or proportionately by each political party if each party nominates a replacement candidate;
  - (i) Candidates for President and Vice President of the United States, of those political parties and organizations who have nominated presidential electors as provided in KRS 118.325, if the certificate of nomination of the electors has been filed with the Secretary of State within the time prescribed in this chapter;
  - (j) Candidates for soil and water district supervisors who have been nominated by petition as provided in KRS 262.210; and
  - (k) Candidates for city office for which no nonpartisan primary has been conducted in a city which requires nonpartisan city elections.
- (2) Any candidate for city office who is defeated in a partisan or nonpartisan primary shall be ineligible as a candidate for the same office in the regular election.
- (3) Candidates for members of boards of education shall have their names printed on **ballots, including** ~~ballot labels and~~ absentee ballots, for the regular election only after filing as provided in KRS 160.220.
- (4) Except as provided in KRS 118.105 and 118.115, no candidate's name shall be printed upon **any ballots, including** ~~the ballot labels,~~ federal provisional ballots, federal provisional absentee ballots, and absentee ballots for any regular election as the nominee of any political party, as defined in KRS 118.015, or under the emblem of any political party, as so defined, except those candidates who have been duly and regularly nominated as nominees of that party at a primary held as provided in this chapter.

- (5) No county clerk shall knowingly cause to be printed, upon the **ballots**~~[ballot labels]~~, federal provisional ballots, federal provisional absentee ballots, or absentee ballots for any regular election, the name of any candidate of a political party, as defined in KRS 118.015, who has not been nominated in the manner provided in the laws governing primaries or the name of any candidate who is not in compliance with the restrictions concerning party registration and candidacy provided in of KRS 118.315(1).
- (6) The names of candidates for President and Vice President shall be certified in lieu of certifying the names of the candidates for presidential electors.
- (7) When a vacancy occurs in an elective office which is required by law to be filled temporarily by appointment, the officer or body designated by law to make the appointment, or in the case of an office to be filled by appointment from a list of nominations, the officer or body designated by law to make the nominations, shall immediately notify in writing both the county clerk and Secretary of State of the vacancy.
- (8) A judge who elected to retire as a Senior Status Special Judge in accordance with KRS 21.580 shall not become a candidate or a nominee for any elected office during the five (5) year term prescribed in KRS 21.580(1)(a)1., regardless of the number of days served by the judge acting as a Senior Status Special Judge.

➔Section 53. KRS 118.325 is amended to read as follows:

- (1) Any political organization not constituting a political party within the meaning of KRS 118.015 but whose candidate received two percent (2%) of the vote of the state at the last preceding election for presidential electors may nominate, by a convention or primary held by the party in accordance with its constitution and bylaws, candidates for any offices to be voted for at any regular election, except the office of member of a board of education, for which nominations shall be made as provided in KRS 160.220. Any political party, as defined in KRS 118.015, and any political organization not constituting such a political party but whose candidate received two percent (2%) of the vote of the state at the last preceding election for presidential electors, may nominate, by a convention or primary held by the party or organization in accordance with its constitution and bylaws, as many electors of President and Vice President of the United States as this state is entitled to elect.
- (2) The certificate of nomination by such a convention or primary shall be in writing, shall contain the name of each person nominated, his or her residence, and the office to which he or she is nominated, and shall designate a title for the party or principle that such convention or primary represents, together with any simple figure or device by which its list of candidates may be designated on the **ballots**~~[voting machines]~~. The certificate shall be signed by the presiding officer and secretary of the convention, or by the chair and secretary of the county, city, or district committee, who shall add to their signatures their respective places of residence, and acknowledge the same before an officer duly authorized to administer oaths. A certificate of the acknowledgment shall be appended to the certificate of nomination. In the case of electors of President and Vice President of the United States the certificate of nomination shall state the names of the candidates of the party for President and Vice President.
- (3) Any person desiring to become a candidate for an office, the nomination to which is to be made by a convention pursuant to subsections (1) and (2) of this section, except for the office of elector of President and Vice President of the United States, shall file a statement with the official designated in KRS 118.165 with whom notification and declaration forms are filed for the office. The form of the statement shall be prescribed by the State Board of Elections. Such statement shall be filed as prescribed by KRS 118.365.
- (4) If the certificate of nomination of any state convention requests that the figure or device selected by such convention be used to designate the candidates of such party on the **ballots**~~[voting machines]~~ for all elections throughout the state, that figure or device shall be used until changed by request of a subsequent state convention of the same party. The device may be any appropriate symbol other than the coat of arms or seal of this state or of the United States, the national flag, or any other emblem common to the people at large.
- (5) In case of death, resignation, or removal of any such candidate subsequent to nomination and before the certification of candidates for the regular election made under KRS 118.215, the chair of the state, county, or city district committee shall fill the vacancy, unless a supplemental certificate or petition of nomination is filed. In the case of electors of President and Vice President of the United States, a vacancy may be filled by the chair of the state committee at any time before the meeting of the electors, whether the vacancy occurs before or after the election.
- (6) If any political party entitled to nominate by convention fails to do so, the names of all nominees by petition for any office who are designated in their petition as members and candidates of that party shall be printed under the device and title on the **ballots**~~[voting machines]~~ as if nominated by a convention. If two (2) or more

persons who have filed certificates of nomination under this section claim to be the nominee of the same political party, the governing authority of that party shall designate to the Secretary of State and county clerk, in writing, which of the candidates is entitled to the party emblem. If there are two (2) or more contending executive committees of the same party in the county or district, the county or district executive committee that is recognized by the state governing authority of the party, by the written certificate of its chair, shall be recognized by the Secretary of State and county clerk.

- (7) A judge who elected to retire as a Senior Status Special Judge in accordance with KRS 21.580 shall not become a candidate or a nominee for any elected office during the five (5) year term prescribed in KRS 21.580(1)(a)1., regardless of the number of days served by the judge acting as a Senior Status Special Judge.

➔Section 54. KRS 118.345 is amended to read as follows:

- (1) No candidate who has been defeated for the nomination for any office in a primary~~[election]~~ shall have his *or her* name placed on *ballots*~~[voting machines]~~ in the succeeding regular election as a candidate for the same office for the nomination to which he *or she* was a candidate in the primary~~[election]~~, except that if a vacancy occurs in the party nomination for which he *or she* was a candidate in the primary~~[election]~~ his *or her* name may be placed on *the ballots*~~[voting machines]~~ for the regular election as a candidate of that party if he *or she* has been duly made such party nominee after the vacancy occurs as provided in KRS 118.105.
- (2) No person who was a candidate for nomination for any office in a primary~~[election]~~ and who, before the succeeding regular election, is declared by the judgment of any court of competent jurisdiction to have violated, in the primary~~[election]~~, any provision of KRS Chapter 121, or to be responsible for such violation by others, shall have his *or her* name placed on *ballots*~~[voting machines]~~ for any office to be voted for in the succeeding regular election.
- (3) This section does not apply to presidential preference primary candidates.

➔Section 55. KRS 118.405 is amended to read as follows:

No candidate's name shall appear on any *ballot, including any*~~[voting machine]~~ federal provisional ballot, federal provisional absentee ballot, or absentee ballot more than once, except that a candidate's name may appear twice if he or she is a candidate for a primary or a regular election and also a candidate to fill a vacancy in the same office required to be filled at a special election, when the special election to fill a vacancy is scheduled for the regular election day.

➔Section 56. KRS 118.415 is amended to read as follows:

- (1) The General Assembly may state the substance of the amendment proposed to the Constitution of Kentucky in the form of a question in a manner calculated to inform the electorate of the substance of the amendment. When an amendment to the Constitution has been proposed by the General Assembly, the Secretary of State shall cause the question calculated to inform the electorate of the substance of the amendment which is prepared by the General Assembly or the Attorney General to be published at least one (1) time in a newspaper of general circulation published in this state, and shall also cause to be published at the same time and in the same manner the fact that the amendment will be submitted to the voters for their acceptance or rejection at the next regular election at which members of the General Assembly are to be voted for. The publication shall be made not later than the first Tuesday in August preceding the election at which the amendment is to be voted on.
- (2) The Attorney General shall, if the General Assembly has not already done so, state the substance of an amendment to the Constitution of Kentucky which has been proposed by the General Assembly in the form of a question in a manner calculated to inform the electorate of the substance of the amendment, and, not later than fourteen (14) days preceding the first Tuesday in August preceding the next regular election at which members of the General Assembly are to be chosen, shall certify the question to the Secretary of State to be placed on the *ballots*~~[voting machine]~~.
- (3) The Secretary of State, not later than the second Monday after the second Tuesday in August preceding the next regular election at which members of the General Assembly are to be chosen in a year in which there is not an election for President and Vice President of the United States, or not later than the Thursday after the first Tuesday in September preceding a regular election in a year in which there is an election for President and Vice President of the United States, shall certify the substance of the amendment, as stated and certified by the General Assembly or by the Attorney General, to the county clerk of each county, and the county clerk shall have the substance of the amendment, as so certified, indicated on the *ballots*~~[voting machines]~~.



- (4) The votes cast for and against the amendment shall be counted, canvassed, and certified to the Secretary of State in the same manner as the votes cast for any officer elective by the votes of the whole state. If a majority of the votes cast on the question are for the amendment, it shall become a part of the Constitution.
- (5) The expenses of the publications provided for in this section shall be paid as are the expenses of other publications that the Secretary of State is required to make in connection with elections.

➔Section 57. KRS 118A.010 is amended to read as follows:

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

- (1) "Ballot" or "official ballot" means the *official presentation of offices and candidates to be voted for, including write-in candidates, and all public questions submitted for determination, and shall include a voting machine ballot*~~[label, ballot cards]~~, a paper *ballot*~~[ballots]~~, an absentee ballot, a special ballot, or a supplemental paper ballot which has been authorized for the use of the voters in any primary, *regular election*~~[general]~~, or special election by the Secretary of State or the county clerk;
- (2) ~~["Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting device or by marking with a pen or special marking device;~~
- (3) ~~"Ballot label" means the cards, papers, booklet, pages, or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines;~~
- (4) ~~"Election" refers only to elections for offices of the Court of Justice;~~
- (3) *"Voting equipment" means any physical component of a voting system and includes voting machines where voting machines are in operation;*~~[and]~~
- (4)~~(5)~~ "Voting machine" or "machine" *means a part of a voting system that consists of:*
- (a) *A direct recording electronic voting machine that:*
1. *Records votes by means of a ballot display provided with mechanical or electro-operated components that may be actuated by the voter;*
  2. *Processes the data by means of a computer program;*
  3. *Records voting data and ballot images in internal and external memory components; and*
  4. *Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or*
- (b) *One (1) or more electronic devices that operate independently or as a combination of a ballot marking device and an electronic or automatic vote tabulating device; and*
- (5) *"Voting system" means:*
- (a) *The total combination of physical, mechanical, electromechanical, or electronic equipment, including the software, hardware, firmware, and documentation required to program, control, and support that equipment, that is used to:*
1. *Define ballots;*
  2. *Cast and count votes;*
  3. *Report or display election results; and*
  4. *Maintain and produce any audit trail information; and*
- (b) *The practices and associated documentation used to:*
1. *Identify system components and versions of those components;*
  2. *Test the system during its development and maintenance;*
  3. *Maintain records of system errors and defects;*
  4. *Determine specific system changes to be made to a system after the initial qualification of the system; and*
  5. *Make available any materials to the voter, such as notices, instructions, forms, or paper ballots*~~[shall include lever machines and, as far as applicable, any electronic or~~

~~electromechanical unit and supplies utilized or relied upon by a voter in casting his vote in an election.~~

No provisions of KRS Chapter 118 existing on March 10, 1976, except KRS 118.015 through 118.045 shall apply to such elections. All other provisions of the election laws not inconsistent with this chapter shall be applicable thereto.

➔Section 58. KRS 118A.060 is amended to read as follows:

- (1) Except as provided in KRS 118A.100, no person's name shall appear on a ballot, *including an* ~~label or~~ absentee ballot, for an office of the Court of Justice without first having been nominated as provided in this section.
- (2) Each candidate for nomination shall file a petition for nomination with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the first Friday following the first Monday in January preceding the day fixed by law for holding the primary for the office. The petition shall be sworn to before an officer authorized to administer an oath by the candidate and by not less than two (2) registered voters from the district or circuit from which he or she seeks nomination. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.
- (3) The petition for nomination shall be in the form prescribed by the State Board of Elections. The petition shall include a declaration sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.
- (4) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing. The order of names on the ballot for each district or circuit, and numbered division if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the filing deadline for the primary as established in this section and in KRS 83A.045 and 118.165.
- (5) Not later than the date set forth in KRS 118.215(1)(a) preceding the primary, and after the order of names on the ballot has been determined as required in subsection (4) of this section, the Secretary of State shall:
  - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division if divisions exist, as specified in the petitions for nomination filed with him or her; and
  - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (6) The ballot position of a candidate shall not be changed after the ballot position has been designated by the Secretary of State.
- (7) The county clerks of each county shall cause to be printed on the ~~ballot labels for the voting machines and on the special~~ ballots for the primary the names of the candidates for offices in the Court of Justice.
- (8) The names of the candidates shall be placed on the *ballots* ~~[voting machine]~~ in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot." The words "Vote for one," or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division if divisions exist, and the candidates shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on ~~the~~ *voting machines or special* ballots.
- (9) The two (2) candidates receiving the highest number of votes for nomination for justice or judge of a district or circuit, or numbered division if divisions exist, shall be nominated. Certificates of nomination shall be issued as provided in KRS 118A.190.
- (10) If it appears after expiration of the time for filing petitions for nomination that there are not more than two (2) candidates who have filed the necessary petitions for a place on the ballot in the regular election, no drawing

for ballot position shall be held and the Secretary of State shall immediately issue and file in the Secretary's office certificates of nomination, and send copies to the candidates.

➔Section 59. KRS 118A.090 is amended to read as follows:

- (1) For the regular election, the order of names on the ballot for each district or circuit, and numbered division if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the first Tuesday after the first Monday in June preceding the regular election, except as provided in KRS 118A.100(6).
- (2) Not later than the date set forth in KRS 118.215(1)(b) after the filing deadline for the regular election in a year in which there is no election for President and Vice President of the United States, or not later than the date set forth in KRS 118.215(1)(c) preceding a regular election in a year in which there is an election for President and Vice President of the United States, and after the order of names on the ballot has been determined as required in subsection (1) of this section, the Secretary of State shall:
  - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division if divisions exist, as certified under KRS 118A.060; and
  - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (3) The ballot position of a candidate shall not be changed after the ballot position has been designated by the Secretary of State. The county clerks of each county shall cause to be printed on the ~~[ballot labels for the voting machines and on the special]~~ ballots for the regular elections the names of the candidates for offices of the Court of Justice.
- (4) The names of the candidates shall be placed on the **ballots**~~[voting machine]~~ in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in such a manner that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on **any ballot**~~[voting machines or special ballots]~~.
- (5) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.

➔Section 60. KRS 118A.100 is amended to read as follows:

- (1) Candidates for an unexpired term of a judicial office to be filled at a regular election shall be nominated at the primary next preceding the regular election in the manner prescribed in KRS 118A.060 if the vacancy occurs not later than the second Friday in December preceding the primary. If the vacancy occurs on or after that date, the election to fill the unexpired term shall be held in accordance with the procedures described in this section and Section 152 of the Constitution of Kentucky.
- (2) If in a regular election for judicial office no candidates nominated as provided in KRS 118A.060 are available due to death, incapacity, or withdrawal, and the candidates have not been replaced as provided in KRS 118A.060, the election to fill the regular term shall be conducted in the manner prescribed in subsections (3) through (11) of this section.
- (3) Each candidate shall file a petition for nomination with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the election for the unexpired term will be held and not later than the first Tuesday after the first Monday in June preceding the day fixed by law for holding the regular election for the unexpired term, if the vacancy occurs prior to the first Tuesday following the first Monday in June. If the vacancy occurs after the first Tuesday following the first Monday in June, each candidate shall file a petition for nomination with the Secretary of State not later than the second Tuesday in August preceding the day fixed by law for holding the regular election for the unexpired term. The petition shall be sworn to by the candidate and by not less than two (2) registered voters from the district or circuit from which he or she seeks nomination, before an officer authorized to administer an oath. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.

- (4) The petition for nomination shall be in the form prescribed by the State Board of Elections. The petition shall include a declaration sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.
- (5) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.
- (6) The order of names on the ballot for each district or circuit, and numbered division if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the first Tuesday after the first Monday in June preceding the regular election for those petitions for nomination required to be filed no later than the first Tuesday following the first Monday in June. For those petitions for nomination required to be filed no later than the second Tuesday in August, the order of names on the ballot for each district and circuit, and numbered division if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the second Tuesday in August preceding the regular election.
- (7) Not later than the date set forth in KRS 118.215 and after the order of names on the ballot has been determined as required in subsection (6) of this section, the Secretary of State shall:
  - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division if divisions exist, as specified in the petitions for nomination filed with the Secretary of State; and
  - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (8) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (9) The county clerks of each county shall cause to be printed on the **ballots, including** ~~ballot labels for the voting machines and on the~~ absentee ballots, for the regular election the names of the candidates for offices of the Court of Justice.
- (10) The names of the candidates shall be placed on the **ballots** ~~[voting machine]~~ in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in a manner so that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the appropriate location. The office, numbered division if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on **any ballot** ~~[voting machines or special ballots]~~.
- (11) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division if divisions exist, shall be elected.
- (12) A judge who elected to retire as a Senior Status Special Judge in accordance with KRS 21.580 shall not become a candidate or a nominee for any elected office during the five (5) year term prescribed in KRS 21.580(1)(a)1., regardless of the number of days served by the judge acting as a Senior Status Special Judge.

➔Section 61. KRS 118A.150 is amended to read as follows:

- (1) In certification of candidates for judicial office, no reference shall be made to political affiliation.
- (2) The Secretary of State shall not knowingly certify to the county clerk of any county the name of any candidate who has not filed the required nomination or candidacy papers, nor knowingly fail to certify the name of any candidate who has filed the required nomination or candidacy papers.
- (3) No county clerk shall knowingly cause to be printed on **any ballots** ~~[the ballot labels]~~ or absentee ballots for any election, the name of a candidate for an office of the Court of Justice who has not been certified in the manner specified in this chapter.
- (4) If, before the time of certification of candidates who will appear on the ballot provided for in this chapter, any candidate whose petition or certificate of nomination or petition for candidacy has been filed, dies or notifies

the Secretary of State in writing, signed and properly notarized, that he will not accept the nomination or election, the Secretary of State shall not certify his name.

- (5) If, after the certification of candidates who will appear on the ballot, any candidate whose petition or certificate of nomination or petition for candidacy has been filed, dies or notifies the Secretary of State in the manner described in subsection (4) of this section, that he will not accept the nomination or election, the Secretary of State shall immediately notify the appropriate county clerk, and the clerk shall ensure that notice is provided to the appropriate precincts as provided in subsection (7) of this section.
- (6) If after the certification of candidates who will appear on the ballot, any candidate whose name appears on the ballot shall withdraw or die, neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate; and, in a primary ~~election~~, if there are only one (1) or two (2) remaining candidates on the ballot for that office, following the withdrawal or death of the other candidate or candidates, neither the precinct election officers nor the county board of elections shall tabulate or record the votes for the remaining candidate or candidates, and the officer with whom the remaining candidate or candidates has filed his or her nomination papers shall immediately issue and file in his or her office a certificate of nomination for that remaining candidate or candidates and send a copy to the remaining candidate or candidates.
- (7) If, after the certification of candidates who will appear on the ballot, any candidate whose name appears on the ballot shall withdraw pursuant to KRS 118.212 or die, the county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation, subject to a fine of not less than ten dollars (\$10) nor more than two hundred fifty dollars (\$250).

➔Section 62. KRS 118A.130 is amended to read as follows:

No judicial candidate's name shall appear on any ~~voting machine or absentee~~ ballot more than once.

➔Section 63. KRS 119.005 is amended to read as follows:

***As used in this chapter:***

- (1) A "ballot" or "official ballot" means the ***official presentation of offices and candidates to be voted for, including write-in candidates, and all public questions submitted for determination, and shall include a voting machine ballot*** ~~label, ballot cards~~, a paper ***ballot*** ~~ballots~~, an absentee ballot, a special ballot, a federal provisional ballot, a federal provisional absentee ballot, or a supplemental paper ballot which has been authorized for the use of the voters in any primary or regular or special election by the Secretary of State or the county clerk;
- (2) ***"Ballot box" means any box, bag, or other container that can be locked, sealed, or otherwise rendered tamper-resistant, for receiving ballots;***
- (3) ***"Voting equipment" means any physical component of a voting system and includes voting machines where voting machines are in operation*** ~~"Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines;~~
- ~~(3) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device;~~
- (4) "Voting machine" or "machine" ***means a part of a voting system that consists of:***
  - (a) ***A direct recording electronic voting machine that:***
    1. ***Records votes by means of a ballot display provided with mechanical or electro-operated components that may be actuated by the voter;***
    2. ***Processes the data by means of a computer program;***
    3. ***Records voting data and ballot images in internal and external memory components; and***
    4. ***Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or***

- (b) *One (1) or more electronic devices that operate independently or as a combination of a ballot-marking device and an electronic or automatic vote-tabulating device; and*
- (5) *"Voting system" means:*
- (a) *The total combination of physical, mechanical, electromechanical, or electronic equipment, including the software, hardware, firmware, and documentation required to program, control, and support that equipment, that is used to:*
1. *Define ballots;*
  2. *Cast and count votes;*
  3. *Report or display election results;*
  4. *Maintain and produce any audit trail information; and*
- (b) *The practices and associated documentation used to:*
1. *Identify system components and versions of those components;*
  2. *Test the system during its development and maintenance;*
  3. *Maintain records of system errors and defects;*
  4. *Determine specific system changes to be made to a system after the initial qualification of the system; and*
  5. *Make available any materials to the voter, such as notices, instructions, forms, or paper ballots*~~[shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his or her vote in an election].~~

➔Section 64. KRS 119.115 is amended to read as follows:

- (1) Any unauthorized person found in possession of any key to a voting machine, **voting equipment, or voting system** to be used or being used in any primary, **regular election**~~[general]~~, or special election shall be guilty of a Class A misdemeanor.
- (2) Any person who, during or before any primary, **regular election**~~[general]~~, or special election, willfully tampers with or attempts to tamper with, disarrange, deface, or impair in any manner whatsoever, injures, or destroys any ballot~~[label]~~, or destroys any~~[such]~~ voting machine, **voting equipment, or voting system** while in use at an election or at any other time, or who shall, after such **voting machine, voting equipment, or voting system** is locked and sealed in order to preserve the record of the vote, tamper with or attempt to tamper with the record of the vote, or who aids or abets with intent to destroy or change the record of the vote shall be guilty of a Class D felony.
- (3) Any election official, or other person entrusted with the custody or control of any voting machine, **voting equipment, or voting system** who, with intent to cause or permit any voting machine, **voting equipment, or voting system** to fail to correctly register **or count** votes cast~~[thereon]~~, tampers with or disarranges such **voting machine, voting equipment, or voting system** in any way, unlawfully opens such voting machine, **voting equipment, or voting system**, prevents or attempts to prevent the correct operation of such voting machine, **voting equipment, or voting system**, or causes such voting machine, **voting equipment, or voting system** to be used or consents to its being used for any election with knowledge of the fact that the **voting machine, voting equipment, or voting system** is not in order, or not perfectly set and adjusted to correctly register all votes cast~~[thereon]~~, or removes, changes, or mutilates any ballot~~[label on a voting machine]~~ shall be guilty of a Class D felony.

➔Section 65. KRS 120.005 is amended to read as follows:

*As used in this chapter:*

- (1) A "ballot" or "official ballot" means the **official presentation of offices and candidates to be voted for, including write-in candidates, and all public questions submitted for determination and shall include a voting machine ballot**~~[label, ballot cards,]~~ a paper **ballot**~~[ballots]~~, an absentee ballot, a special ballot, a federal provisional ballot, a federal provisional absentee ballot, or a supplemental paper ballot which has been authorized for the use of the voters in any primary or regular or special election by the Secretary of State or the county clerk;

- (2) *"Ballot box" means any box, bag, or other container that can be locked, sealed, or otherwise rendered tamper-resistant, for receiving ballots;*
- (3) *"Voting equipment" means any physical component of a voting system and includes voting machines where voting machines are in operation* [~~"Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines;~~];
- ~~(3) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device;~~
- (4) *"Voting machine" or "machine" means a part of a voting system that is either:*
- (a) *A direct recording electronic voting machine that:*
1. *Records votes by means of a ballot display provided with mechanical or electro-operated components that may be actuated by the voter;*
  2. *Processes the data by means of a computer program;*
  3. *Records voting data and ballot images in internal and external memory components; and*
  4. *Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or*
- (b) *One (1) or more electronic devices that operate independently or as a combination of a ballot-marking device and an electronic or automatic vote tabulating device; and*
- (5) *"Voting system" means:*
- (a) *The total combination of physical, mechanical, electromechanical, or electronic equipment, including the software, hardware, firmware, and documentation required to program, control, and support that equipment, that is used to:*
1. *Define ballots;*
  2. *Cast and count votes;*
  3. *Report or display election results; and*
  4. *Maintain and produce any audit trail information; and*
- (b) *The practices and associated documentation used to:*
1. *Identify system components and versions of those components;*
  2. *Test the system during its development and maintenance;*
  3. *Maintain record records of system errors and defects;*
  4. *Determine specific system changes to be made to a system after the initial qualification of the system; and*
  5. *Make available any materials to the voter, such as notices, instructions, forms, or paper ballots* [~~shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his vote in an election.~~].

➔Section 66. KRS 120.017 is amended to read as follows:

- (1) It shall be the duty of precinct election officers at all **primaries** [~~primary~~], regular **elections**, or special elections to immediately report to the county clerk any administrative or clerical error discovered in the process of conducting the polling or tabulation of votes at any such **primary or** election.
- (2) Upon receipt by the county clerk of notice of error in conducting the polling or tabulation of votes pursuant to subsection (1) of this section, the county clerk shall file an action in the Circuit Court [{}] within fifteen (15) days of the **primary or** election, requesting a recount of ballots for the precinct reporting the administrative or clerical error. Simultaneously with the filing of such action, the county clerk shall make written notice by regular mail to all candidates appearing on the ballot of the precinct at issue that such action is being filed. In the case of an election for candidates for offices for the state at large or an election on a statewide public

question, the action shall be filed in the Franklin Circuit Court; in the case of other elections, the action shall be filed in the Circuit Court of the county in which the precinct reporting the error is located.

- (3) An action filed in the Circuit Court of ~~competent~~ <sup>proper</sup> jurisdiction pursuant to this section shall be heard summarily and without delay. Upon filing of the action, the circuit clerk shall immediately notify the Circuit Judge, and the judge shall at once enter an order directing custody of the voting machine, **voting equipment, or voting system**, the ballots, **ballot** boxes, and all papers pertaining to the **primary or** election from that precinct claiming error, to be transferred to the Circuit Court, and fix a day for the recount proceeding to begin.
- (4) Candidates notified pursuant to subsection (3) of this section shall, upon proper motion, be made parties to the action.
- (5) On the day fixed for the recount, the court shall proceed to recount the ballots if their integrity is satisfactorily shown and shall complete the recount as soon as practicable, and shall file and enter of record the results thereof.
- (6) Any person made party to the action pursuant to subsection (4) of this section may appeal from the judgment to the Court of Appeals, in the same manner as provided in KRS 120.075.
- (7) The county clerk shall certify the final recount results entered of record in any action filed pursuant to this section to the county board of elections and to the local governing body of each of two (2) dominant political parties. Final certification of election results shall then proceed according to KRS Chapters 117, 118, and 118A.
- (8) ***The court may determine if an automatic recount conducted under Section 80 of this Act satisfies the recount required under this section.***

➔Section 67. KRS 120.095 is amended to read as follows:

- (1) Any candidate voted for at a primary held under KRS 118.015 to 118.035 and 118.105 to 118.255 may request a recount of the ballots by filing a petition with the same court that contest petitions are required to be filed with, within ten (10) days after the day of the primary, or, if the candidate is qualified to bring a contest proceeding under KRS 120.055, by including a request for a recount in his or her petition instituting the contest proceedings. Any candidate who is a contestee in a contest proceeding under KRS 120.055 may request a recount in his or her answer filed in the contest proceeding, but in that case the answer shall be filed within five (5) days after the service of process on the petition. When a request for a recount is made, the State Board of Elections or the county board of elections, whichever would issue the certificate of nomination, shall be made a party defendant. The party requesting the recount shall execute a bond with approved surety for the costs of the recount, in an amount to be fixed by the Circuit Judge. Upon the bond being filed, the clerk shall immediately notify the Circuit Judge of the request and the filing of the bond, and the judge shall at once enter an order directing custody of the voting machines, **voting equipment, or voting system**, the ballots, boxes, and all papers pertaining to the election to be transferred to the Circuit Court, and fix a day for the recount proceedings to begin. A copy of the order shall be served upon the parties or their counsel in the same manner as notices are required to be served, which shall be deemed sufficient notice of the proceeding. On the day fixed, the court shall proceed to recount the ballots if their integrity is satisfactorily shown and shall complete the recount as soon as practicable, and file and enter of record the results thereof, and direct the state board or county board, whichever would issue the certificate of nomination, to issue a certificate to the party entitled thereto as shown by the recount.
- (2) Any party may appeal from the judgment to the Court of Appeals, in the same manner as provided in KRS 120.075, all of the provisions of which statute shall be applicable.
- (3) If a proceeding for recount is asked and prosecuted in a contest proceeding, it shall not await the preparation or trial of the contest in the Circuit Court or in the Court of Appeals. The action of the courts shall be final, concluding the parties as to the question of a recount of the ballots, and certificates shall then be issued to the parties entitled thereto.

➔Section 68. KRS 120.165 is amended to read as follows:

- (1) A contest instituted under KRS 120.155 shall proceed as equity actions. Upon return of the summons properly executed to the office of the circuit clerk, he shall immediately docket the case and notify the presiding judge of the court that the contest has been filed. The judge shall proceed to a trial of the cause without delay. In courts having more than one (1) judge, the judge who shall try the case shall be determined by lot. The court shall complete the case as soon as practicable. The action shall have precedence over all other cases.



- (2) The evidence in chief for the contestant shall be completed within thirty (30) days after service of summons; the evidence for the contestee shall be completed within twenty-five (25) days after filing of answer, and evidence for contestant in rebuttal shall be completed within seven (7) days after the contestee has concluded; provided that for cause the court may grant a reasonable extension of time to either party.
- (3) All voting machines, **voting equipment, or voting systems**, ballots, stub books, and other papers concerning which there is any ground for contest may be removed to the court in which the action is pending.
- (4) If it appears from an inspection of the whole record that there has been such fraud, intimidation, bribery, or violence in the conduct of the election that neither contestant nor contestee can be judged to have been fairly elected, the Circuit Court, or an appellate court, on appeal, may adjudge that there has been no election. In that event the office shall be deemed vacant, with the same legal effect as if the person elected had refused to qualify. If one (*I*) of the parties is adjudged by the court to be elected to the office, he *or she* shall, on production of a copy of the final judgment, be permitted to qualify or be commissioned.

→Section 69. KRS 120.185 is amended to read as follows:

- (1) (a) *I.* Any candidate who was voted for at a regular election for any of the offices to which KRS 120.155 applies, **and who does not qualify for an automatic recount under Section 80 of this Act**, may request a recount of the ballots by filing a petition ~~[so requesting,]~~ with the same court ~~where[that] petitions of contest are required to be filed.[with, within ten (10) days after the day of the election, or,]~~
  2. If the candidate is qualified to institute a contest proceeding under KRS 120.155, **the candidate may request a recount** by including a **recount** request ~~[for a recount]~~ in his *or her* petition instituting the contest **proceeding** ~~[proceedings, but in the latter case the petition shall be filed within ten (10) days after the day of the election].~~
- (b) Any candidate who is a contestee in a contest proceeding under KRS 120.155 may request a recount in his *or her* answer filed in the contest proceeding, but only if the answer **containing the recount request** is filed within **five (5)** ~~[ten (10)]~~ days after **service of the petition upon the contestee** ~~[the day of election].~~
- (c) **Any candidate under this subsection who would receive a certificate of election from the county board of elections under KRS 118.425 shall file his or her petition requesting a recount not later than ten (10) days after the day of the election. The county board of elections shall be named a party defendant in the petition.**
- (d) **Any candidate under this subsection who would receive a certificate of election from the State Board of Elections under KRS 118.425 shall file his or her petition requesting a recount not later than the second Tuesday following the election. The State Board of Elections shall be named a party defendant in the petition.** ~~[If a request for a recount is made, the State Board of Elections or the county board of elections, whichever would issue the certificate of election shall be made a party defendant.]~~
- (e) The party requesting the recount shall execute bond with approved surety for the costs of the recount, in an amount to be fixed by the Circuit Judge. **The bond may be filed by the state political party, political organization, or political group, if any, to which the candidate is affiliated.** Upon the bond being filed, the clerk shall immediately notify the Circuit Judge of the request and the filing of the bond, and the judge shall at once enter an order directing the voting machines, **voting equipment, or voting system**, ballots, boxes, and all papers pertaining to the election ~~[to] be secured. The court shall further order that the voting equipment, voting system, and ballot boxes containing all paper ballots shall remain continuously locked as required by Section 37 of this Act until the time set for the recount. The keys shall remain in the custody and possession of the county board of elections until the time set for the recount.~~ ~~[transferred to]~~
- (f) The Circuit Court ~~shall, and]~~ fix a day for the recount proceedings to begin. A copy of the order shall be served upon the parties or their counsel in the same manner as notices are required to be served, which shall be deemed sufficient notice of the proceeding.
- (g) **At the recount, each political party represented on the county board of elections may appoint a representative to be present, and each candidate subject to the recount may be present, either in person or by a representative, or both. The county board of elections shall authorize representatives of the news media to observe the recount.**

- (h) On the day fixed *by the court*, the *county board of elections shall meet and after confirming the integrity of the ballots*, ~~court~~ shall proceed to recount the ballots. ~~if their integrity is satisfactorily shown and shall~~
- (i) *The county board of elections shall* complete the recount as soon as practicable, and *shall forward the results of the recount to the Circuit Court.*
- (j) *Upon receipt of the results of the recount, the court shall enter a judgment setting out* ~~file and enter of record~~ the results *of the recount* ~~thereof~~, and *directing* ~~direct~~ the *State Board of Elections* ~~state board~~ or county board *of elections*, whichever would issue the certificate of election, to issue the *certificate* ~~same~~ to the party entitled thereto as shown by the recount.
- (k) *No certificate of election shall be issued by the State Board of Elections or any county board of elections while any recount proceeding is pending, and any certificate of election issued before the final judgment in any recount proceeding shall be null and void.*
- ~~(l)(2)~~ Any party may appeal from the judgment *issued under paragraph (j) of this subsection* to the Court of Appeals, in the same manner as provided in KRS 120.075, *and* all of the provisions of *that* ~~which~~ statute shall *apply* ~~be applicable~~.
- ~~(m)(3)~~ If a proceeding for recount is *requested* ~~asked~~ and prosecuted in a contest proceeding, *the recount* ~~it~~ shall not await the preparation or trial of the contest in the Circuit Court or in the Court of Appeals. The action of the courts shall be final~~, concluding the parties~~ as to the question of a recount of the ballots *under this subsection*, and certificates shall then be issued to the parties entitled thereto.
- (2) (a) *Any slate of candidates for Governor and Lieutenant Governor, or any candidate for the United States Senate or the United States House of Representatives who was voted for at a regular election or a special election, and who does not qualify for an automatic recount under Section 80 of this Act, may request a recount of the ballots by filing a petition in the Franklin Circuit Court.*
- (b) *For any slate of candidates for Governor and Lieutenant Governor, the petition requesting a recount shall be filed not later than the Tuesday following the election. No recanvass under Section 38 of this Act shall be conducted. The court shall order the recount to commence at 9 a.m. local time not later than a date five (5) days after the filing of the petition. The recount shall be completed by the county board of elections within fourteen (14) days of commencement of the recount, Sundays excluded. The State Board of Elections shall be named a party defendant in the petition.*
- (c) *For any candidate for the United States Senate or the United States House of Representatives, the petition requesting a recount shall be filed not later than the second Tuesday following the election. The State Board of Elections shall be named a party defendant in the petition.*
- (d) *Except for the time requirements established under paragraphs (b) and (c) of this subsection, the recount shall proceed as provided in subsection (1)(e) to (j) of this section.*
- (e) *No appeal shall be taken from the findings issued by the Franklin Circuit Court described in subsection (1)(j) of this section; however, any party aggrieved by the findings or action of the court may file a petition for contest to the General Assembly under Section 82 of this Act, and the General Assembly may accept, modify, or disregard the findings of the court in its sole and absolute discretion.*
- (f) *No certificate of election shall be issued by the State Board of Elections while any recount proceeding or contest proceeding is pending, and if issued before entry of the findings described in paragraph (e) of this subsection shall be null and void.*
- (g) *Any candidate for the United States Senate or the United States House of Representatives aggrieved by the findings or action of the court shall proceed under the rules established by the United States Congress or federal law.*
- (3) (a) *Any candidate for the General Assembly who was voted for at a regular election or special election, and who does not qualify for an automatic recount under Section 80 of this Act, may request a recount of the ballots by filing a petition in the Circuit Court of the county where the requesting candidate resides.*
- (b) *The petition requesting a recount shall be filed not later than the second Tuesday following the election. The State Board of Elections shall be named a party defendant in the petition.*

- (c) *The recount shall proceed as provided in subsection (1)(e) to (j) of this section.*
- (d) *No appeal shall be taken from the findings issued by the court described in subsection (1)(j) of this section; however, any party aggrieved by the findings or action of the court may file a petition for contest to the General Assembly under Section 82 of this Act, and the General Assembly may accept, modify, or disregard the findings of the court in its sole and absolute discretion.*
- (e) *No certificate of election shall be issued by the State Board of Elections while any recount proceeding or contest proceeding is pending, and if issued before entry of the findings described in subsection (1)(j) of this section shall be null and void.*

➔Section 70. KRS 242.120 is amended to read as follows:

- (1) Any qualified voter may demand a recount of the votes or contest the election in the same manner as is provided for the recount of votes or contest of ~~regular~~~~general~~ elections of county officers by KRS 120.155 to 120.185. The members of the county board of election commissioners shall be named as contestees and summons shall be served upon them. Any qualified voter may intervene as contestee by filing a petition to be made a party in the action.
- (2)
  - (a) The canvass and returns provided for in KRS 242.110 shall constitute the official returns for the local option election, unless before 4 p.m. on the seventh day following the local option election, the county clerk or county board of elections takes notice of a discrepancy in the tally of votes cast in any precinct or number of precincts within the territory voting in the local option election, or a committee favoring or opposing the proposition makes a written request to the county board of elections to check and recanvass the **ballots cast, including**~~voting machines and~~ absentee ballots, of any precinct or any number of precincts involving the local option election. After this time period has elapsed and notice is taken, the county board of elections shall assemble at 9 a.m. on the second day following the filing deadline to request a recanvass, and not sooner, and recheck and recanvass **all voting equipment**~~each machine~~ and make a proper return thereof to the county clerk, and the canvass and return shall become the official returns for the election.
  - (b) In making the recanvass, the county board of elections shall make a record of the **unique designation or number of the seal upon the voting equipment**~~machine~~ and, without unlocking the **voting equipment**~~machine~~ against voting, recanvass the **votes**~~vote~~ cast~~thereon~~. If, after a recanvass, it is found that the original canvass of the returns has been correctly made from the **voting equipment**~~machine~~ and that there still remains a discrepancy unaccounted for, this discrepancy shall be noted. If, upon recanvass, it appears that the original canvass of the returns by the election officers was incorrect, the returns and all papers being prepared by the county board of elections shall be corrected accordingly.
  - (c) The county board of elections shall, immediately upon receipt of a request for a recanvass, notify the committees favoring or opposing the proposition of the time and place of the recanvass. At the recanvass, the committees favoring or opposing the proposition may be present. The county board of elections shall authorize representatives of the news media to observe the recanvass of the votes cast **at the polls**~~on the voting machine~~ in each precinct. Nothing in this section shall prohibit an individual from requesting, in addition to a recanvass, a recount as authorized by KRS Chapter 120.
- (3) The State Board of Elections shall prescribe **through administrative regulations promulgated under KRS Chapter 13A, a form**~~forms~~ to be used by county boards of election to report all recanvassed votes. The form shall include the following information:
  - (a) The name of the county in which the recanvass was conducted;
  - (b) The date of the report;
  - (c) The date of the local option election;
  - (d) The proposition for which the recanvass was conducted;
  - (e) The names of the leaders of the committees favoring or opposing the proposition being recanvassed; and
  - (f) The ~~machine~~ votes **cast at the polls**, absentee votes, and vote totals for each "yes" or "no" vote.

The report shall be signed by each member of the county board of elections.

- (4) The county board of elections shall file its recanvass report as prescribed in administrative regulations promulgated by the State Board of Elections in accordance with KRS Chapter 13A.
- (5) The State Board of Elections shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the proper procedures for conducting a local option election recanvass for each type of voting system approved by the State Board of Elections and in use in Kentucky.

➔Section 71. KRS 424.290 is amended to read as follows:

- (1) Not less than three (3) days before any primary or regular election the county clerk shall cause to be published in a newspaper a copy of the ~~ballots~~~~[face of the voting machines, or where an electronic or electromechanical voting system is used, a copy of the ballot cards]~~ or supplementary material on which appear the names of candidates or issues to be voted upon. Where the lists of candidates or issues to be voted upon differ for various precincts within the county, the county clerk shall cause to be published only one (1) set of data with appropriate notations showing the differences in the various precincts. If supplemental paper ballots have been approved as provided in KRS 118.215, the *supplemental* paper ballot shall be published at the same time as other material required to be published by this subsection. The cost of publication shall be paid by the county, except that the cost of publishing any voting data required to be published by this subsection that is limited to a city election or a district election other than a school district election shall be paid by the city or the district as the case may be.
- (2) "Copy," as used in subsection (1) of this section, means a summary of candidates and issues to be voted upon showing all the pertinent information that will appear, upon which the voters will cast their votes at a particular polling place.

➔SECTION 72. A NEW SECTION OF KRS CHAPTER 118 IS CREATED TO READ AS FOLLOWS:

*Except as required by Section 75 of this Act related to the emergency powers granted to the Governor and Secretary of State as to the time and place for holding elections, no government official other than the General Assembly may suspend or revise any statute pertaining to elections.*

➔SECTION 73. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

*Local, state, and federal tax dollars shall not be used to advocate, in partial terms, for or against any public question that appears on the ballot. For purposes of this section, "local" means and includes any city, county, urban-county government, consolidated local government, unified local government, charter county government, or special district.*

➔SECTION 74. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*Local, state, and federal tax dollars shall not be used to advocate, in partial terms, for or against any public question that appears on the ballot. For purposes of this section, "local" means and includes any city, county, urban-county government, consolidated local government, unified local government, charter county government, or special district.*

➔Section 75. KRS 39A.100 is amended to read as follows:

- (1) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, the Governor may declare, in writing, that a state of emergency exists. The Governor shall have and may exercise the following emergency powers during the period in which the state of emergency exists:
  - (a) To enforce all laws, and administrative regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth;
  - (b) To require state agencies and to request local governments, local agencies, and special districts to respond to the emergency or disaster in the manner directed;
  - (c) To seize, take, or condemn property, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, for the protection of the public or at the request of the President, the Armed Forces, or the Federal Emergency Management Agency of the United States, including:
    1. All means of transportation and communication;
    2. All stocks of fuel of whatever nature;
    3. Food, clothing, equipment, materials, medicines, and all supplies; and

4. Facilities, including buildings and plants;
  - (d) To sell, lend, give, or distribute any of the property under paragraph (c) of this subsection among the inhabitants of the Commonwealth and to account to the State Treasurer for any funds received for the property;
  - (e) To make compensation for the property seized, taken, or condemned under paragraph (c) of this subsection;
  - (f) To exclude all nonessential, unauthorized, disruptive, or otherwise uncooperative personnel from the scene of the emergency, and to command those persons or groups assembled at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;
  - (g) To declare curfews and establish their limits;
  - (h) To prohibit or limit the sale or consumption of goods, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, or commodities for the duration of the emergency;
  - (i) To grant emergency authority to pharmacists pursuant to KRS 315.500, for the duration of the emergency;
  - (j) Except as prohibited by this section or other law, to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population;
  - (k) To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth; and
  - (l) Upon the recommendation of the Secretary of State, to declare by executive order a different time ~~and~~ *or* place ~~or manner~~ for holding elections in an election area for which a state of emergency has been declared for part or all of the election area. The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. The State Board of Elections shall establish procedures for election officials to follow. Any procedures established under this paragraph shall be subject to the approval of the Secretary of State and the Governor by respective executive orders.
- (2) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in the judgment of a local chief executive officer is of such severity or complexity as to require the exercise of extraordinary emergency measures, the county judge/executive of a county other than an urban-county government, or mayor of a city or urban-county government, or chief executive of other local governments or their designees as provided by ordinance of the affected county, city, or urban-county may declare in writing that a state of emergency exists, and thereafter, subject to any orders of the Governor, shall have and may exercise for the period as the state of emergency exists or continues, the following emergency powers:
  - (a) To enforce all laws and administrative regulations relating to disaster and emergency response and to direct all local disaster and emergency response forces and operations in the affected county, city, urban-county, or charter county;
  - (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative personnel from the scene of the emergency, and to command persons or groups of persons at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;
  - (c) To declare curfews and establish their limits;
  - (d) To order immediate purchase or rental of, contract for, or otherwise procure, without regard to procurement codes or budget requirements, the goods and services essential for protection of public health and safety or to maintain or to restore essential public services; and

- (e) To request emergency assistance from any local government or special district and, through the Governor, to request emergency assistance from any state agency and to initiate requests for federal assistance as are necessary for protection of public health and safety or for continuation of essential public services.
- (3) Nothing in this section shall be construed to allow any governmental entity to impose additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display, or use of firearms and ammunition or components of firearms and ammunition.

➔Section 76. KRS 118.176 is amended to read as follows:

- (1) A "bona fide" candidate means one who is seeking nomination in a primary or election in a special or regular election according to law.
- (2) The bona fides of any candidate seeking nomination *as the nominee of a political party or a nonpartisan or judicial nominee in a primary* or election *to an office as a member of a political organization, political group, or as an independent* ~~in a primary or~~ in a special or regular election may be questioned by any qualified voter entitled to vote for the candidate or by an opposing candidate by summary proceedings consisting of a motion before the Circuit Court of the judicial circuit in which the candidate whose bona fides is questioned resides. An action regarding the bona fides of *the nominee of a political party or a nonpartisan or judicial nominee may be commenced at any time prior to the primary. An action regarding the bona fides for election to an office as a member of a political organization, political group, or as an independent may be commenced at any time prior to a special or regular election* ~~any candidate seeking nomination or election in a primary or in a special or regular election may be commenced at any time prior to the regular election~~. The motion shall be tried summarily and without delay. Proof may be heard orally, and upon motion of either party shall be officially reported. If the Circuit Judge of the circuit in which the proceeding is filed is disqualified or absent from the county or is herself or himself a candidate, the proceeding may be presented to, heard and determined by the Circuit Judge of any adjoining judicial circuit.
- (3) In any action or proceeding under this section the burden of proof as to the bona fides of a candidate shall be on the person challenging the bona fides of a candidate.
- (4) If the court finds the candidate is not a bona fide candidate it shall so order, and certify the fact to the board of elections, and the candidate's name shall be stricken from the written designation of election officers filed with the board of elections or the court may refuse recognition or relief in a mandatory or injunctive way. The order of the Circuit Court shall be entered on the order book of the court and shall be subject to a motion to set aside in the Court of Appeals. The motion shall be heard by the Court of Appeals or a judge thereof in the manner provided for dissolving or granting injunctions, except that the motion shall be made before the court or judge within five (5) days after the entry of the order in the Circuit Court, and may be heard and tried upon the original papers, and the order of the Court of Appeals or judge thereof shall be final.
- (5) No person shall approach the Circuit Judge for the purpose or view of influencing his or her decision on the motion pending before the Circuit Judge or to be tried by him or her.

➔Section 77. KRS 118.367 is amended to read as follows:

- (1) An independent, or political organization, or political group candidate required to file nomination papers pursuant to KRS 118.365(5) shall be required to file a statement-of-candidacy form with the same office at which nomination papers are filed. Candidates for federal office and candidates for mayor or legislative body in cities of the home rule class participating in partisan elections shall not be required to file a statement-of-candidacy form. The statement-of-candidacy form shall be filed not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than *April 1* ~~the last Tuesday in January~~ preceding the day fixed by law for holding of regular elections for the offices sought. *If the office in which the statement-of-candidacy form is to be filed is closed on April 1, the form may be filed on the next business day.* The statement-of-candidacy form shall be filed no later than 4 p.m. local time when filed on the last day on which papers are permitted to be filed. No person shall file a statement-of-candidacy form for more than one (1) public office during an election cycle.
- (2) The statement-of-candidacy form shall be prescribed by the State Board of Elections. The statement-of-candidacy form shall be signed by the candidate upon filing. No charge shall be assessed for the filing of a statement-of-candidacy form. The Secretary of State and county clerks shall examine the statement-of-candidacy form of each candidate who files the form to determine if there is an error. If an error has occurred, the candidate shall be notified by certified mail within twenty-four (24) hours.

➔Section 78. KRS 116.035 is amended to read as follows:

The following rules, so far as applicable, shall be observed in determining the residence of a person offering to vote:

- (1) A voter's residence shall be deemed to be at the place where his or her habitation is, and to which, when absent, he or she has the intention of returning. ***For a person who is homeless and lacks an established and fixed nighttime residence of regular return, he or she may elect a location with a fixed address as a place of habitation, which shall be considered his or her residence, and may include the following:***
  - (a) ***A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or***
  - (b) ***A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;***
- (2) A voter shall not lose his or her residence by absence for temporary purposes merely; nor shall he or she obtain a residence by being in a county or precinct for such temporary purposes, without the intention of making that county or precinct his or her home;
- (3) A voter shall lose his or her residence by removal to another state or county with intention to make his or her permanent residence there, or by removal to and residence in another state, with intention to reside there an indefinite time, or by voting there, even though he or she may have had the intention to return to this state at some future period;
- (4) The place where the family of a married person resides shall generally be considered his or her residence, unless the family so resides for a temporary purpose. If his family is permanently in one (1) place, and he or she transacts business in another, the former shall be the residence.

➔Section 79. KRS 132.017 is amended to read as follows:

- (1) As used in this section, "local governmental entity" includes a county fiscal court and legislative body of a city, urban-county government, consolidated local government, charter county government, unified local government, or other taxing district.
- (2) (a)
  1. Except as provided in subparagraph 2. of this paragraph, the portion of a tax rate levied by an ordinance, order, resolution, or motion of a local governmental entity or district board of education subject to recall as provided for in KRS 68.245, 132.023, 132.027, and 160.470, shall go into effect forty-five (45) days after its passage.
  2. When a tax rate is levied by a district board of education or other taxing district that is primarily located in a county containing an urban-county government or a consolidated local government, the portion of a tax rate levied by an ordinance, order, resolution, or motion of a district board of education or other taxing district subject to recall as provided for in KRS 68.245, 132.023, 132.027, and 160.470, shall go into effect fifty (50) days after its passage.
- (b) During the same forty-five (45) day or fifty (50) day time period provided by paragraph (a) of this subsection, any five (5) qualified voters, who reside in the area where the tax levy will be imposed, may commence petition proceedings to protest the passage of the ordinance, order, resolution, or motion by filing an affidavit with the county clerk. The affidavit shall state:
  1. The five (5) qualified voters constitute the members of the petition committee;
  2. The petition committee will be responsible for circulating the petition;
  3. The petition committee will file the petition in the proper form within the same forty-five (45) day or fifty (50) day time period provided by paragraph (a) of this subsection;
  4. The names and addresses of the petition committee members;
  5. The address to which all notices to the committee are to be sent; and
  6. For petition committees filing petitions in response to a tax rate levied by a district board of education or other taxing district that is primarily located in a county containing an urban-county government or a consolidated local government, whether or not the petition committee is willing to incur all of the expenses associated with electronic petition signatures. If the petition committee is not willing to incur all of the expenses, then electronic petition signatures shall not be allowed for the petition.

- (c) Upon receipt of the affidavit, the county clerk shall immediately:
1. Notify the petition committee of all statutory requirements for the filing of a valid petition under this section;
  2. Notify the petition committee that the clerk will publish a notice identifying the tax levy being challenged and providing the names and addresses of the petition committee in a newspaper of general circulation within the county, if:
    - a. There is a newspaper within the county in which to publish the notice; and
    - b. The petition committee remits an amount equal to the cost of publishing the notice determined in accordance with the provisions of KRS 424.160 at the time of the filing of the affidavit.

If the petition committee elects to have the notice published, the clerk shall publish the notice within five (5) days of receipt of the affidavit; and
  3. Deliver a copy of the affidavit to the appropriate local governmental entity or district board of education.
- (d) The petition shall be filed with the county clerk within the same forty-five (45) day or fifty (50) day time period provided by paragraph (a) of this subsection and meet the following requirements:
1. All papers of the petition shall be substantially uniform in size and style and shall be assembled in one (1) instrument for filing;
  2. For a district board of education or other taxing district that is primarily located in a county containing an urban-county government or a consolidated local government, each sheet of the petition may contain the names of voters from more than one (1) voting precinct, and for a district board of education or other taxing district that is not primarily located in a county containing an urban-county government or a consolidated local government, each sheet of the petition shall contain the names of voters from one (1) voting precinct;
  3. Each nonelectronic petition signature shall be executed in ink or indelible pencil;
  4. Each electronic petition signature shall comply with the requirements of the Uniform Electronic Transactions Act, KRS 369.101 to 369.120;
  5. Each electronic and nonelectronic petition signature shall be followed by the printed name, street address, Social Security number or birthdate, and the name and number of the designated voting precinct of the person signing; and
  6. The petition shall be signed by a number of registered and qualified voters residing in the affected jurisdiction equal to at least ten percent (10%) of the total number of votes cast in the last preceding presidential election. Electronic petition signatures shall be included in determining whether the required number of petition signatures has been obtained when the expenses associated with the electronic petition signatures have been incurred in accordance with paragraph (b)6. of this subsection, the electronic petition signatures comply with the requirements of this subsection, and the petition was filed in response to a tax rate levied by a district board of education or other taxing district that is primarily located in a county containing an urban-county government or a consolidated local government. The inclusion of an invalid electronic or nonelectronic petition signature on a page shall not invalidate the entire page of the petition, but shall instead result in the invalid petition signature being stricken and not counted.
- (e) Upon the filing of the petition with the county clerk, the ordinance, order, resolution, or motion shall be suspended from going into effect until after the election referred to in subsection (3) of this section is held, or until the petition is finally determined to be insufficient and no further action may be taken pursuant to paragraph (i) of this subsection.
- (f) The county clerk shall immediately notify the presiding officer of the appropriate local governmental entity or district board of education that the petition has been received and shall, within thirty (30) days of the receipt of the petition, make a determination of whether the petition contains enough signatures of qualified voters to place the ordinance, order, resolution, or motion before the voters.
- (g) If the county clerk finds the petition to be sufficient, the clerk shall certify to the petition committee and the local governmental entity or district board of education within the thirty (30) day period provided



for in paragraph (f) of this subsection that the petition is properly presented and in compliance with the provisions of this section, and that the ordinance, order, resolution, or motion levying the tax will be placed before the voters for approval.

- (h) If the county clerk finds the petition to be insufficient, the clerk shall, within the thirty (30) day period provided for in paragraph (f) of this subsection, notify, in writing, the petition committee and the local governmental entity or district board of education of the specific deficiencies found. Notification shall be sent by certified mail and shall be published at least one (1) time in a newspaper of general circulation within the county containing the local governmental entity or district board of education levying the tax. If there is not a newspaper within the county in which to publish the notification, then the notification shall be posted at the courthouse door.
  - (i) A final determination of the sufficiency of a petition shall be subject to final review by the Circuit Court of the county in which the local governmental entity or district board of education is located, and shall be limited to the validity of the county clerk's determination. Any petition challenging the county clerk's final determination shall be filed within ten (10) days of the issuance of the clerk's final determination.
  - (j) The local governmental entity or district board of education may cause the cancellation of the election by reconsidering and amending the ordinance, order, resolution, or motion to levy a tax rate which will produce no more revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 from real property. The action by the local governmental entity or district board of education shall be valid only if taken within fifteen (15) days following the date the clerk finds the petition to be sufficient.
- (3) (a) If an election is necessary under the provisions of subsection (2) of this section, the local governmental entity shall cause to be submitted to the voters of the district at the next regular election, the question as to whether the property tax rate shall be levied. The question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election.
- (b) If an election is necessary for a school district under the provisions of subsection (2) of this section, the district board of education may cause to be submitted to the voters of the district in a called common school election not less than thirty-five (35) days nor more than forty-five (45) days from the date the signatures on the petition are validated by the county clerk, or at the next regular election, at the option of the district board of education, the question as to whether the property tax rate shall be levied. If the election is held in conjunction with a regular election, the question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election. The cost of a called common school election shall be borne by the school district holding the election. Any called common school election shall comply with the provisions of KRS 118.025.
- (c) In an election held under paragraph (a) or (b) of this subsection, the question shall be so framed that the voter may by his or her vote answer "for" or "against." If a majority of the votes cast upon the question oppose its passage, the ordinance, order, resolution, or motion shall not go into effect. If a majority of the votes cast upon the question favor its passage, the ordinance, order, resolution, or motion shall become effective.
- (d) If the ordinance, order, resolution, or motion fails to pass pursuant to an election held under paragraph (a) or (b) of this subsection, the property tax rate which will produce four percent (4%) more revenues from real property, exclusive of revenue from new property as defined in KRS 132.010, than the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be levied without further approval by the local governmental entity or district board of education.
- (e) ***Local, state, and federal tax dollars shall not be used to advocate, in partial terms, for or against any public question that appears on the ballot in this subsection. For purposes of this section, "local" means and includes any city, county, urban-county government, consolidated local government, unified local government, charter county, or special district.***
- (4) Notwithstanding any statutory provision to the contrary, if a local governmental entity or district board of education has not established a final tax rate as of September 15, due to the recall provisions of this section, KRS 68.245, 132.027, or 160.470, regular tax bills shall be prepared as required in KRS 133.220 for all districts having a tax rate established by that date; and a second set of bills shall be prepared and collected in the regular manner, according to the provisions of KRS Chapter 132, upon establishment of final tax rates by the remaining districts.

- (5) If a second billing is necessary, the collection period shall be extended to conform with the second billing date.
- (6) All costs associated with the second billing shall be paid by the taxing district or districts requiring the second billing.

➔SECTION 80. A NEW SECTION OF KRS CHAPTER 120 IS CREATED TO READ AS FOLLOWS:

- (1) *In any regular election or special election for any member of the General Assembly, the United States Senate or the United States House of Representatives, Governor and Lieutenant Governor, Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, Labor and Statistics, Secretary of State, and Attorney General, a recount of the vote shall be required when a candidate is defeated by a margin of not more than one-half of one percent (0.5%) of the votes cast for the office.*
- (2) *The State Board of Elections shall determine whether a recount is required under this section based upon the total number of votes certified to the Secretary of State. The time for conducting the recount under this section shall be as follows:*
  - (a) *For the offices of Governor and Lieutenant Governor, no recanvass under Section 38 of this Act shall be made. The recount shall be commenced not later than 9 a.m. local time on the Tuesday following the election and shall be conducted in the manner provided under subsections (3) to (7) of this section. The recount shall be completed within fourteen (14) days, Sundays excluded; and*
  - (b) *For all other offices listed in subsection (1) of this section, the recount shall be commenced not later than 9 a.m. local time on the second Tuesday following the election and shall be conducted in the manner provided under subsections (3) to (7) of this section. The recount shall be completed within fourteen (14) days, Sundays excluded.*
- (3) *The custody of the voting equipment, ballots, boxes, and all papers pertaining to the election shall be maintained by the county board of elections. The voting equipment shall remain continuously locked, and the ballot boxes containing all paper ballots shall remain continuously locked as required by Section 37 of this Act until the time set for the recount. The keys shall remain in the possession of the county board of elections until the time set for the recount.*
- (4) *The recount shall be conducted by the county board of elections of each county in which votes for the office that is the subject of the recount were cast.*
- (5) *At the recount, each political party represented on the county board of elections may appoint a representative to be present, and each candidate subject to the recount may be present, either in person or by a representative, or both. The county board of elections shall authorize representatives of the news media to observe the recount.*
- (6) *On the day fixed for the recount, the county board of elections shall meet and, after confirming the integrity of the ballots, shall proceed to recount the ballots.*
- (7) *The county board of elections shall complete the recount within the time established under subsection (2) of this section. Upon completion of the recount, the county board of elections shall file and enter of record the results of the recount, and shall certify the results of the recount of the total number of votes to the Secretary of State not later than 4 p.m., local time, on the day following the completion of the recount, Sunday excluded. No certificate of election shall be issued by the State Board of Elections while the recount is pending.*
- (8) *The costs of any recount held pursuant to this section shall be paid by the Commonwealth of Kentucky. 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 account under KRS 48.705.*
- (9) *If a recount is conducted under subsection (1) of this section:*
  - (a) *The time for filing a contest petition shall be tolled until the vote is certified under subsection (7) of this section; and*
  - (b) *The candidate may initiate an election contest, but no request for an additional recount shall be considered prior to the completion of the certification of the vote under subsection (7) of this section.*

➔Section 81. KRS 118.775 is amended to read as follows:

A successful candidate in a special election held for the purpose of filling a vacancy in any elective office shall take office immediately upon certification of the election results by the State Board of Elections or the county board of

elections in which the special election was held, ~~and~~ administration of the oath of office, *and if the successful candidate was a candidate for the General Assembly, upon being determined to be a member by the house in which membership is sought.*

➔Section 82. KRS 120.195 is amended to read as follows:

- (1) *Any slate of candidates for Governor and Lieutenant Governor may contest any regular election or special election to the General Assembly by filing a written application and notice of the contest with the clerk of the Senate and with the clerk of the House of Representatives of the General Assembly. The application and notice of contest shall be signed by the parties contesting the election, and:*
  - (a) *If contesting a regular election, the application and notice of contest shall:*
    1. *Be filed not later than thirty (30) days after the final action of the State Board of Elections; or*
    2. *Be filed not later than thirty (30) days following entry of the findings of the Franklin Circuit Court as provided in subsection (2) of Section 69 of this Act if a recount was conducted; and*
  - (b) *If contesting a special election, the application and notice of contest shall be filed not later than seven (7) days after the final action of the State Board of Elections.*
- (2) *Any candidate for the General Assembly may contest any regular election or special election to the General Assembly by filing a written application and notice of the contest with the clerk of the house to which the candidate seeks election. The application and notice of contest shall be signed by the party contesting the election, and:*
  - (a) *If contesting a regular election, the application and notice of contest shall:*
    1. *Be filed not later than fifteen (15) days after the final action of the State Board of Elections; or*
    2. *Be filed not later than fifteen (15) days following entry of the findings entered by the Circuit Court as provided in subsection (3) of Section 69 of this Act if a recount was conducted; and*
  - (b) *If contesting a special election, the application and notice of contest shall be filed not later than three (3) days following the final action of the State Board of Elections.*
- (3) *The application and notice required under subsections (1) and (2) of this section shall state the grounds of the contest, and no grounds other than those stated in the application and notice shall be heard as coming from that party following the filing of the application and notice. The candidate filing the application and notice may include a request for a recount which may be ordered by the board selected to try the contest under Section 83 or 84 of this Act.*
- (4) *No election contest shall be heard unless the contestee to the proceeding has been served with a copy of the application and notice of contest. The contestee may make defense without giving counternotice.*
- (5) *No certificate of election shall be issued by the State Board of Elections while any election contest is pending, and any certificate issued before, during, or after final resolution by the board of any election contest filed under this section shall be null and void.* ~~[No application to contest the election of a Governor, Lieutenant Governor, or member of the General Assembly shall be heard unless written notice, signed by the party contesting, is given. The notice shall state the grounds of the contest, and none other shall afterwards be heard as coming from that party, but the contestee may make defense without giving counternotice.]~~
- ~~(2) In the case of the Governor or Lieutenant Governor, the notice shall be given within thirty (30) days after the final action of the State Board of Elections. In the case of a member of the General Assembly, the notice shall be given within fifteen (15) days after the final action of the county board of elections or the State Board of Elections, whichever canvasses the returns.]~~
- ~~(6)(3)~~ Immediately after the *filing of the application and notice of contest*, either party may proceed to take proof by depositions, under the same rules and regulations that govern the taking of depositions in actions in equity, except that no commission shall be required for taking a deposition out of the state. The depositions shall be sealed ~~up~~ by the officer taking them, and directed to the clerk of the Senate or clerk of the House, as the case may require. The depositions properly taken shall be read as evidence before the board or *house* ~~branch~~ of the General Assembly having jurisdiction of the case, and the board or *house* ~~branch~~ may call for and hear other proof *as either shall determine*. The taking of depositions to be used before ~~the~~ ~~board or house~~ ~~branch~~ of the General Assembly shall close ten (10) days before the next meeting of the

General Assembly, or, if *the General Assembly is* in session when the *application and* notice is *filed*~~[given]~~, when the *board or house orders the taking of proof by deposition*~~[taking is ordered]~~ to close.

- (7)~~(4)~~ The costs of the proceeding shall be adjudged against the unsuccessful party, and a certificate *of costs*~~[thereof]~~ shall be given by the clerk of the Senate or the clerk of the House *to the parties to the contest or their attorneys*, as the case requires, *and shall be paid to the prevailing party within thirty (30) days of adjudication. If the costs are not timely paid, the prevailing party may seek entry of a judgment in a Circuit Court of competent jurisdiction.*~~[A judgment for the costs may be obtained after five (5) days' notice in a Circuit Court.]~~

➔Section 83. KRS 120.205 is amended to read as follows:

When the election of a Governor ~~and~~ Lieutenant Governor is contested, a board for determining the contest shall be formed and shall proceed in the following manner:

- (1) On the third day after the organization of the General Assembly that meets next after the election, the Senate shall select three (3) of its members *as provided in subsection (2) of this section*, and the House of Representatives shall select eight (8) of its members *as provided in subsection (2) of this section*, and the eleven (11) so selected shall constitute a board to try the contest, seven (7) of whom shall constitute a quorum;~~;~~
- (2) In making the selection, the name of each member present shall be written on a separate piece of paper, every piece being as nearly similar to the other as possible. Each piece shall be rolled up so that the names thereon cannot be seen, nor any particular piece ascertained or selected by feeling. The whole, so prepared, shall be placed by the clerk in a box on *clerk's*~~[his]~~ table, and after it has been well shaken, and the papers therein well intermixed, the clerk shall draw out one (1) paper, which shall be opened and read aloud by the presiding officer, and so on until the required number is obtained;~~;~~
- (3) If any *member*~~[person so]~~ selected swears that he *or she* cannot, without great personal inconvenience, serve on the board, or that he *or she* feels an undue bias for or against either of the parties, *that member*~~[he]~~ may be excused by the house from which *that member*~~[he]~~ was chosen from serving on the board.~~;~~~~and~~ If it appears that a *selected member*~~[person so selected]~~ is related to either party, or is liable to any other proper objection on the score of his *or her* partiality, *that member*~~[he]~~ shall be excused. Any deficiency in the proper number~~;~~ ~~so~~ created *by excuse* shall be supplied by another draw from the box;~~;~~
- (4) The *selected* members of the board~~[so chosen]~~ shall be sworn by the Speaker of the House of Representatives to try the contested election, and *shall* give true judgment~~[thereon]~~ according to the evidence, unless dissolved before rendering judgment;~~;~~
- (5)~~(2)~~ The board shall, within twenty-four (24) hours after its selection, meet, appoint its *chair*~~[chairman]~~, and assign a day for hearing the contest. ~~It, and~~ may adjourn from day to day as its business requires. If any member of the board willfully fails to attend its sessions, *that member*~~[he]~~ shall be reported to the house to which he *or she* belongs, and that house shall *then*~~[thereupon]~~, in its discretion, punish *that member*~~[him]~~ by fine or imprisonment, or both;~~;~~
- (6)~~(3)~~ The board may, *upon a majority of vote*, send for persons, papers, and records, *including all voting equipment, ballots, boxes, and precinct rosters. The board may* ~~[and]~~ issue *subpoenas*~~[attachments therefor]~~ signed by its *chair*~~[chairman]~~ or *the Speaker of the House of Representatives*~~;~~~~clerk, and may issue commissions for taking proof.~~
- (7) *The board may use the services of any law enforcement agency to transport all records relating to the election contest, including voting equipment, ballots, boxes, and precinct rosters. All voting equipment, ballots, boxes, precinct rosters, and other voting records sent for by the board shall be sealed, to the extent possible, and transmitted in a tamper-resistant manner. The chain of custody for the records shall be recorded, in writing, on a form prescribed by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A to include the identity of the person or persons transferring and receiving the records, and the date, time, and location of the transfer. The clerk of the House of Representatives shall be designated by the board as the custodian of the records while the records are in the possession of the board;*
- (8)~~(4)~~ If it appears that the *slates of* candidates receiving the highest number of votes *cast*~~[given]~~ have received an equal number, the right to the *offices*~~[office]~~ shall be determined by lot, *in the manner prescribed by the board, and* under the direction of the board;~~;~~

- (9) If the person returned *for the Office of Governor* is found not ~~[to have been]~~ legally qualified to receive the office at the time of his *or her* election ~~[, and the first two (2) years of his term have not expired]~~, a new election shall be ordered to fill the vacancy *under subsection (13) of this section;* ~~;~~
- (10) If a *slate of candidates* ~~[person]~~ other than the one returned is found to have received the highest number of legal votes *cast* ~~[given]~~, *that slate* ~~[he]~~ shall be adjudged *by the General Assembly* to be the *persons* ~~[person]~~ elected and entitled to the *offices*; ~~[office]~~
- (11) ~~(5)~~ No decision shall be made but by the vote of *at least* six (6) members of the board. The decision of the board shall not be final ~~or not~~ conclusive, but shall be reported to the two (2) houses of the General Assembly, in joint session, for the further action of the General Assembly. The Speaker of the House shall preside at the joint session, and the General Assembly shall then determine the contest; ~~;~~
- (12) If no decision of the board is given during the then session of the General Assembly, *the board* ~~[it]~~ shall be dissolved, unless by joint resolution of the two (2) houses it is empowered to continue longer; ~~;~~
- (13) ~~(6)~~ If a new election is required, it shall be immediately ordered by proclamation of the Speaker of the House, *who shall issue a writ of election. The writ shall be signed by the Speaker, shall designate the day for holding the election, and shall be directed to the proper sheriff or sheriffs as provided in Section 86 of this Act; and* ~~[to take place on a day not less than thirty (30) days nor more than six (6) weeks thereafter.]~~
- (14) ~~(7)~~ When a new election is ordered, or the incumbent is adjudged not to be entitled to the office, his *or her* power shall immediately cease, and if the office is not adjudged to another, it shall be deemed ~~[to be]~~ vacant.

➔Section 84. KRS 120.215 is amended to read as follows:

- (1) When the election of a member of the General Assembly is contested, the *house* ~~[branch]~~ to which he *or she* belongs *or seeks to be a member* shall, within three (3) days after its organization, and in the manner provided in KRS 120.205, select a board of not more than nine (9) nor less than five (5) of its members to determine the contest.
- (2) *The number of members required for the board shall be determined by the presiding officer of the house to which the person filing the contest belongs or seeks to be a member, and announced to the house prior to the selection of any member of the board, a majority of whom shall constitute a quorum.*
- (3) *The members selected to serve on the board as provided in this section shall be sworn by the presiding officer to try the contested election, and shall give true judgment according to the evidence, unless dissolved before rendering judgment*
- (4) ~~The~~ ~~[Such]~~ board shall be governed by the same rules, have the same power, and be subject to the same penalties as a board to determine the contested election of Governor *and Lieutenant Governor under Section 82 of this Act and as provided in this section.* It shall report its decision to the *house* ~~[branch]~~ of the General Assembly by which it was appointed, for its further action.
- (5) *The board shall, within twenty-four (24) hours of its selection, meet, appoint its chair, and assign a day for hearing the contest, and may adjourn from day to day as its business requires. If any member of the board willfully fails to attend its sessions, that member shall be reported to the house to which he or she belongs, and that house shall then, in its discretion, punish that member by fine or imprisonment, or both.*
- (6) *The board may, upon a majority vote, send for persons, papers, and records, including all voting equipment, ballots, boxes, and precinct rosters, and may issue subpoenas signed by its chair or the presiding officer of the house before which the contest is proceeding. The board or the presiding officer may also issue subpoenas for taking proof.*
- (7) *The board may use the services of any law enforcement agency to transport all records relating to the election contest, including voting equipment, ballots, boxes, and precinct rosters. All voting equipment, ballots, boxes, precinct rosters, and other voting records sent for by the board shall be sealed, to the extent possible, and transmitted in a tamper-resistant manner. The chain of custody for the records shall be recorded, in writing, on a form prescribed by the State Board of Elections in administrative regulations promulgated under KRS Chapter 13A to include the identity of the person or persons transferring and receiving the records, and the date, time, and location of the transfer. The clerk of the house before which the contest is proceeding shall be designated by the board as the custodian of the records while the records are in the possession of the board.*

- (8) *The board may order a recount of the election even if a recount has been conducted under Section 80 or 69 of this Act. A recount ordered by the board may be conducted without prior approval of the house before which the contest is proceeding. The recount shall be conducted by:*
- (a) *The county clerk of the county or counties in which the precincts subject to the recount are located, if no recount of the election has been conducted; or*
  - (b) *The State Board of Elections, if a recount has been conducted under Section 80 or 69 of this Act, which shall:*
    1. *Determine the number of persons required to conduct the recount, each of whom shall be a county clerk;*
    2. *Select that number of clerks by placing the name of each county clerk in a box or similar receptacle, and after it has been well-shaken and well-intermixed, the chair of the State Board of Elections shall draw out one (1) name at a time, which shall be announced aloud. This process shall continue until the required number is obtained; and*
    3. *Once completed, provide the results of the recount to the contest board.*

*The county clerk of any county containing precincts subject to the recount shall not be eligible to conduct the recount.*
- (9) *If it appears the candidates have received an equal number of legal votes cast, the right to the office shall be determined by lot, in the manner prescribed by the board, and under the direction of the board.*
- (10) *If the board finds the person returned is not legally qualified to receive the office at the time of his or her election, and if the house in which the contest is pending concurs under subsection (14) of this section, a vacancy shall exist, and a new election shall be ordered to fill the vacancy. If a new election is required, it shall be immediately ordered by proclamation of the presiding officer of the house before which the contest is proceeding who shall issue a writ of election. The writ shall be signed by the officer issuing it, shall designate the day for holding the election, and shall be directed to the proper sheriff or sheriffs as provided in Section 86 of this Act.*
- (11) *If the board finds a person other than the one returned received the highest number of legal votes cast, and if the house in which the contest is pending concurs under subsection (14) of this section, he or she shall be adjudged the person elected and entitled to the office.*
- (12) *If the board is unable to decide the person entitled to the office, and if the house in which the contest is pending concurs under subsection (14) of this section, a vacancy shall exist, and a new election shall be ordered by that house of the General Assembly to fill the vacancy. If a new election is required, it shall be immediately ordered by proclamation of the presiding officer of the house before which the contest is proceeding who shall issue a writ of election. The writ shall be signed by the officer issuing it, shall designate the day for holding the election, and shall be directed to the proper sheriff or sheriffs as provided in Section 86 of this Act.*
- (13) *When a new election is ordered, or the incumbent is adjudged not to be entitled to the office, his or her power shall immediately cease, and if the office is not adjudged to another, it shall be deemed vacant.*
- (14) *No decision shall be made but by the vote of a majority of the members of the board. The decision of the board shall not be final or conclusive, except as provided in subsection (8) of this section, but shall be reported to the house of the General Assembly by which it was appointed, for its further action.*

➔Section 85. KRS 120.155 is amended to read as follows:

- (1) Any candidate for election to any state, county, district or city office (except the office of Governor, Lieutenant Governor, member of the General Assembly, and those city offices as to which there are other provisions made by law for determining contest elections), for whom a number of votes was cast equal to not less than twenty-five percent (25%) of the number of votes cast for the successful candidate for the office, may contest the election of the successful candidate, by filing a petition in the Circuit Court of the county where the contestee resides, unless the officer is one (1) elected by the voters of the whole state, in which case the petition shall be filed in the Franklin Circuit Court.
- (2)
  - (a) The petition shall be filed and process issued within thirty (30) days after the day of election.
  - (b) *The petition*~~[+ it]~~ shall state the grounds of the contest relied on, and no other grounds shall afterwards be relied upon.

- (3) (a) The contestee shall file an answer within twenty (20) days after the service of summons upon him *or her*.
- (b) The answer may consist of a denial of the averments of the petition and may also set up grounds of contest against the contestant; if grounds are so set up they shall be specifically pointed out and none other shall thereafter be relied upon by the party.
- (4) Any candidate who would have been qualified to bring a contest action under this section, who is a party to a *requested* recount proceeding under *subsection (1) of Section 69 of this Act* ~~KRS 120.185~~, may, by filing answer in the recount proceeding within the time allowed by this section for filing grounds of contest, set forth grounds of contest against the petitioner in the recount proceeding.
- (5) A reply may be filed within ten (10) days after the answer is filed; its affirmative allegations shall be treated as controverted, and no subsequent pleading shall be allowed.

→Section 86. KRS 118.740 is amended to read as follows:

- (1) A copy of a proclamation issued under KRS 118.710 or 118.720, or a writ of election issued under KRS 118.730 *or Section 83 or 84 of this Act* shall be forwarded by mail to the sheriff of each county in the district in which the election is to be held, at least fifty-six (56) days before the election. The sheriff of each county in which an election is to be held shall give notice at least forty-nine (49) days before the day of election. If, from any cause, the sheriff cannot properly act, he shall immediately hand the writ or proclamation to the person authorized to act in his place.
- (2) If a special election is administered under KRS 118.730(2), the notice required by subsection (1) of this section shall include the location of the election.

→Section 87. The following KRS sections are repealed:

117.381 Requirements for approval.

117.387 Absentee voting by electronic system.

**Signed by Governor April 7, 2021.**

## CHAPTER 198

( HB 193 )

**Provisions of this bill that are to be deleted due to vetoes of the Governor that were not overridden by the General Assembly are displayed as bracketed and struck-through text enclosed in double asterisks, e.g.,**

**\*\*[text]\*\*.**

AN ACT relating to appropriations providing financing and conditions for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky.

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

→Section 1. The Transportation Cabinet Budget is as follows:

### PART I

#### OPERATING BUDGET

(1) **Funds Appropriations:** There is appropriated out of the General Fund, Road Fund, Restricted Funds accounts, Federal Funds accounts, or Bond Funds accounts for the fiscal year beginning July 1, 2019, and ending June 30, 2020, for the fiscal year beginning July 1, 2020, and ending June 30, 2021, and for the fiscal year beginning July 1, 2021, and ending June 30, 2022, the following discrete sums, or so much thereof as may be necessary. Appropriated funds are included pursuant to KRS 48.700 and 48.710. Each appropriation is made by source of respective fund or funds accounts. Appropriations for the budget units of the Transportation Cabinet are subject to the provisions of Chapters 12, 42, 45, and 48 of the Kentucky Revised Statutes and compliance with the conditions and procedures set forth in this Act.

#### A. TRANSPORTATION CABINET

**Budget Units****1. GENERAL ADMINISTRATION AND SUPPORT**

	<b>2020-21</b>	<b>2021-22</b>
General Fund	500,000	500,000
Restricted Funds	2,672,100	2,676,600
Road Fund	85,112,100	85,493,100
<b>TOTAL</b>	<b>88,284,200</b>	<b>88,669,700</b>

(1) **Biennial Highway Construction Plan:** The Secretary of the Transportation Cabinet shall produce a single document that contains two separately identified sections, as follows:

Section 1 shall detail the enacted fiscal biennium 2020-2022 Biennial Highway Construction Program and Section 2 shall detail the 2020-2022 Highway Preconstruction Program Plan for fiscal year 2020-2021 through fiscal year 2025-2026 as identified by the 2020 General Assembly. This document shall mirror in data type and format the fiscal year 2020-2026 Recommended Six-Year Road Plan as submitted to the 2020 General Assembly. The document shall be published and distributed to members of the General Assembly and the public within 60 days of adjournment of the 2020 Regular Session of the General Assembly.

(2) **Debt Service:** Included in the above Road Fund appropriation is \$7,110,100 in fiscal year 2020-2021 and \$7,105,900 in fiscal year 2021-2022 for debt service on previously authorized bonds.

(3) **Adopt-A-Highway Litter Program:** The Transportation Cabinet and the Energy and Environment Cabinet may receive, accept, and solicit grants, contributions of money, property, labor, or other things of value from any governmental agency, individual, nonprofit organization, or private business to be used for the Adopt-a-Highway Litter Program or other statewide litter programs. Any contribution of this nature shall be deemed to be a contribution to a state agency for a public purpose and shall be treated as Restricted Funds under KRS Chapter 45 and reported according to KRS Chapter 48, and shall not be subject to restrictions set forth under KRS Chapter 11A.

(4) **Riverport Improvements:** Included in the above General Fund appropriation is \$500,000 in each fiscal year to improve public riverports within Kentucky. The Secretary of the Transportation Cabinet, in conjunction with the Kentucky Water Transportation Advisory Board, shall determine how the funds are distributed.

**2. AVIATION**

	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	21,221,400	16,224,900
Federal Funds	672,000	500,000
Road Fund	2,797,700	1,805,600
<b>TOTAL</b>	<b>24,691,100</b>	<b>18,530,500</b>

(1) **Operational Costs:** Notwithstanding KRS 183.525(5), the above Restricted Funds appropriation includes operational costs of the program in each fiscal year.

(2) **Debt Service:** Included in the above Road Fund appropriation is \$1,831,100 in fiscal year 2020-2021 and \$837,400 in fiscal year 2021-2022 for debt service on previously authorized bonds. Notwithstanding KRS 183.525, \$1,831,100 in fiscal year 2020-2021 and \$837,400 in fiscal year 2021-2022 is transferred to the Road Fund from the Kentucky Aviation Economic Development Fund to support debt service on those bonds.

**3. DEBT SERVICE**

	<b>2020-21</b>	<b>2021-22</b>
Road Fund	147,991,400	139,139,600

(1) **Economic Development Road Lease-Rental Payments:** Included in the above Road Fund appropriation is \$147,991,400 in fiscal year 2020-2021 and \$139,039,600 in fiscal year 2021-2022 for Economic Development Road lease-rental payments relating to projects financed by Economic Development Road Revenue Bonds previously authorized by the General Assembly and issued by the Kentucky Turnpike Authority.



(2) **Debt Payment Acceleration Fund Account:** Notwithstanding KRS 175.505, no portion of the revenues to the state Road Fund provided by the adjustments in KRS 138.220(2), excluding KRS 177.320 and 177.365, shall accrue to the Debt Payment Acceleration Fund account during the 2020-2022 fiscal biennium.

#### 4. HIGHWAYS

	2020-21	2021-22
Restricted Funds	123,458,100	150,238,300
Federal Funds	955,999,900	962,500,500
Road Fund	905,271,800	935,647,200
TOTAL	1,984,729,800	2,048,386,000

(1) **Debt Service:** Included in the above Federal Funds appropriation is \$79,468,700 in fiscal year 2020-2021 and \$79,388,200 in fiscal year 2021-2022 for debt service on Grant Anticipation Revenue Vehicle (GARVEE) Bonds previously appropriated by the General Assembly.

(2) **State Supported Construction Program:** Included in the above Road Fund appropriation is \$321,391,800 in fiscal year 2020-2021 and \$350,671,500 in fiscal year 2021-2022 for the State Supported Construction Program.

(3) **Biennial Highway Construction Program:** Included in the State Supported Construction Program is \$184,016,300 in fiscal year 2020-2021 and \$209,071,500 in fiscal year 2021-2022 from the Road Fund for state construction projects in the 2020-2022 Biennial Highway Construction Program. ~~\*\*[The fiscal year 2020-2021 appropriation includes \$68,806,900 for projects in the 2020-2022 Biennial Highway Construction Program with a fund designation of "PM." The fiscal year 2021-2022 appropriation includes \$108,133,000 for projects in the 2020-2022 Biennial Highway Construction Program with a fund designation of "FED."]\*\*~~

(4) **Highway Construction Contingency Account:** Included in the State Supported Construction Program is \$26,600,000 in fiscal year 2020-2021 and \$16,600,000 in fiscal year 2021-2022 for the Highway Construction Contingency Account. ~~\*\*[Notwithstanding KRS 45.247(2), (4), (6), (7), and (8), the Secretary shall only expend Highway Construction Contingency moneys for projects of an emergency nature, for projects that relieve a hazardous condition, or to provide the state match for unanticipated Federal Funds made available as a result of other states not utilizing their total federal obligations.]\*\*~~ Notwithstanding KRS 224.43-505(2)(d), included in the Highway Construction Contingency Account is \$5,000,000 in each fiscal year for the Kentucky Pride Fund created in KRS 224.43-505. Also included in the Highway Construction Contingency Account for Railroads is \$1,600,000 in each fiscal year for public safety and service improvements which shall not be expended unless matched with non-state funds equaling at least 20 percent of the total amount for any individual project. Additionally, in each fiscal year, up to \$350,000 of the \$1,600,000 appropriation may be used to research the merits and responsibilities of the Kentucky Rail Office in the Kentucky Transportation Cabinet and establish and administer the Kentucky Rail Office.

(5) **2018-2020 Biennial Highway Construction Plan:** Projects in the enacted 2018-2020 Biennial Highway Construction Plan are authorized to continue their current authorization into the 2020-2022 fiscal biennium. If projects in previously enacted highway construction plans conflict with the 2020-2022 Biennial Highway Construction Plan, the projects in the 2020-2022 Biennial Highway Construction Plan shall control. The Secretary shall make every effort to maintain highway program delivery by adhering to the timeframes included in the 2020-2022 Biennial Highway Construction Plan for those projects.

(6) **Kentucky Transportation Center:** Notwithstanding KRS 177.320(4), included in the above Road Fund appropriation is \$290,000 in each fiscal year for the Kentucky Transportation Center.

(7) **State Match Provisions:** The Transportation Cabinet is authorized to utilize state construction moneys or Toll Credits to match federal highway moneys.

(8) **Federal Aid Highway Funds:** If additional federal highway moneys are made available to Kentucky by the United States Congress, the funds shall be used according to the following priority: (a) Any demonstration-specific or project-specific moneys shall be used on the project identified; and (b) All other funds shall be used to ensure that projects in the fiscal biennium 2020-2022 Biennial Highway Construction Plan are funded. If additional federal moneys remain after these priorities are met, the Transportation Cabinet may select projects from the Highway Preconstruction Program.

(9) **Road Fund Cash Management:** The Secretary of the Transportation Cabinet may continue the Cash Management Plan to address the policy of the General Assembly to expeditiously initiate and complete projects in the

fiscal biennium 2020-2022 Biennial Highway Construction Plan. Notwithstanding KRS Chapter 45, specifically including KRS 45.242 and 45.244, the Secretary may concurrently advance projects in the Biennial Highway Construction Plan by employing management techniques that maximize the Cabinet's ability to contract for and effectively administer the project work. Under the approved Cash Management Plan, the Secretary shall continuously ensure that the unspent project and Road Fund balances available to the Transportation Cabinet are sufficient to meet expenditures consistent with appropriations provided. The Transportation Cabinet shall provide quarterly reports to the Interim Joint Committee on Appropriations and Revenue when the General Assembly is not in session and the Standing Committees on Appropriations and Revenue when the General Assembly is in session beginning July 1, 2020.

**(10) Carry Forward of Appropriation Balances:** Notwithstanding KRS 45.229, unexpended Road Fund appropriations in the Highways budget unit for the Construction program, the Maintenance program, and the Research program in fiscal year 2019-2020 and in fiscal year 2020-2021 shall not lapse but shall carry forward. Unexpended Federal Funds and Restricted Funds appropriations in the Highways budget unit for the Construction program, the Maintenance program, the Equipment Services program, and the Research program in fiscal year 2019-2020 and in fiscal year 2020-2021, up to the amount of ending cash balances and unissued Highway and GARVEE Bond Funds, to include any interest income earned on those bond funds, and grant balances shall not lapse but shall carry forward.

**(11) Federally Supported Construction Program:** Included in the above Federal Funds appropriation is \$852,506,400 in fiscal year 2020-2021 and \$856,313,300 in fiscal year 2021-2022 for federal construction projects.

**(12) Highways Maintenance:** Included in the above Highways Road Fund appropriation is \$399,379,300 in fiscal year 2020-2021 and \$393,769,000 in fiscal year 2021-2022 for Highways Maintenance. Highways Maintenance positions may be filled to the extent the above funding level and the Highways Maintenance continuing appropriation are sufficient to support those positions.

**(13) Delayed Projects Status Report:** The Secretary of the Transportation Cabinet shall report by September 30 of each fiscal year to the Interim Joint Committee on Transportation any project included in the enacted Biennial Highway Construction Plan which has been delayed beyond the fiscal year for which the project was authorized. The report shall include:

- (a) The county name;
- (b) The Transportation Cabinet project identification number;
- (c) The route where the project is located;
- (d) The length of the project;
- (e) A description of the project and the scope of improvement;
- (f) The type of local, state, or federal funds to be used on the project;
- (g) The stage of development for the design, right-of-way, utility, and construction phases;
- (h) The fiscal year in which each phase of the project was scheduled to commence;
- (i) The estimated cost for each phase of the project;
- (j) A detailed description of the circumstances leading to the delay; and
- (k) The same information required in paragraphs (a) to (i) of this subsection for the project or projects advanced with funds initially scheduled for the delayed project.

**(14) Maintenance Reentry Employment Program:** Included in the above Road Fund appropriation is \$250,000 in each fiscal year to support contracting with a 501(c)(3) nonprofit organization that employs individuals on probation or parole supervision to perform crew-based maintenance services. These individuals will be selected with input from the Department of Corrections and shall provide assistance with litter abatement, graffiti removal, and vegetation control.

## 5. JUDGMENTS

**(1) Payment of Judgments:** Road Fund resources required to pay judgments shall be transferred from the State Construction Account at the time when actual payments must be disbursed from the State Treasury.

## 6. PUBLIC TRANSPORTATION

	2020-21	2021-22
General Fund	5,589,000	13,989,000
Restricted Funds	9,203,600	685,300
Federal Funds	66,287,400	25,800,200
TOTAL	81,080,000	40,474,500

(1) **Toll Credits:** The Transportation Cabinet is authorized to maximize, to the extent necessary, the use of Toll Credits to match Federal Funds for transit systems capital grants.

(2) **Nonpublic School Transportation:** Included in the above General Fund appropriation is \$3,500,000 in each fiscal year for nonpublic school transportation.

## 7. REVENUE SHARING

	2020-21	2021-22
Road Fund	335,267,500	341,480,300

(1) **County Road Aid Program:** Included in the above Road Fund appropriation is \$126,675,800 in fiscal year 2020-2021 and \$129,053,900 in fiscal year 2021-2022 for the County Road Aid Program in accordance with KRS 177.320, 179.410, 179.415, and 179.440. Notwithstanding KRS 177.320(2) and (4), the above amount has been reduced by \$38,000 in each year, which has been appropriated to the Highways budget unit for the support of the Kentucky Transportation Center.

(2) **Rural Secondary Program:** Included in the above Road Fund appropriation is \$153,672,400 in fiscal year 2020-2021 and \$156,557,200 in fiscal year 2021-2022 for the Rural Secondary Program in accordance with KRS 177.320, 177.330, 177.340, 177.350, and 177.360. Notwithstanding KRS 177.320(1) and (4), the above amount has been reduced by \$46,000 in each year, which has been appropriated to the Highways budget unit for the support of the Kentucky Transportation Center.

(3) **Municipal Road Aid Program:** Included in the above Road Fund appropriation is \$53,300,700 in fiscal year 2020-2021 and \$54,301,300 in fiscal year 2021-2022 for the Municipal Road Aid Program in accordance with KRS 177.365, 177.366, and 177.369. Notwithstanding KRS 177.320(4) and 177.365(1), the above amount has been reduced by \$16,000 in each year, which has been appropriated to the Highways budget unit for the support of the Kentucky Transportation Center.

(4) **Energy Recovery Road Fund:** Included in the above Road Fund appropriation is \$165,000 in fiscal year 2020-2021 and \$142,000 in fiscal year 2021-2022 for the Energy Recovery Road Fund in accordance with KRS 177.977, 177.9771, 177.978, 177.979, and 177.981.

(5) **County Judge/Executive Expense Allowance:** Notwithstanding KRS 67.722, each County Judge/Executive not serving in a consolidated local government shall receive an annual expense allowance of \$2,400 during the 2020-2022 fiscal biennium. Payment shall be made quarterly from the Rural Secondary Program.

(6) **Continuation of the Flex Funds and the 80/20 Bridge Replacement Programs:** The Transportation Cabinet shall continue the Flex Funds and the 80/20 Bridge Replacement Programs within the Rural Secondary Program.

## 8. VEHICLE REGULATION

	2019-20	2020-21	2021-22
Restricted Funds	-0-	14,640,500	15,685,800
Federal Funds	-0-	2,640,100	3,127,100
Road Fund	4,265,500	46,232,900	45,483,500
TOTAL	4,265,500	63,513,500	64,296,400

(1) **Debt Service:** Included in the above Road Fund appropriation is \$800,000 in fiscal year 2020-2021 and \$1,541,000 in fiscal year 2021-2022 for debt service on previously authorized bonds.

(2) **Regional Driver License Office:** Included in the above Road Fund appropriation in fiscal year 2021-2022 is sufficient funding to operate a regional driver license issuing office in the city of London. If established, the office shall not replace any current or proposed office.

**TOTAL - TRANSPORTATION CABINET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund	-0-	6,089,000	14,489,000
Restricted Funds	-0-	171,195,700	185,510,900
Federal Funds	-0-	1,025,599,400	991,927,800
Road Fund	4,265,500	1,522,673,400	1,549,049,300
<b>TOTAL</b>	<b>4,265,500</b>	<b>2,725,557,500</b>	<b>2,740,977,000</b>

**PART II****CAPITAL PROJECTS BUDGET**

(1) **Capital Construction Fund Appropriations and Reauthorizations:** Moneys in the Capital Construction Fund are appropriated for the following capital projects subject to the conditions and procedures in this Act. Items listed without appropriated amounts are previously authorized for which no additional amount is required. These items are listed in order to continue their current authorization into the 2020-2022 fiscal biennium. Unless otherwise specified, reauthorized projects shall conform to the original authorization enacted by the General Assembly.

(2) **Expiration of Existing Line-Item Capital Construction Projects:** All appropriations to existing line-item capital construction projects expire on June 30, 2020, unless reauthorized in this Act with the following exceptions: (a) A construction contract for the project shall have been awarded by June 30, 2020; (b) Permanent financing or a short-term line of credit sufficient to cover the total authorized project scope shall have been obtained in the case of projects authorized for bonds, if the authorized project completes an initial draw on the line of credit within the biennium immediately subsequent to the original authorization; and (c) Grant or loan agreements, if applicable, shall have been finalized and properly signed by all necessary parties. Notwithstanding the criteria set forth in this subsection, the disposition of 2018-2020 fiscal biennium nonstatutory appropriated maintenance pools funded from Capital Construction Investment Income shall remain subject to the provisions of KRS 45.770(5)(c).

(3) **Bond Proceeds Investment Income:** Investment income earned from bond proceeds beyond that which is required to satisfy Internal Revenue Service arbitrage rebates and penalties and excess bond proceeds upon the completion of a bond-financed capital project shall be used to pay debt service according to the Internal Revenue Service Code and accompanying regulations.

(4) **Appropriations for Projects Not Line-Itemized:** Inasmuch as the identification of specific projects cannot be ascertained with absolute certainty at this time, amounts are appropriated for specific purposes to projects which are not individually identified in this Act in the following area: Aircraft Maintenance Pool. Notwithstanding any statute to the contrary, projects estimated to cost \$1,000,000 and over and equipment estimated to cost \$200,000 and over shall be reported to the Capital Projects and Bond Oversight Committee.

**A. TRANSPORTATION CABINET**

<b>Budget Units</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
<b>1. GENERAL ADMINISTRATION AND SUPPORT</b>			
<b>001. Maintenance Pool 2020-2022</b>			
Road Fund	-0-	2,950,000	2,950,000
<b>002. Construct Whitley County Maintenance Facility and Salt Structure</b>			
Road Fund	-0-	1,050,000	-0-
<b>003. Construct Nicholas County Maintenance Facility and Salt Storage</b>			
Road Fund	-0-	2,000,000	-0-
<b>004. Construct Ballard County Maintenance Facility and Salt Storage Additional Reauthorization (\$1,584,000 Road Fund)</b>			
Road Fund	-0-	700,000	-0-
<b>005. Construct Hopkins County Maintenance Facility and Salt Storage Reauthorization (\$1,800,000 Road Fund)</b>			

**006.** Construct Clay County District Office Reauthorization (\$7,445,000 Road Fund)

**007.** AASHTOWare

Road Fund	-0-	1,000,000	1,000,000
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**008.** Construct Casey County Maintenance Facility

Restricted Funds	660,000	-0-	-0-
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Road Fund	800,000	-0-	-0-
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TOTAL	1,460,000	-0-	-0-
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**009.** District 6 District Office and Materials Lab

Road Fund	-0-	1,500,000	-0-
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**010.** Replace Automated Vehicle Information System (AVIS) - Additional Reauthorization (\$25,000,000 Bond Funds)

Restricted Funds	-0-	-0-	4,000,000
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## 2. AVIATION

**001.** Aircraft Maintenance Pool - 2020-2022

Restricted Funds	-0-	-0-	300,000
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Investment Income	-0-	700,000	700,000
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TOTAL	-0-	700,000	1,000,000
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(1) **Restricted Funds:** Notwithstanding KRS 186.240(2) and 186.240(3), the above Restricted Funds shall be transferred to the Aircraft Maintenance Pool - 2020-2022.

## 3. HIGHWAYS

**001.** Repair Loadometer and Rest Areas - 2020-2022

Road Fund	-0-	1,500,000	1,500,000
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**002.** Road Maintenance Parks - 2020-2022

Road Fund	-0-	1,250,000	1,250,000
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**003.** Various Environmental Compliance - 2020-2022

Road Fund	-0-	490,000	490,000
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**004.** Transportation Warehouse Facility Renovation or Replacement

Road Fund	-0-	1,500,000	-0-
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**005.** Jefferson County - Lease

### PART III

#### FUNDS TRANSFER

The General Assembly finds that the financial condition of state government requires the following action.

Notwithstanding the statutes or requirements of the Restricted Funds enumerated below, there is transferred to the General Fund the following amounts in fiscal year 2020-2021 and fiscal year 2021-2022:

	2020-21	2021-22
<b>A. TRANSPORTATION CABINET</b>		
<b>1. Aviation</b>		
Agency Revenue Fund	438,400	428,800
(KRS 183.525(4) and (5))		
<b>2. Aviation</b>		

Special Revenue Fund	-0-	899,300
<b>3. Vehicle Regulation</b>		
Agency Revenue Fund (KRS 186.040(6)(a))	4,400,000	400,000
<b>4. Vehicle Regulation</b>		
Agency Revenue Fund (KRS 186.040(6)(b))	-0-	2,000,000
<b>5. Vehicle Regulation</b>		
Agency Revenue Fund (KRS 186.240(2) and (3))	-0-	700,000
<b>6. Vehicle Regulation</b>		
Agency Revenue Fund (KRS 235.080, 235.085, and 235.130)	-0-	300,000
<b>TOTAL - FUNDS TRANSFER</b>	<b>4,838,400</b>	<b>4,728,100</b>

**PART IV****TRANSPORTATION CABINET BUDGET SUMMARY****OPERATING BUDGET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund	-0-	6,089,000	14,489,000
Restricted Funds	-0-	171,195,700	185,510,900
Federal Funds	-0-	1,025,599,400	991,927,800
Road Fund	4,265,500	1,522,673,400	1,549,049,300
<b>SUBTOTAL</b>	<b>4,265,500</b>	<b>2,725,557,500</b>	<b>2,740,977,000</b>

**CAPITAL PROJECTS BUDGET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
Restricted Funds	660,000	-0-	4,300,000
Road Fund	800,000	13,940,000	7,190,000
Investment Income	-0-	700,000	700,000
<b>SUBTOTAL</b>	<b>1,460,000</b>	<b>14,640,000</b>	<b>12,190,000</b>

**TOTAL - TRANSPORTATION CABINET BUDGET**

	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
General Fund	-0-	6,089,000	14,489,000
Restricted Funds	660,000	171,195,700	189,810,900
Federal Funds	-0-	1,025,599,400	991,927,800
Road Fund	5,065,500	1,536,613,400	1,556,239,300
Investment Income	-0-	700,000	700,000
<b>TOTAL FUNDS</b>	<b>5,725,500</b>	<b>2,740,197,500</b>	<b>2,753,167,000</b>

➔Section 2. The provisions of the State/Executive Branch Budget, 2021 Regular Session HB 192/EN, are amended to read as follows:

Beginning on page 185, line 25, through page 186, line 17, delete language in its entirety and insert in lieu thereof the following:

**"PART VII**

**GENERAL FUND SURPLUS EXPENDITURE PLAN**

(1) Notwithstanding KRS 48.130(7), 48.140(3), 48.700, and 48.705, there is established a plan for the expenditure of General Fund surplus moneys pursuant to a General Fund Surplus Expenditure Plan contained in this Part for fiscal years 2019-2020, 2020-2021, and 2021-2022. Pursuant to the enactment of the Surplus Expenditure Plan, General Fund moneys made available for the General Fund Surplus Expenditure Plan pursuant to Part III, General Provisions, Section 22. of this Act are appropriated to the following:

(a) Authorized expenditures without a sum-specific appropriation amount, known as Necessary Government Expenses, including but not limited to Emergency Orders formally declared by the Governor in an Executive Order;

(b) The ~~\*\*[entire remaining amount to the]~~\*\* Budget Reserve Trust Fund; and

(c) ~~\*\*[No surplus moneys in any fiscal year shall be reserved for]~~\*\* Necessary Government Expenses in a subsequent fiscal year; and

(2) The Secretary of the Finance and Administration Cabinet shall determine, within 30 days after the close of each fiscal year, based on the official financial records of the Commonwealth, the amount of actual General Fund undesignated fund balance for the General Fund Surplus Account that may be available for expenditure pursuant to the Plan in fiscal year 2020-2021 and fiscal year 2021-2022. The Secretary of the Finance and Administration Cabinet shall certify the amount of actual General Fund undesignated fund balance available for expenditure to the Legislative Research Commission."

**Line items vetoed and became law without Governor's signature April 7, 2021.**

**CHAPTER 199**

**( SB 267 )**

AN ACT relating to the dissemination of personally identifying information.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO READ AS FOLLOWS:

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

(a) *"Dissemination" means electronically publishing, posting, or otherwise disclosing information to a public Internet site or public forum;*

(b) *"Household member" means a person who regularly resides in the household or who within the six (6) months preceding the conduct of the offense regularly resided in the household;*

(c) *"Immediate family member" means a parent, grandparent, spouse, child, stepchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, or grandchild; and*

(d) *"Personally identifying information" means information that identifies or reasonably can be used to identify an individual, including but not limited to:*

1. *Social Security number or other government-issued identifier;*
2. *Date of birth;*
3. *Home or physical address;*
4. *Electronic-mail address or telephone number;*
5. *Financial account number or credit or debit card number;*
6. *Biometric, health, or medical data, or insurance information; or*

7. *School or employment locations.*

- (2) *A person is guilty of disseminating personally identifying information about another person when, with the intent to intimidate, abuse, threaten, harass, or frighten a person who resides in the Commonwealth, he or she:*
- (a) *Intentionally disseminates the personally identifying information of the person or a person's immediate family member or household member; and*
- (b) *The dissemination would cause a reasonable person to be in fear of physical injury to himself or herself, or to his or her immediate family member or household member.*
- (3) *This section shall apply to electronic communications originating within or accessible within the Commonwealth.*
- (4) *Disseminating personally identifying information is a Class A misdemeanor, unless the dissemination results in:*
- (a) *Physical injury to the victim or to a victim's immediate family member or household member, in which case it is a Class D felony;*
- (b) *Serious physical injury to the victim or to a victim's immediate family member or household member, in which case it is a Class C felony; or*
- (c) *Death of the victim or of a victim's immediate family member or household member, in which case it is a Class B felony.*
- (5) *Nothing in this section shall be construed to impose liability on a broadband Internet access service provider, a telecommunications service provider, an interconnected VoIP provider, or a mobile service provider as defined in 47 U.S.C. sec. 153, a commercial mobile service provider as defined in 47 U.S.C. sec. 332(d), or a cable operator as defined in 47 U.S.C. sec. 522, when acting in its capacity as a provider of those services.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who violates Section 1 of this Act shall be personally liable for actual and punitive damages, court costs, and reasonable attorney's fees in a civil cause of action brought against an alleged perpetrator:*
- (a) *By a victim;*
- (b) *By a victim's parent or legal guardian on behalf of a victim who is a minor; and*
- (c) *By a victim's immediate family member or household member, if he or she is harmed as a result of the same violation against the victim.*
- (2) *The action may be filed in the Circuit Court for the county where the alleged violation occurred or the county where the victim resides.*
- (3) *An individual found liable under this section shall be jointly and severally liable with each other person found liable under this section for the damages arising from the same violation of this section.*
- (4) *Nothing in this section shall be construed to impose liability on a broadband Internet access service provider, a telecommunications service provider, an interconnected VoIP provider, or a mobile service provider as defined in 47 U.S.C. sec. 153, a commercial mobile service provider as defined in 47 U.S.C. sec. 332(d), or a cable operator as defined in 47 U.S.C. sec. 522, when acting in its capacity as a provider of those services.*

Signed by Governor April 8, 2021.

CHAPTER 200

( HB 226 )

AN ACT relating to gaming.



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

➔Section 1. KRS 238.505 is amended to read as follows:

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

- (1) "Department" means the Department of Charitable Gaming within the Public Protection Cabinet;
- (2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. "Charitable gaming" shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races;
- (3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;
- (4) "Bingo" means a specific game of chance in which participants use cards or paper sheets, or card-minding device representations thereof, divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;
- (5) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, or electronic pulltab device representations thereof, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card. "Charity game ticket" shall include pulltabs, both paper and electronic representations thereof;
- (6) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;
- (7) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;
- (8) "Charity fundraising event" means an activity of limited duration at which games of chance approved by the department are conducted, including bingo, raffles, charity game tickets, special limited charitable games, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding. Examples of such activities include events that attract patrons for community, social, and entertainment purposes apart from charitable gaming, such as fairs, festivals, carnivals, licensed charitable gaming organization conventions, bazaars, and banquets. For the purposes of this subsection, "banquet" shall mean a formal meal or feast held by a charitable organization for community, social, or entertainment purposes apart from charitable gaming;
- (9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:
  - (a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and
  - (b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;
- (10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" shall not include:
  - (a) A resident printer who prints raffle tickets at the request of a licensed charitable organization; and
  - (b) A licensed charitable organization that affects a one-time donation of charitable gaming supplies or equipment to another licensed charitable organization if the donation is first approved by the department.
- (11) "Charitable gaming facility" means *the premises on which charitable gaming is conducted*~~[a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available to two (2) or more licensed charitable organizations, other than itself, during a one (1) year period for the conduct of charitable gaming];~~
- (12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;

- (13) "Adjusted gross receipts" means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased;
- (14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;
- (15) "Charitable gaming supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply;
- (16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;
- (17) "Special limited charitable game" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type games; any dice game where the player competes against the house; and any other game of chance as identified, defined, and approved by administrative regulation of the department;
- (18) "Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "casino night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of games offered for play are special limited charitable games;
- (19) "Session" or "bingo session" means a single gathering at which a bingo game or series of successive bingo games are played, excluding bingo played at a charity fundraising event;
- (20) "Immediate family" means:
  - (a) Spouse and parents-in-law;
  - (b) Parents and grandparents;
  - (c) Children and their spouses; and
  - (d) Siblings and their spouses;
- (21) "Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility;
- (22) "Secretary" means the secretary of the Public Protection Cabinet;
- (23) "Commissioner" means the commissioner of the Department of Charitable Gaming within the Public Protection Cabinet;
- (24) "Chairperson" means the chief executive officer and any officer, member, or employee of a licensed charitable organization who will be involved in the management and supervision of charitable gaming as designated in the organization's charitable gaming license application under KRS 238.535(13)(g);
- (25) "Year" means calendar year except as used in subsection (11) of this section and KRS 238.535(11), 238.545(4), 238.547(1), and 238.555(7), when "year" means the licensee's license year; and
- (26) "Card-minding device" means any mechanical, electronic, electromechanical, or computerized device that is interfaced with or connected to equipment used to conduct a game of bingo and that allows a player to store, display, and mark a bingo card face. A card-minding device shall not be designed and manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device;
- (27) "Electronic pulltab device" means an electronic device used only for charitable gaming to facilitate the play of an electronic pulltab. An electronic pulltab device shall be a tablet or other personal computing device, other than a mobile phone or similar handheld device, as approved by the department. An electronic pulltab device may only operate on a closed network or intranet that is confined to the licensee's premises, and shall not be Internet accessible by patrons, but shall be connected to a central server system solely for the purposes of monitoring, reporting, accounting, and software maintenance. An electronic pulltab device shall not be designed and manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device; and

- (28) "Electronic video gaming device," as used in this chapter and the related administrative regulations, means any device that possesses a video display and computer mechanism for playing a game. Electronic video gaming device shall not mean any electronic representation of charitable gaming games identified, defined, and approved by statute and by administrative regulation of the department.

➔Section 2. KRS 238.536 is amended to read as follows:

- (1) The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period. A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the benefits or financial gain of an individual. Any charitable organization which permits its license to expire or otherwise lapse shall still be subject to the retention requirement. The following fees and taxes shall be excluded from the calculation of the percentage retained, retroactive to calculations made for calendar year 1999:
- (a) All fees paid to the department during the calendar year;
  - (b) Any sales or use taxes levied under KRS Chapter 139 on charitable gaming supplies and equipment that are paid by a licensed charitable organization during the calendar year; and
  - (c) Any federal excise taxes levied under 26 U.S.C. secs. 4401 and 4411 and paid by a licensed charitable organization during the calendar year.
- (2) The following actions shall be imposed on a licensed charitable organization that fails to retain the requisite percentage of adjusted gross receipts required in subsection (1) of this section. The calculation of percentages shall be rounded to the nearest tenth of a percent:
- (a) If the percentage retained is between thirty-five percent (35%) and thirty-nine and nine-tenths percent (39.9%), the licensee shall be placed on probation for a period of six (6) months and shall be required to submit to the department an acceptable financial plan detailing corrective actions to be taken by the licensee to achieve the forty percent (40%) threshold by the end of the calendar year in which the probation is imposed;
  - (b) If the percentage retained is between thirty percent (30%) and thirty-four and nine-tenths percent (34.9%), the licensee shall be placed on probation for a period of one (1) year and shall be required to submit to the department a financial plan as described in paragraph (a) of this subsection. The department shall conduct a six (6) month review of the charitable gaming activities of a licensee placed on probation pursuant to this subsection to evaluate the licensee's compliance with its financial plan;
  - (c) If the percentage retained falls between twenty-nine and nine-tenths percent (29.9%) and twenty-five percent (25%), the licensee shall be placed on probation for a period of one (1) year, shall submit to the department an acceptable financial plan as described in paragraph (a) of this subsection, and shall participate in a mandatory training program designed by the department. The department shall conduct a quarterly review of the licensee's activities to evaluate the licensee's compliance with its financial plan and its progress toward achievement of the forty percent (40%) threshold during the probationary period;
  - (d) If the percentage falls below twenty-five percent (25%) or if the licensee fails to attain the forty percent (40%) threshold for a second consecutive calendar year, the licensee shall have its license suspended for a period of one (1) year; and
  - (e) For purposes of paragraphs (a), (b), (c), and (d) of this subsection, periods of probation and suspension shall commence, unless appealed, from the date the department notifies the licensee of its failure to satisfy the retention requirement for the previous calendar year. If a probation or suspension is appealed, the action shall commence on the date final adjudication of the matter is complete.
- (3) Any licensee that has had its license suspended under the provisions of subsection (2)(d) of this section shall be required to submit to the department an acceptable financial plan as described in subsection (2)(a) of this section, upon applying for reinstatement of its license. As a condition of reinstatement, the licensee shall be on probation for a period of one (1) year and shall be subject to quarterly review by the department in accordance with subsection (2)(c) of this section.

~~[(4) Any licensee that has had its license revoked, has had its renewal application denied, or has had action initiated to revoke, suspend, or deny its license for failure to meet the forty percent (40%) retention threshold prior to July 14, 2000, may petition the department for reconsideration of its action or proposed action. Upon petition for reconsideration, the department shall apply the standards contained in subsection (2) of this section and shall adjust the license status of the petitioner accordingly. The department shall give credit for the amount of time a license has been revoked in assessing penalties under subsection (2) of this section not to exceed the amount of time imposed under the new penalty.]~~

➔Section 3. KRS 238.555 is amended to read as follows:

- (1)
  - (a) No person *or organization* shall operate a charitable gaming facility unless the person *or organization* is licensed under the provisions of this chapter, ***except that facilities that are utilized by two (2) or fewer charitable organizations for the purpose of conducting charitable gaming, and facilities that only host charity fundraising events, shall be exempt from licensure.***
  - (b) The department shall charge a license fee not to exceed two thousand five hundred dollars (\$2,500). Specific license fees to be charged shall be:
    1. Prescribed in a graduated scale promulgated by administrative regulation; and
    2. Based on the number of sessions which the facility holds per week or other applicable factors or combination of factors.
  - (c) Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.
- (2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:
  - (a) The address of the facility;
  - (b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;
  - (c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;
  - (d) The name, address, date of birth, and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;
  - (e) A copy of the lease agreement used by the applicant; and
  - (f) Any other information the department deems appropriate.
- (3) No owner, officer, employee, or contractee of a licensed charitable gaming facility or an affiliate, or any member of the immediate family of any officer, employee, or contractee of a licensed charitable gaming facility or an affiliate shall, concerning a lessee:
  - (a) Manage or otherwise be involved in the conduct of charitable gaming;
  - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
  - (c) Handle any moneys generated in the conduct of charitable gaming;
  - (d) Advise a licensed charitable organization on the expenditure of net receipts;
  - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
  - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;
  - (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
  - (h) Influence or require a licensed charitable organization to use a certain distributor or any particular gaming supplies; or
  - (i) Donate or give any prize to be awarded in the conduct of charitable gaming.
- (4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. ~~[-The licensed charitable gaming facility shall agree in the lease to provide gaming space, utilities, insurance for the premises, parking, tables and chairs, and other nongaming equipment necessary for the conduct of charitable gaming, adequate storage~~

~~space, security, and janitorial services. The costs of the goods and services provided shall be itemized in the lease. A licensed charitable organization may elect to provide for itself any of the goods and services that a charitable gaming facility is required to provide under this subsection, provided these arrangements are clearly noted in the lease agreement, and provided the total compensation to be paid the charitable gaming facility is reduced commensurate with the cost of the goods and services as itemized in the lease.~~ The amount of rent, goods, and services charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. **The amount charged to rent a charitable gaming facility, whether the facility is licensed or unlicensed,** ~~rent~~ shall not be based in whole or in part ~~on~~ on a percentage of gross receipts, ~~or~~ net proceeds derived from the conduct of charitable gaming, or by reference to the number of people in attendance. ~~The department by administrative regulation may establish standards for the determination of prevailing market values.~~ A **licensed charitable gaming facility shall file a** copy of each signed lease agreement ~~shall be filed~~ with the department. ~~The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.~~

- (5) The number of bingo sessions conducted at a charitable gaming facility shall be limited to the following:
- (a) No more than eighteen (18) sessions per week if the charitable gaming facility is located in one (1) of the following:
    1. A city containing a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census;
    2. An urban-county government;
    3. A consolidated local government;
    4. A charter county government; or
    5. A county containing a city of the first class or a city containing a population equal to or greater than twenty thousand (20,000) based upon the most recent federal decennial census; or
  - (b) No more than eight (8) sessions per week if the charitable gaming facility is located in a city other than those listed in paragraph (a) of this subsection, or in a county that does not contain a city that is listed in paragraph (a) of this subsection.
- (6) A licensed charitable gaming facility shall report at least quarterly to the department and shall provide any information concerning its operation that the department may require.
- (7) A charity fundraising event at which special limited charitable games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.
- (8) A licensed charitable gaming facility shall conspicuously display a sign bearing the name and the license number of the charitable organization that is conducting charitable gaming activities in the facility.
- (9) The license to operate the charitable gaming facility shall be prominently displayed on or in the premises where charitable gaming activity is being conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the department, law enforcement officials, and other interested officials.

➔Section 4. KRS 11A.010 (Effective until April 1, 2021) is amended to read as follows:

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

- (1) "Business" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted, whether or not for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law,

mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;

- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, the waiver of a registration fee for a presenter at a conference or training described in KRS 45A.097(5), or door prizes available to the public;
  - (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
  - (7) "Officer" means:
    - (a) All major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, executive directors, executive assistants, policy advisors, special assistants, administrative coordinators, executive advisors, staff assistants, and division directors;
    - (b) Members and full-time chief administrative officers of:
      1. The Parole Board;
      2. Kentucky Claims Commission;
      3. Kentucky Retirement Systems board of trustees;
      4. Kentucky Teachers' Retirement System board of trustees;
      5. The Kentucky Public Employees Deferred Compensation Authority board of trustees;
      6. Public Service Commission;
      7. Worker's Compensation Board and its administrative law judges;
      8. The Kentucky Occupational Safety and Health Review Commission;
      9. The Kentucky Board of Education; ~~and~~
      10. The Council on Postsecondary Education; *and*
    - 11. *The Kentucky Horse Racing Commission.***
  - (c) Salaried members of executive branch boards and commissions; and
  - (d) Any person who, through a personal service contract or any other contractual employment arrangement with an agency, performs on a full-time, nonseasonal basis a function of any major management position listed in this subsection;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his or her position in the state service;
- (9) "Public servant" means:
  - (a) The Governor;
  - (b) The Lieutenant Governor;
  - (c) The Secretary of State;
  - (d) The Attorney General;
  - (e) The Treasurer;
  - (f) The Commissioner of Agriculture;
  - (g) The Auditor of Public Accounts;
  - (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees; and

- (i) Any person who, through any contractual arrangement with an agency, is employed to perform a function of a position within an executive branch agency on a full-time, nonseasonal basis;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his or her appointing authority is employed, unless his or her agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;
- (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(23) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(9);
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of this section;
- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
- (15) "Public agency" means any governmental entity;
- (16) "Appointing authority" means the agency head or any person whom he or she has authorized by law to act on behalf of the agency with respect to employee appointments;
- (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else;
- (18) "Directly involved" means to work on personally or to supervise someone who works on personally;
- (19) "Sporting event" means any professional or amateur sport, athletic game, contest, event, or race involving machines, persons, or animals, for which admission tickets are offered for sale and that is viewed by the public;
- (20) "Person" means an individual, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business or statutory trust, donative trust, estate, company, corporation, limited liability company, association, club, committee, organization, or group of persons acting in concert; and
- (21) "Salaried" means receiving a fixed compensation or benefit reserved for full-time employees, which is paid on a regular basis without regard to the actual number of hours worked.

➔Section 5. KRS 11A.010 (Effective April 1, 2021) is amended to read as follows:

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

- (1) "Business" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted, whether or not for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or herself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, the waiver of a registration fee for a presenter at a conference or training described in KRS 45A.097(5), or door prizes available to the public;

- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means:
- (a) All major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, executive directors, executive assistants, policy advisors, special assistants, administrative coordinators, executive advisors, staff assistants, and division directors;
  - (b) Members and full-time chief administrative officers of:
    - 1. The Parole Board;
    - 2. Kentucky Claims Commission;
    - 3. Kentucky Retirement Systems board of trustees;
    - 4. Kentucky Teachers' Retirement System board of trustees;
    - 5. The Kentucky Public Employees Deferred Compensation Authority board of trustees;
    - 6. Public Service Commission;
    - 7. Worker's Compensation Board and its administrative law judges;
    - 8. The Kentucky Occupational Safety and Health Review Commission;
    - 9. The Kentucky Board of Education;
    - 10. The Council on Postsecondary Education;
    - 11. County Employees Retirement System board of trustees; ~~and~~
    - 12. Kentucky Public Pensions Authority; *and*
    - 13. *The Kentucky Horse Racing Commission;*
  - (c) Salaried members of executive branch boards and commissions; and
  - (d) Any person who, through a personal service contract or any other contractual employment arrangement with an agency, performs on a full-time, nonseasonal basis a function of any major management position listed in this subsection;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his or her position in the state service;
- (9) "Public servant" means:
- (a) The Governor;
  - (b) The Lieutenant Governor;
  - (c) The Secretary of State;
  - (d) The Attorney General;
  - (e) The Treasurer;
  - (f) The Commissioner of Agriculture;
  - (g) The Auditor of Public Accounts;
  - (h) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees; and
  - (i) Any person who, through any contractual arrangement with an agency, is employed to perform a function of a position within an executive branch agency on a full-time, nonseasonal basis;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his or her appointing authority is employed, unless his or her agency is attached to the appointing authority's agency for



administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;

- (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(23) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(9);
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of this section;
- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
- (15) "Public agency" means any governmental entity;
- (16) "Appointing authority" means the agency head or any person whom he or she has authorized by law to act on behalf of the agency with respect to employee appointments;
- (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else;
- (18) "Directly involved" means to work on personally or to supervise someone who works on personally;
- (19) "Sporting event" means any professional or amateur sport, athletic game, contest, event, or race involving machines, persons, or animals, for which admission tickets are offered for sale and that is viewed by the public;
- (20) "Person" means an individual, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business or statutory trust, donative trust, estate, company, corporation, limited liability company, association, club, committee, organization, or group of persons acting in concert; and
- (21) "Salaried" means receiving a fixed compensation or benefit reserved for full-time employees, which is paid on a regular basis without regard to the actual number of hours worked.

➔Section 6. KRS 11A.040 is amended to read as follows:

- (1) A public servant, in order to further his own economic interests, or those of any other person, shall not knowingly disclose or use confidential information acquired in the course of his official duties.
- (2) A public servant shall not knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.
- (3) A public servant shall not knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.
- (4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:
  - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
  - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
  - (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
  - (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction; or

- (e) Sales of craft items to a state park by interim state employees designated as craftspersons under KRS 148.257.
- (5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.
- (6) A former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within one (1) year of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction. This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.
- (7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within one (1) year following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of one (1) year, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions, including but not limited to filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.
- (8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:
  - (a) The date of leaving office or termination of employment; or
  - (b) The date the term of office expires to which the public servant was elected.
- (9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:
  - (a) The date of leaving office or termination of employment; or
  - (b) The date the term of office expires to which the public servant was elected.
- (10) Without the approval of his appointing authority, a public servant shall not accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.
  - (a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.
  - (b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.
  - (c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.
- (11) The prohibitions imposed by subsection (5) or (10) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner

of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.

**(12) *The prohibitions imposed by subsections (6) to (10) of this section shall not apply to members of the Kentucky Horse Racing Commission.***

➔Section 7. KRS 230.230 is amended to read as follows:

- (1) The Governor shall appoint an executive director who shall serve at the pleasure of the Governor. The Governor shall set the qualifications and salary for the position of executive director pursuant to KRS 64.640. The executive director shall possess the powers and perform the duties imposed upon him by the Governor, and other duties as the racing commission may direct or prescribe. The executive director shall:
- (a) Be responsible for the day-to-day operations of the racing commission;
  - (b) Set up appropriate organizational structures and personnel policies for approval by the racing commission;
  - (c) Appoint all staff;
  - (d) Prepare annual reports of the racing commission's program of work;
  - (e) Carry out policy and program directives of the racing commission;
  - (f) Prepare and submit to the racing commission for its approval the proposed biennial budget of the racing commission; and
  - (g) Perform all other duties and responsibilities assigned by law.

The executive director shall cause to be kept a full record of all proceedings before the racing commission and shall preserve at its general office all books, maps, records, documents, licenses, and other papers of the racing commission. All records of the racing commission shall be open to inspection by the public during regular office hours. With approval of the racing commission, the executive director may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the racing commission.

- (2) The executive director of the racing commission may employ, dismiss, or take other personnel action concerning an assistant executive director, stenographers, clerks, and other personnel as he or she may deem necessary to efficiently operate the racing commission's general office or any branch thereof. The executive director of the racing commission shall fix the compensation of all employees. Any member of the racing commission or any employee referred to in this section shall be reimbursed for expenses paid or incurred in the discharge of official business when approved by the executive director of the racing commission. The compensation of the employees referred to in this section, except for the executive director, together with reimbursement of expenses incurred by employees, a member of the racing commission, or the executive director, shall be paid from racing commission funds.
- (3) ***Members of the Kentucky Horse Racing Commission shall be subject to the provisions of Sections 4, 5, and 6 of this Act.***

➔Section 8. The provisions of subsection (2) of Section 2 of this Act shall be waived for all licensees for the calendar year 2020.

➔Section 9. Because financial reports for calendar year 2020 and violations based upon those reports are due before the effective date of legislation passed during the 2021 General Assembly, an emergency is declared to exist, and Sections 1 to 3 and Section 8 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor April 8, 2021.**

## ( SB 51 )

AN ACT relating to addiction treatment.

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

➔Section 1. KRS 304.17A-611 is amended to read as follows:

- (1) A utilization review decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer or its designee for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person, authorized person, or the provider.
- (2) ***For health benefit plans issued or renewed on or after the effective date of this section, an insurer shall not require or conduct a prospective or concurrent review for a prescription drug:***
  - (a) ***That:***
    1. ***Is used in the treatment of alcohol or opioid use disorder; and***
    2. ***Contains Methadone, Buprenorphine, or Naltrexone; or***
  - (b) ***That was approved before the effective date of this section by the United States Food and Drug Administration for the mitigation of opioid withdrawal symptoms.***

➔Section 2. KRS 205.536 is amended to read as follows:

- (1) A Medicaid managed care organization shall have a utilization review plan, as defined in KRS 304.17A-600, that meets the requirements established in 42 C.F.R. pts. 431, 438, and 456. If the Medicaid managed care organization utilizes a private review agent, as defined in KRS 304.17A-600, the agent shall comply with all applicable requirements of KRS 304.17A-600 to 304.17A-633.
- (2) In conducting utilization reviews for Medicaid benefits, each Medicaid managed care organization shall use the medical necessity criteria selected by the Department of Insurance pursuant to KRS 304.38-240, for making determinations of medical necessity and clinical appropriateness pursuant to the utilization review plan required by subsection (1) of this section.
- (3) ***To the extent consistent with the federal regulations referenced in subsection (1) of this section, the Department for Medicaid Services or any managed care organization contracted to provide Medicaid benefits pursuant to KRS Chapter 205 shall not require or conduct a prospective or concurrent review, as defined in KRS 304.17A-600, for a prescription drug:***
  - (a) ***That:***
    1. ***Is used in the treatment of alcohol or opioid use disorder; and***
    2. ***Contains Methadone, Buprenorphine, or Naltrexone; or***
  - (b) ***That was approved before January 1, 2022, by the United States Food and Drug Administration for the mitigation of opioid withdrawal symptoms.***

➔SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) ***As used in this section:***
  - (a) ***"Kentucky Board of Nursing" means the board established in KRS 314.121; and***
  - (b) ***"State Board of Medical Licensure" means the board established in KRS 311.530.***
- (2) ***For all claims made during the preceding plan year, an insurer shall annually report to the commissioner the number and type of providers that have prescribed medication for addiction treatment to its insureds:***
  - (a) ***In conjunction with behavioral therapy; and***
  - (b) ***Not in conjunction with behavioral therapy.***
- (3) ***The commissioner shall submit an annual written report, which shall include an executive summary, on the information reported under subsection (2) of this section to:***
  - (a) ***The General Assembly;***

(b) *The State Board of Medical Licensure; and*

(c) *The Kentucky Board of Nursing.*

➔Section 4. KRS 205.522 is amended to read as follows:

- (1) The Department for Medicaid Services and any managed care organization contracted to provide Medicaid benefits pursuant to this chapter shall comply with the provisions of KRS 304.17A-167, 304.17A-235, 304.17A-515, 304.17A-580, 304.17A-600, 304.17A-603, 304.17A-607, and 304.17A-740 to 304.17A-743, as applicable.
- (2) *A managed care organization contracted to provide Medicaid benefits pursuant to this chapter shall comply with the reporting requirements of Section 3 of this Act.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "third-party payor" means any person required to comply with subsection (2) of Section 1 of this Act or subsection (3) of Section 2 of this Act.*
- (2) *Prior to the discharge of a patient that has received medication for addiction- treatment, the treating facility shall submit a written discharge plan to the patient, and the patient's third-party payor, if any, which shall describe arrangements for additional services needed following discharge.*

➔Section 6. In implementing Section 2 of this Act, if the Cabinet for Health and Family Services or the Department for Medicaid Services determines that a waiver or any other authorization is necessary to take advantage of all federal funds that may be available, the cabinet or department shall:

- (1) Within 90 days of the effective date of Section 2 of this Act, apply for the waiver or authorization;
- (2) Notify in writing the co-chairs of the Interim Joint Committee on Health, Welfare, and Family Services within 2 business days of the submission of the application; and
- (3) Pursuant to KRS 205.525, provide an update, on or before December 1, 2021, on the status of the application to the Interim Joint Committee on Health, Welfare, and Family Services.

➔Section 7. Section 1 of this Act takes effect January 1, 2022.

**Signed by Governor April 8, 2021.**

## CHAPTER 202

( SB 4 )

AN ACT relating to warrants authorizing entry without notice.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO READ AS FOLLOWS:

*No arrest warrant or search warrant shall be issued authorizing entry without notice unless:*

- (1) *The court finds by clear and convincing evidence that:*
  - (a) *The crime alleged is a crime that would qualify a person, if convicted, as a violent offender under KRS 439.3401; the crime alleged is a crime designated in KRS 525.045, 527.200, 527.205, or 527.210; or the evidence sought may give rise to the charge of a crime that would qualify a person, if convicted, as a violent offender under KRS 439.3401 or may give rise to a charge of a crime designated in KRS 525.045, 527.200, 527.205, or 527.210; and*
  - (b) *As established by facts specific to the case, giving notice prior to entry will endanger the life or safety of any person, or result in the loss or destruction of evidence sought that may give rise to a charge of a crime that would qualify a person, if convicted, as a violent offender under KRS 439.3401 or may give rise to a charge of a crime designated in KRS 525.045, 527.200, 527.205, or 527.210;*
- (2) *The law enforcement officer seeking the warrant has obtained the approval of his or her supervising officer, or has the approval of the highest ranking officer in his or her law enforcement agency;*

- (3) *The law enforcement officer seeking the warrant has consulted with the Commonwealth's attorney or county attorney for the jurisdiction for which the warrant is sought, or with an assistant Commonwealth's attorney or assistant county attorney for the jurisdiction for which the warrant is sought;*
- (4) *The law enforcement officer seeking the warrant discloses to the judge, as part of the application, any other attempt to obtain a warrant authorizing entry without notice for the same premises, or for the arrest of the same individual;*
- (5) *The warrant authorizes that the entry without notice occur only between the hours of 6 a.m. and 10 p.m., except in exigent circumstances where the court makes the findings set forth in subsection (1) of this section and the court further finds by clear and convincing evidence that there are substantial and imminent risks to the health and safety of the persons executing the warrant, the occupants of the premises, or the public that justify the entry without notice occur during other hours designated by the court; and*
- (6) *If the warrant is not issued electronically pursuant to KRS 455.170, the warrant includes the legibly printed name and signature of the judge.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO READ AS FOLLOWS:

*A judge shall carefully review any application for a warrant pursuant to Section 1 of this Act as a neutral and detached magistrate. Failure to act as a neutral and detached magistrate may be referred to the Judicial Conduct Commission.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO READ AS FOLLOWS:

*A warrant issued pursuant to Section 1 of this Act shall be executed:*

- (1) *By law enforcement officers who:*
  - (a) *Are members of a special weapons and tactics team or special response team, or another established team or unit trained and tasked with resolving high-risk situations and incidents, who have received appropriate training in the execution of arrest and search warrants authorizing entry without notice. In counties having a population of less than ninety thousand (90,000), when, after reasonable inquiry by the law enforcement officer seeking the warrant, members of the special weapons and tactics team or special response team are not available to timely execute the warrant and the court finds by clear and convincing evidence that the risks to the health and safety of the persons executing the warrant, the occupants of the premises, or the public are greater if the warrant is not timely executed, the court may approve the execution of the warrant without members of a special weapons and tactics team or special response team;*
  - (b) *Are equipped with body-worn cameras, or, in counties having a population of less than ninety thousand (90,000), equipped with other audio-visual or audio recording devices issued by the government, and shall record the entirety of the execution of the warrant with a recording device that meets the requirements of this paragraph; and*
  - (c) *Are equipped with clearly visible insignia on any protective equipment or clothing that clearly identifies the name of the agency that employs the members of the special weapons and tactics team or special response team;*
- (2) *In the presence of a uniformed law enforcement officer; and*
- (3) *With a certified or licensed paramedic or emergency medical technician in proximity and available to provide medical assistance, if needed.*

➔Section 4. KRS 523.020 is amended to read as follows:

- (1) A person is guilty of perjury in the first degree when he *or she* makes a material false statement, which he *or she* does not believe:
  - (a) In any official proceeding under an oath required or authorized by law; ~~{or}~~
  - (b)~~(2)~~ ~~{When he makes a material false statement which he does not believe }~~In a subscribed written instrument for which an oath is required or authorized by law, with the intent to mislead a public servant in the performance of his *or her* official functions when such person is subscribing a warrant accusing his *or her* spouse of an offense under KRS Chapter 510; *or*
  - (c) *In an application for a warrant under Section 1 of this Act.*

~~(2)(3)~~ Perjury in the first degree is a Class D felony.

➔SECTION 5. A NEW SECTION OF KENTUCKY RULES OF EVIDENCE 401 TO 412 IS CREATED TO READ AS FOLLOWS:

- (a) *Except as provided in subdivision (b) of this rule, the following evidence is not admissible in any civil or criminal proceeding:*
- (1) *Evidence gathered by use of an arrest warrant or search warrant authorizing entry without notice that did not comply with applicable statutes; or*
  - (2) *Evidence gathered by use of an arrest warrant or search warrant authorizing entry without notice that was obtained through perjury or material false statement.*
- (b) *Evidence excluded in subdivision (a) of this rule is admissible if otherwise admissible under these rules, and:*
- (1) *In a civil case, offered by the plaintiff in an action for damages arising from the warrant; or*
  - (2) *In a criminal proceeding for perjury or material false statement in the application for the warrant, offered against the defendant.*

Signed by Governor April 9, 2021.

## CHAPTER 203

( HB 321 )

AN ACT relating to revenue.

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 and declares the following:*
- (a) *The development area, the west end of Louisville, which includes the communities of Parkland, Shawnee, Park Duvalle, Russell, Portland, California, Chickasaw, including an adjacent unincorporated community, Park Hill, and Algonquin, including an adjacent unincorporated community, has been the home of many prominent African-Americans, including being the boyhood home of Muhammad Ali;*
  - (b) *The development area possesses a rich history of African-American life, including thriving restaurants, theatres, and other minority-owned businesses. That history also includes the presence of the Western Branch of the Louisville Free Public Library, at 10th St. and Chestnut, America's first public library open to African-Americans, which opened in 1908;*
  - (c) *The development area continues to be the home of thousands of African-Americans who live and work in the Commonwealth and desire to build a better future for themselves, their families, and the generations that follow;*
  - (d) *The current challenging economic times combined with the intergenerational effects of years of racial prejudice and segregation have hindered the economic progress of African-Americans;*
  - (e) *The development area currently has a low percentage of owner-occupied homes, problems with vacant and abandoned housing, and a dearth of strategic economic planning and investment;*
  - (f) *Fifty percent (50%) of households within the development area have an annual gross income of less than twenty-five thousand one hundred thirty dollars (\$25,130), and individuals under the age of eighteen (18) or over the age of sixty-five (65) make up approximately thirty-eight and one-tenth percent (38.1%) of the population;*
  - (g) *In the development area, thirty-nine and six-tenths percent (39.6%) of the population lives below the federal poverty level and children make up thirty-seven and four-tenths percent (37.4%) of all individuals below the poverty line; and*

- (h) *In addition to many nonprofits working in the development area to improve the quality of life of residents, African-American leaders and other Louisville community leaders and philanthropists have recently united to envision a public-private partnership to make investments promoting economic growth and the long-term well-being of the community, while simultaneously supporting policies to guard against displacement of residents as growth proceeds.*
- (2) *The General Assembly enacts Sections 1 to 7 and 8 of this Act to:*
- (a) *Support the revitalization of and investment in the development area; and*
- (b) *Provide resources for additional opportunities for residents of the development area, both natural persons and businesses, to work together to improve their educational attainment, working opportunities, and quality of life, thus returning the West End to the safe, prosperous, and enjoyable community needed, deserved, and expected by the residents, and for the area to become an equal partner in the future of all of Jefferson County.*
- (3) *It is the intent of the General Assembly that if any part of Sections 1 to 7 or 8 of this Act is held unconstitutional, the remaining parts shall remain in force.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 7 of this Act:*

- (1) *"Affiliated" means the following:*
- (a) *Members of a family, including brothers and sisters of the whole or half blood, spouse, parents, grandparents, ancestors, children, spouses of children, grandchildren, spouses of grandchildren, and other lineal descendants of an individual;*
- (b) *An individual and a corporation, if more than ten percent (10%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;*
- (c) *An individual and a limited liability company or a partnership, if more than ten percent (10%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual; or*
- (d) *An individual and a trust, if the individual is a grantor, fiduciary, or beneficiary of the trust;*
- (2) *"Board" means the board of the West End Opportunity Partnership;*
- (3) *"CPI" means the nonseasonally adjusted United States city average of the Consumer Price Index for all urban consumers for all items, as released by the federal Bureau of Labor Statistics;*
- (4) *"Development area" means a region within a consolidated local government bounded by:*
- (a) *To the south, Algonquin Parkway to the South Seventh Street intersection, but including the unincorporated communities adjacent to Park Duvalle and Algonquin:*
1. *Beginning at the Ohio River, at the southwest corner of Chickasaw Park and then along the park's southern boundary to Southwestern Parkway;*
  2. *Southwestern Parkway south to Algonquin Parkway;*
  3. *Algonquin Parkway to South Forty-First Street;*
  4. *South Forty-First Street south to Bells Lane;*
  5. *Bells Lane east to Cane Run Road;*
  6. *Cane Run Road north to Linwood Avenue;*
  7. *Linwood Avenue east to Beech Street;*
  8. *Beech Street south to Wingfield Lane;*
  9. *Wingfield Lane east to Dixie Highway;*
  10. *Dixie Highway north to Algonquin Parkway; and*
  11. *Algonquin Parkway east to South Seventh Street;*
- (b) *To the east, South Seventh Street north to Ninth Street and Ninth Street north to the Ohio River; and*
- (c) *The Ohio River to the north and west;*



- (5) *"Governing body" means the body possessing legislative authority in a consolidated local government;*
- (6) *"Incremental revenues" means the amount of revenues received by:*
- (a) *A consolidated local government, determined by subtracting old revenues from new revenues in a calendar year with respect to the development area; and*
  - (b) *The Commonwealth, determined by subtracting old revenues from new revenues in a calendar year with respect to the development area;*
- (7) (a) *"Local tax revenues" means revenues derived by a consolidated local government from one (1) or more of the following sources:*
1. *Real property ad valorem taxes, excluding any taxes not assessed while a property is participating in an assessment or reassessment moratorium program under KRS 99.600; and*
  2. *Occupational license taxes; and*
- (b) *"Local tax revenues" does not mean revenues that have been pledged to support a tax increment financing project established under KRS 65.490 to 65.499, 65.680 to 65.699, or 65.7041 to 65.7083 or an economic development project within the development area;*
- (8) *"New revenues" means the amount of:*
- (a) *Local tax revenues received by a consolidated local government with respect to the development area in any calendar year beginning with the calendar year described under subsection (1) of Section 5 of this Act; and*
  - (b) *State tax revenues received by the Commonwealth with respect to the development area in any calendar year beginning with the calendar year described under subsection (1) of Section 5 of this Act;*
- (9) *"Old revenues" means the amount of:*
- (a) *Local tax revenues received by a consolidated local government with respect to the development area in any calendar year beginning with the calendar year immediately preceding the calendar years described under subsection (1) of Section 5 of this Act; and*
  - (b) *State tax revenues received by the Commonwealth with respect to the development area in any calendar year beginning with the calendar year immediately preceding the calendar years described under subsection (1) of Section 5 of this Act.*
- "Old revenues" shall be adjusted annually to incorporate the percentage change in the CPI. In the first calendar year of the calendar years described under subsection (1) of Section 5 of this Act, the calculated amount for the state tax revenues and the local tax revenues shall be adjusted by multiplying each amount by the percentage change in the CPI. For every calendar year thereafter until the expiration of the calendar years described under subsection (1) of Section 5 of this Act, the calculated amount for the state tax revenues and the local tax revenues shall be the previous year's calculated amount multiplied by the percentage change in the CPI;*
- (10) *"Percentage change in the CPI" means the percentage of change in CPI from one (1) year to the next based on averaging the twelve (12) consecutive months of CPI data for each of the two (2) immediately preceding calendar years and then using those two (2) averages to calculate a year-over-year percentage change; and*
- (11) (a) *"State tax revenues" means revenues received by the Commonwealth from one (1) or more of the following sources:*
1. *State real property ad valorem taxes, excluding any taxes not assessed while a property is participating in an assessment or reassessment moratorium program under KRS 99.600;*
  2. *Individual income taxes required to be withheld by an employer as required under KRS 141.310; and*
  3. *Sales taxes levied under KRS 139.200, excluding sales taxes already pledged for:*
    - a. *Approved tourism attraction projects, as defined in KRS 148.851, within the development area; and*

*b. Projects which are approved for sales tax refunds under Subchapter 20 of KRS Chapter 154 within the development area and*

*(b) "State tax revenues" does not mean revenues that have been pledged to support a tax increment financing project established under KRS 65.490 to 65.499, 65.680 to 65.699, or 65.7041 to 65.7083 or an economic development project within the development area.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*(1) The West End Opportunity Partnership is hereby created and shall be a public corporation and a public body corporate and politic, with the powers and duties in its corporate name to:*

- (a) Have a corporate seal;*
- (b) Sue and be sued;*
- (c) Make or execute contracts and other instruments necessary or convenient to the exercise of its powers;*
- (d) Make, and from time to time amend and repeal, bylaws and procedures, including a policy and procedure for replacing any institution that has a permanent seat on the board, should an institution cease to exist or change corporate form, to effect the purposes of Sections 1 to 7 of this Act;*
- (e) Hire and maintain personnel as may be required;*
- (f) Borrow from and accept loans and grants from the federal, state, local jurisdictions, or any agency thereof, or from any sources, public or private, and to pledge such security as may be required;*
- (g) Invest any funds held in reserves or any funds not required for immediate disbursements, in property or securities in which savings banks may legally invest funds subject to their control;*
- (h) Purchase its bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased to be canceled;*
- (i) Plan initiatives within the development area;*
- (j) Invest in projects and neighborhood-based or neighborhood-directed initiatives led by other organizations seeking to invest within the development area;*
- (k) Make loans to businesses, individuals, or other organizations seeking to invest within the development area;*
- (l) Receive proceeds from loans and grants;*
- (m) Purchase, acquire, own, hold, and dispose of all real and personal property necessary for carrying out its corporate purposes;*
- (n) Invest in projects that create affordable housing within the development area;*
- (o) Communicate with the advisory council established in Section 7 of this Act to seek specific knowledge about the community;*
- (p) Adopt and comply with KRS Chapter 45A or develop a procurement code designed to provide for the purchase of supplies, equipment, services, and construction items that provide the greatest long-term benefit to the development area, the greatest integrity for the West End Opportunity Partnership, and the best service and products for the public;*
- (q) Develop a program that will:
 
  - 1. Raise awareness of the income tax credit established under Section 8 of this Act;*
  - 2. Enable individuals in the development area to timely pay property taxes by lending funds on a short-term basis until the refundable income tax credit is returned to the individual; and*
  - 3. Assist individuals residing in the development area and qualifying for the income tax credit by filling out returns or other paperwork required to claim the tax credit;**
- (r) Create an account for the incremental tax increases collected from property owners of residential property located within the development area; and*

- (s) *Create an account to make home improvements for existing property owners of residential property located within the development area; and*
  - (t) *Exercise any power, duties, and requirements for carrying out its corporate purposes under Sections 1 to 7 of this Act.*
- (2) *The purpose of the West End Opportunity Partnership shall be to:*
- (a) *Manage and support the revitalization of and investment in the development area, with a focus on projects supported by residents and businesses within the development area;*
  - (b) *Encourage private investment in businesses and residential projects that will have a significant impact within the development area;*
  - (c) *Ensure that all projects include the employment of area residents, both in short-term construction jobs and long-term employment in businesses locating within the development area; and*
  - (d) *Ensure that all housing projects include the creation of housing that is deemed affordable in accordance with federal guidelines for low-income families.*
- (3) *The West End Opportunity Partnership shall comply with KRS 61.800 to 61.850 and 61.870 to 61.884.*
- (4) *The board shall comply with KRS Chapter 65A and the West End Opportunity Partnership shall be subject to audit under KRS 43.070.*
- (5) (a) *The West End Opportunity Partnership is solely responsible for its operations. No debt of the West End Opportunity Partnership is a debt of the Commonwealth or consolidated local government. An action of the West End Opportunity Partnership is not an action of the Commonwealth or a consolidated local government and shall not obligate the Commonwealth or consolidated local government in any manner.*
- (b) *Bonds issued by the board under the provisions of this section do not constitute a debt of the Commonwealth or of any political subdivision thereof, or a pledge of the faith and credit of the Commonwealth or of any such political subdivision, but such bonds shall be payable solely from the funds, and security, provided therefor under the provisions of Sections 1 to 7 of this Act, and all such bonds shall contain on the face thereof a statement to that effect.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The West End Opportunity Partnership shall be governed by a board. The board shall initially consist of the following members:*
- (a) *One (1) member appointed by the Governor for a term of two (2) years;*
  - (b) *One (1) member appointed by the mayor of a consolidated local government for a term of two (2) years;*
  - (c) *One (1) member of the legislative council of the consolidated local government appointed by its members for a term of three (3) years;*
  - (d) *A representative of the University of Louisville appointed by its board of trustees for a term of three (3) years;*
  - (e) *A representative of Simmons College of Kentucky appointed by its board of trustees for a term of three (3) years; and*
  - (f) *1. The following shall be appointed by the Governor:*
    - a. *One (1) member from the NAACP of Louisville;*
    - b. *One (1) member from OneWest in Louisville;*
    - c. *One (1) member from Louisville Urban League;*
    - d. *One (1) member from the Federal Reserve Bank in Louisville;*
    - e. *One (1) member from the Volunteers of America Mid States in Louisville;*
    - f. *One (1) member from a locally based foundation with assets over one hundred million dollars (\$100,000,000); and*

- g. *One (1) member from a bank with local assets greater than one billion dollars (\$1,000,000,000).*
- 2. *The initial appointments of the members described in subparagraph 1. of this paragraph shall be for terms as follows:*
  - a. *Two (2) members for a term of one (1) year;*
  - b. *Two (2) members for a term of two (2) years;*
  - c. *Two (2) members for a term of three (3) years; and*
  - d. *One (1) member for a term of four (4) years.*
- (2) *The board shall include in its bylaws a process for appointing one (1) member from each of the nine (9) neighborhoods in the development area as additional members. The process shall:*
  - (a) *Ensure the nine (9) members are each from a different neighborhood;*
  - (b) *Require that, at all times, at least one (1) of the nine (9) members representing the neighborhoods shall be between the ages of eighteen (18) and thirty (30) at the time of appointment or reappointment; and*
  - (c) *Provide that the initial appointment of the members be for terms as follows:*
    - 1. *Four (4) members for a term of two (2) years; and*
    - 2. *Five (5) members for a term of three (3) years.*
- (3) *After expiration of the term limits provided in subsections (1) and (2) of this section, the board shall self-perpetuate. The overall makeup of the board shall remain the same unless an institution ceases to exist or changes corporate form. All successors of the representatives described in subsection (1) of this section shall serve four (4) year terms and all successors of the representatives described in subsection (2) of this section shall serve three (3) year terms. No individual shall serve more than two (2) consecutive terms.*
- (4) *The head of economic development for the consolidated local government, or his or her designee, and the secretary of the Cabinet for Economic Development, or his or her designee, shall be nonvoting, ex officio members of the West End Opportunity Partnership;*
- (5) *The membership of the board shall not exceed twenty-one (21) voting members.*
- (6) *The majority of the board's membership shall reflect the racial majority of the residents living in the development area.*
- (7) *A chair of the board shall be selected annually from its members and shall have responsibility for board meeting agendas and presiding at board meetings.*
- (8) *Members of the board shall be entitled only to reimbursement from the West End Opportunity Partnership for actual expenses incurred in the performance of their duties as board members.*
- (9) *A majority of the entire voting members of the board shall constitute a quorum, and all actions of the board shall be by vote of a majority of its entire voting membership.*
- (10) *A member of the board shall abstain from action on an official decision in which he or she has or may have a personal or private interest, or if the member is affiliated with any party conducting business with the West End Opportunity Partnership, shall disclose the existence of that personal or private interest or affiliation in writing to the other members of the board on the same day on which the member becomes aware that the interest or affiliation exists or that an official decision may be under consideration by the board. The member which has or may have a personal or private interest or affiliation shall be absent from all meetings and votes in relation to the matter.*
- (11) *As a prerequisite to service, each appointee to the board and each member of the West End Louisville Advisory Council established in Section 7 of this Act shall participate in a board-sanctioned training program on the topics of community and economic development, finance, equity and community engagement, gentrification, and the implications of these concepts.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding KRS 6.945, beginning in the calendar year following the full receipt of the initial funds statutorily required to be invested by private sector investors, a consolidated local government, and the*

*Commonwealth to the West End Opportunity Partnership and continuing for twenty (20) years, eighty percent (80%) of the incremental revenues shall be pledged to the West End Opportunity Partnership by a consolidated local government and the Commonwealth.*

- (2) *A local participation agreement shall be executed between the West End Opportunity Partnership and the governing body involved in providing financing or pledging incremental revenues to support the implementation of a development plan in a development area.*
- (3) *The local participation agreement shall be adopted by the governing body by ordinance and shall include but not be limited to the following provisions:*
  - (a) *Identification of the parties to the local participation agreement and the duties and responsibilities of each entity under the agreement;*
  - (b) *Specific identification of the incremental revenues released or pledged by type of tax by each taxing district;*
  - (c) *The anticipated benefit to be received by each taxing district for the release or pledge, including a detailed summary of old revenues collected;*
  - (d) *A requirement that pledged incremental revenues shall be accounted for within a separate account under Section 6 of this Act;*
  - (e) *Terms of default and remedies, provided that no remedy shall permit the withholding by any party to the local participation agreement of any incremental revenues pledged to the special fund if increment bonds are outstanding that are secured by a pledge of those incremental revenues;*
  - (f) *The commencement date, activation date, and termination date; and*
  - (g) *Any other provisions not inconsistent with Sections 1 to 7 of this Act.*
- (4) *Any pledge of incremental revenues in a local participation agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the activation date to the termination date set forth in the local participation agreement, supersede any statute, ordinance, or resolution regarding the application or use of incremental revenues. An ordinance in conflict with a local participation agreement shall not be adopted while any increment bonds secured by that pledge remain outstanding. Ordinances or resolutions pledging incremental revenues on a subordinate basis to any existing pledges may be adopted.*
- (5) *The local participation agreement established under this section and the development area established under Section 2 of this Act shall not be included in the percentage calculation established by KRS 65.7049(2).*
- (6) *Notwithstanding KRS 65.7049(2), the local participation agreement shall permit residential property located within the development area to be eligible for participation in a program granting property assessment or reassessment moratoriums pursuant to KRS 99.600 when the incremental revenues related to that residential property have not been pledged to support a tax increment financing project established under KRS 65.490 to 65.499, 65.680 to 65.699, or 65.7041 to 65.7083 or an economic development project within the development area.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *All documentation, records, and release of incremental revenues relating to local tax revenues shall be maintained and determined by the governing body.*
- (2) *All documentation, records, and release of incremental revenues relating to state tax revenues shall be maintained and determined by the Department of Revenue.*
- (3) *Upon notice from the West End Opportunity Partnership, the governing body obligated under a local participation agreement and the Department of Revenue shall release to the West End Opportunity Partnership the incremental revenues due.*
- (4)
  - (a) *The governing body and the Department of Revenue shall have no obligation to refund or otherwise return any of the incremental revenues to the taxpayer from whom the incremental revenues arose or are attributable.*
  - (b) *No additional incremental revenues resulting from audit, amended returns, or other activity for any period shall be transferred after the initial release to the West End Opportunity Partnership for that period.*

- (5) *If the West End Opportunity Partnership issues bonds for development within the development area and incremental revenues have been pledged for that development, the West End Opportunity Partnership shall maintain a separate account to account for the:*
- (a) *Bond proceeds received;*
  - (b) *Incremental revenues received; and*
  - (c) *Payment of debt charges of the bond.*
- (6) *The West End Opportunity Partnership shall provide a biennial report to the Interim Joint Committee on Appropriations and Revenue on or before August 1, 2023, and on or before August 1 of each odd-numbered year thereafter. The report shall contain the following information:*
- (a) *The amounts of moneys received by private sector investors, the consolidated local government, and the Commonwealth, including the party that made the payment;*
  - (b) *The annual financial statements of the West End Opportunity Partnership, including the current balances of all funds and accounts of the West End Opportunity Partnership;*
  - (c) *The total amount of state tax revenues and local tax revenues received by the West End Opportunity Partnership for the preceding biennial period categorized by each type of tax;*
  - (d) *The operating expenditures incurred by the West End Opportunity Partnership, including management fees, investment fees, legal fees, or administrative fees incurred;*
  - (e) *A list of the projects supported by investments from the West End Opportunity Partnership in the preceding year and a description of the investment amount contributed by the West End Opportunity Partnership for each project;*
  - (f) *The amount of bonds issued or other borrowed moneys received by the West End Opportunity Partnership;*
  - (g) *Any personal or private interests or affiliated board members as described in subsection (10) of Section 4 of this Act; and*
  - (h) *Upon request from the General Assembly, copies of the West End Opportunity Partnership's bylaws and any contracts or agreements in which the West End Opportunity Partnership is a party.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *A West End Louisville Advisory Council is hereby established and shall be a subcommittee of the West End Opportunity Partnership established in Section 3 of this Act. The council shall consist of one (1) resident from each of the nine (9) different neighborhoods located within the development area.*
- (2) *The members of the council shall serve four (4) year terms, except initial appointments shall be for terms as follows:*
- (a) *Two (2) members for a term of one (1) year;*
  - (b) *Three (3) members for a term of two (2) years;*
  - (c) *Three (3) members for a term of three (3) years; and*
  - (d) *One (1) member for a term of four (4) years.*
- (3) *The Governor shall initially appoint the members of the council, but then the council shall self-perpetuate.*
- (4) *The council shall:*
- (a) *Elect its own chairperson and establish other officers as needed to execute the duties of the council;*
  - (b) *Adopt bylaws and operate under its bylaws;*
  - (c) *Establish and evaluate goals and outcomes for economic development and housing issues in the development area; and*
  - (d) *Assist the board with information about the development area community and its economic development and housing project needs.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 141 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
- (a) *"Development area" has the same meaning as in Section 2 of this Act;*
  - (b) *"Owner" means:*
    - 1. *The individual who owned the residential property on January 1, 2021; or*
    - 2. *Upon the death of the individual under subparagraph 1. of this paragraph, a beneficiary who:*
      - a. *Is a lineal descendant of the individual, but also including a spouse, child, legally adopted child, grandchild, brother, sister, parent, or grandparent; and*
      - b. *Inherits the residential property of the individual;*
  - (c) *"Property tax" means the total ad valorem tax paid to the Commonwealth, a consolidated local government, and all taxing districts on the residential property; and*
  - (d) *"Residential property" means:*
    - 1. *The principal residence of the owner;*
    - 2. *Located in a development area; and*
    - 3. *Owned as of January 1, 2021.*
- (2) *There is hereby created the development area tax credit allowable against the tax imposed under KRS 141.020, with the ordering of credits under Section 9 of this Act.*
- (3) (a) *The tax credit permitted by subsection (2) of this section shall be a refundable, nontransferable tax credit to the owner of residential property in the development area.*
- (b) *The credit shall be equal to the amount in which the property tax timely paid on the residential property in a taxable year exceeds the amount of property tax assessed on that residential property on January 1, 2021.*
- (4) *The tax credit shall end the earlier of the taxable year in which:*
- (a) *The residential property is sold by the owner; or*
  - (b) *The period allowed for incremental revenues under Section 5 of this Act ends.*
- (5) (a) *In order for the General Assembly to evaluate the development area tax credit, the department shall provide the following information on a cumulative basis for each taxable year to provide a historical impact of the tax credit to the Commonwealth:*
- 1. *The total amount of tax credit claimed for each taxable year by all owners;*
  - 2. *The total amount of tax credit for each taxable year which is used to offset tax liability of owners and the total amount that is refunded to owners;*
  - 3. *The physical address of the residential property which created the tax credit;*
  - 4. *The amount of the tax credit claimed for the taxable year for each physical address;*
  - 5. *The amount of the tax credit used to offset tax liability and the amount refunded to the owner at that physical address; and*
  - 6. *Based on ranges of net income no larger than five thousand dollars (\$5,000), the total amount of tax credit claimed and the number of returns claiming a tax credit for each adjusted gross income range.*
- (b) *The report required by paragraph (a) of this subsection shall be submitted to the Interim Joint Committee on Appropriations and Revenue beginning no later than November 1, 2023, and no later than each November 1 thereafter, as long as the credit is claimed on any return processed by the department.*

➔Section 9. KRS 141.0205 is amended to read as follows:

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

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The limited liability entity tax credit permitted by KRS 141.0401;
  - (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
  - (c) The qualified farming operation credit permitted by KRS 141.412;
  - (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (e) The health insurance credit permitted by KRS 141.062;
  - (f) The tax paid to other states credit permitted by KRS 141.070;
  - (g) The credit for hiring the unemployed permitted by KRS 141.065;
  - (h) The recycling or composting equipment credit permitted by KRS 141.390;
  - (i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (j) The research facilities credit permitted by KRS 141.395;
  - (k) The employer High School Equivalency Diploma program incentive credit permitted under KRS 151B.402;
  - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (n) The clean coal incentive credit permitted by KRS 141.428;
  - (o) The ethanol credit permitted by KRS 141.4242;
  - (p) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (q) The energy efficiency credits permitted by KRS 141.436;
  - (r) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (s) The Endow Kentucky credit permitted by KRS 141.438;
  - (t) The New Markets Development Program credit permitted by KRS 141.434;
  - (u) The distilled spirits credit permitted by KRS 141.389;
  - (v) The angel investor credit permitted by KRS 141.396;
  - (w) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018;
  - (x) The inventory credit permitted by KRS 141.408; and
  - (y) The renewable chemical production credit permitted by KRS 141.4231.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The individual credits permitted by KRS 141.020(3);
  - (b) The credit permitted by KRS 141.066;
  - (c) The tuition credit permitted by KRS 141.069;
  - (d) The household and dependent care credit permitted by KRS 141.067; and
  - (e) The income gap credit permitted by KRS 141.066.
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
  - (a) The individual withholding tax credit permitted by KRS 141.350;



- (b) The individual estimated tax payment credit permitted by KRS 141.305;
  - (c) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); ~~and~~
  - (d) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018; *and*
  - (e) *The development area tax credit permitted in Section 8 of this Act.*
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.3841, 141.400, 141.401, 141.403, 141.407, 141.415, 154.12-207, and 154.12-2088;
  - (b) The qualified farming operation credit permitted by KRS 141.412;
  - (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (d) The health insurance credit permitted by KRS 141.062;
  - (e) The unemployment credit permitted by KRS 141.065;
  - (f) The recycling or composting equipment credit permitted by KRS 141.390;
  - (g) The coal conversion credit permitted by KRS 141.041;
  - (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
  - (i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (j) The research facilities credit permitted by KRS 141.395;
  - (k) The employer High School Equivalency Diploma program incentive credit permitted by KRS 151B.402;
  - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (n) The clean coal incentive credit permitted by KRS 141.428;
  - (o) The ethanol credit permitted by KRS 141.4242;
  - (p) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (q) The energy efficiency credits permitted by KRS 141.436;
  - (r) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
  - (s) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (t) The railroad expansion credit permitted by KRS 141.386;
  - (u) The Endow Kentucky credit permitted by KRS 141.438;
  - (v) The New Markets Development Program credit permitted by KRS 141.434;
  - (w) The distilled spirits credit permitted by KRS 141.389;
  - (x) The film industry credit permitted by KRS 141.383 for applications approved on or after April 27, 2018;
  - (y) The inventory credit permitted by KRS 141.408; and
  - (z) The renewable chemical production tax credit permitted by KRS 141.4231.

- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
- (a) The corporation estimated tax payment credit permitted by KRS 141.044;
  - (b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); and
  - (c) The film industry tax credit permitted by KRS 141.383 for applications approved prior to April 27, 2018.

→Section 10. KRS 131.190 is amended to read as follows:

- (1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.
- (2) The prohibition established by subsection (1) of this section shall not extend to:
  - (a) Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;
  - (b) Any matter properly entered upon any assessment record, or in any way made a matter of public record;
  - (c) Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
  - (d) Testimony provided by the commissioner or any employee of the department in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;
  - (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820, or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820, that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;
  - (f) Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this paragraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10);
  - (g) Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817;
  - (h) Statistics of gasoline and special fuels gallonage reported to the department under KRS 138.210 to 138.448;
  - (i) Providing any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617 to applicable school districts on a confidential basis;
  - (j) Providing documents, data, or other information to a third party pursuant to an order issued by a court of competent jurisdiction; or
  - (k) Providing information to the Legislative Research Commission under:
    - 1. KRS 139.519 for purposes of the sales and use tax refund on building materials used for disaster recovery;
    - 2. KRS 141.436 for purposes of the energy efficiency products credits;
    - 3. KRS 141.437 for purposes of the ENERGY STAR home and the ENERGY STAR manufactured home credits;

4. KRS 148.544 for purposes of the film industry incentives;
5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization tax credits and the job assessment fees;
6. KRS 141.068 for purposes of the Kentucky investment fund;
7. KRS 141.396 for purposes of the angel investor tax credit;
8. KRS 141.389 for purposes of the distilled spirits credit;
9. KRS 141.408 for purposes of the inventory credit;
10. KRS 141.390 for purposes of the recycling and composting credit;
11. KRS 141.3841 for purposes of the selling farmer tax credit;~~{and}~~
12. KRS 141.4231 for purposes of the renewable chemical production tax credit; *and*

**13. Section 8 of this Act for purposes of the development area tax credit.**

- (3) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
- (4) Access to and inspection of information received from the Internal Revenue Service is for department use only, and is restricted to tax administration purposes. Information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department, or any other person.
- (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Department of Revenue under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Energy and Environment Cabinet, Department for Natural Resources.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

➔Section 11. KRS 138.146 is amended to read as follows:

- (1) The cigarette tax shall be due when any licensed wholesaler or unclassified acquirer takes possession within this state of untax-paid cigarettes.
- (2)
  - (a) The cigarette tax shall be paid by the purchase of stamps by a resident wholesaler within forty-eight (48) hours after the wholesaler receives the cigarettes.
  - (b) A stamp shall be affixed to each package of an aggregate denomination not less than the amount of the cigarette tax on the package.
  - (c) The affixed stamp shall be prima facie evidence of payment of the cigarette tax.
  - (d) Unless stamps have been previously affixed, they shall be affixed by each resident wholesaler prior to the delivery of any cigarettes to a retail location or any person in this state.
  - (e) The evidence of cigarette tax payment shall be affixed to each individual package of cigarettes by a nonresident wholesaler prior to the introduction or importation of the cigarettes into the territorial limits of this state.
  - (f) The evidence of cigarette tax payment shall be affixed by an unclassified acquirer within twenty-four (24) hours after the cigarettes are received by the unclassified acquirer.

- (3) (a) The department shall by regulation prescribe the form of cigarette tax evidence, the method and manner of the sale and distribution of cigarette tax evidence, and the method and manner that tax evidence shall be affixed to the cigarettes.
- (b) All cigarette tax evidence prescribed by the department shall be designed and furnished in a fashion to permit identification of the person that affixed the cigarette tax evidence to the particular package of cigarettes, by means of numerical rolls or other mark on the cigarette tax evidence.
- (c) The department shall maintain for at least three (3) years information identifying the person that affixed the cigarette tax evidence to each package of cigarettes. This information shall not be kept confidential or exempt from disclosure to the public through open records.
- (4) (a) Units of cigarette tax evidence shall be sold at their face value, but the department shall allow as compensation to any licensed wholesaler an amount of tax evidence equal to thirty cents (\$0.30) face value for each three dollars (\$3) of tax evidence purchased at face value and attributable to the tax assessed in KRS 138.140(1)(a). No compensation shall be allowed for tax evidence purchased at face value attributable to the surtaxes imposed in KRS 138.140(1)(b) or (c).
- (b) The department shall have the power to withhold compensation as provided in paragraph (a) of this subsection from any licensed wholesaler for failure to abide by any provisions of KRS 138.130 to 138.205 or any administrative regulations promulgated thereunder. Any refund or credit for unused cigarette tax evidence shall be reduced by the amount allowed as compensation at the time of purchase.
- (5) (a) **1.** Payment for units of cigarette tax evidence shall be made at the time the units are sold, unless the licensed wholesaler:
- ~~a.1.1~~ Has filed with the department a bond, issued by a corporation authorized to do surety business in Kentucky, in an amount equal to ***an amount:***
- i. Determined by the department; or***
- ii. Not less than the monthly average of payments by the wholesaler for the units of cigarette tax evidence purchased in the immediately preceding calendar year*** ~~for greater than the amount of payment for the units of cigarette tax evidence purchased, plus all penalties, interest, and collection fees applicable to that amount, should the taxpayer default on the payment;~~ and
- ~~b.1.2~~ Has registered and agrees to make the payment of tax to the department electronically.
- 2. At no time shall the licensed wholesaler be allowed to delay any payment for units of cigarette tax evidence, including tax, penalty, interest, or collection fees, which would exceed the amount of bond filed with the department.**
- (b) Except as provided in paragraph (c) of this subsection, if the licensed wholesaler qualifies under paragraph (a) of this subsection, the licensed wholesaler shall have ten (10) days from the date of purchase to remit payment of cigarette tax, without the assessment of civil penalties under KRS 131.180 or interest under KRS 131.183 during the ten (10) day period.
- (c) **1.** The ten (10) day payment period under paragraph (b) of this subsection shall not apply to the payment for units of cigarette tax evidence during the last ten (10) days of the month of June during each fiscal year.
- 2.** All payments for units of cigarette tax evidence made under paragraph (b) of this subsection during the month of June shall be made the earlier of:
- a. The ten (10) day period; or
- b. June 25.
- (d) **1.** If the licensed wholesaler does not make the payment of cigarette tax ***evidence purchased*** within the ten (10) day period ***following the purchase***, or within the period of time under paragraph (c) of this subsection, the department shall:
- ~~a.1.1~~ Revoke the license required under KRS 138.195;
- ~~b.1.2~~ Issue a demand for payment in an amount equal to ***all outstanding*** ~~the~~ cigarette tax evidence purchased ***by the licensed wholesaler***, plus ***any*** ~~all~~ penalties, interest, and collection fees ***up to the amount of the required bond*** ~~applicable to that amount;~~ and

- ~~c.[3.]~~ Require *the surety to remit to the department* immediate payment of the bond.
2. *Any protests by the licensed wholesaler related to the amount of tax, penalty, interest, or collection fees remitted by the surety to the department shall be resolved under KRS 131.110, by the licensed wholesaler filing a written protest within sixty (60) days from the date the department requires the payment under subparagraph 1.c. of this paragraph.*
- (6) (a) The bond required under subsection (5) of this section shall be on a form and with a surety approved by the department.
- (b) The licensed wholesaler shall be named as the principal obligor and the department shall be named as the obligee within the bond.
- (c) The bond shall be conditioned upon the payment by the licensed wholesaler of all *payments required in subsection (5)(b) and (c) of this section*~~[cigarette tax imposed by the Commonwealth]~~.
- (d) 1. *A surety shall give at least a sixty (60) day notice to the department and the licensed wholesaler prior to the cancellation of the bond required under this section.*
2. *A licensed wholesaler that receives notice of cancellation of its bond shall immediately pay all outstanding payments for cigarette tax evidence.*
3. *A replacement bond that meets the requirements of this section shall be required by the department prior to allowing the licensed wholesaler the ten (10) day payment period within this section.*
- (e) The provisions of KRS 131.110 shall not apply to the demand for payment required under subsection (5)(c)2. of this section.
- (7) (a) No tax evidence may be affixed, or used in any way, by any person other than the person purchasing the evidence from the department.
- (b) Tax evidence may not be transferred or negotiated, and may not, by any scheme or device, be given, bartered, sold, traded, or loaned to any other person.
- (c) Unaffixed tax evidence may be returned to the department for credit or refund for any reason satisfactory to the department.
- (8) (a) In the event any retailer receives into his possession cigarettes to which evidence of Kentucky tax payment is not properly affixed, the retailer shall, within twenty-four (24) hours, notify the department of the receipt.
- (b) The notification to the department shall be in writing, stating the name of the person from whom the cigarettes were received and the quantity of those cigarettes.
- (c) The written notice may be:
1. Given to any field agent of the department; or
2. Directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.
- (d) If the notice is given by means of the United States mail, it shall be sent by certified mail.
- (e) Any such cigarettes shall be retained by the retailer, and not sold, for a period of fifteen (15) days after giving the notice provided in this subsection.
- (f) The retailer may, at his option, pay the tax due on those cigarettes according to administrative regulations prescribed by the department, and proceed to sell those cigarettes after the payment.
- (9) (a) Cigarettes stamped with the cigarette tax evidence of another state shall at no time be commingled with cigarettes on which the Kentucky cigarette tax evidence has been affixed.
- (b) Any licensed wholesaler, licensed sub-jobber, or licensed vending machine operator may hold cigarettes stamped with the tax evidence of another state for any period of time, subsection (2) of this section notwithstanding.

➔Section 12. 2021 Regular Session HB 249/VO is amended as follows:

On page 120, beginning on line 18, and continuing through page 121, line 25, delete all language, and insert the following in lieu thereof:

- "(1) *Prior to December 31, 2021, the council may award one (1) application for preliminary approval of a major certified rehabilitation for a certified historic structure, for a tax credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in Section 31 of this Act.*
- (2) *The major certified rehabilitation shall contain the following characteristics:*
- (a) *The certified historic structure was individually listed on the National Register of Historic Places on or before December 31, 1981;*
  - (b) *The size of the certified historic structure exceeds three hundred thousand (300,000) square feet;*
  - (c) *The total project costs exceed fifty million dollars (\$50,000,000);*
  - (d) *Substantial rehabilitation of the certified historic structure begins prior to December 31, 2021; and*
  - (e) *The application for preliminary approval reflects that following the substantial rehabilitation, the certified historic structure will be used as a hotel, tourism destination, or other use supporting or relating to the promotion of tourism to and within the Commonwealth.*
- (3) (a) *The credit shall:*
- 1. *Equal the percentage of qualified rehabilitation expenses as provided in KRS 171.397(1)(a);*
  - 2. *Only apply to the first thirty million dollars (\$30,000,000) of qualified rehabilitation expenses; and*
  - 3. *Be refundable and transferable.*
- (b) *The project approved for a credit under this section:*
- 1. *Shall not be subject to the maximum credits which may be claimed with regard to owner-occupied residential property or other property that is not owner-occupied residential property established by KRS 171.397; but*
  - 2. *Shall be considered in determining whether the certified rehabilitation credit cap in Section 30 of this Act has been met.*
- (4) *Any taxpayer seeking the credit shall file the application for preliminary determination and final determination as provided by KRS 171.397(2), without regard to the April 20 or June 30 dates referenced in that section.*
- (5) *The total approved credit shall be available over a four (4) year period and the maximum credit which may be claimed in a taxable year shall not exceed twenty-five percent (25%) of the total approved credit.*
- (6) *The provisions of KRS 171.397(9) to (14) shall also apply to this section."*

➔Section 13. Sections 1 to 10 of this Act are effective only if 2021 Regular Session House Bill Number 556 is enacted and becomes law.

➔Section 14. The General Assembly offers the following supportive statutory measure:

The Department of Revenue shall adhere to a declaration in return filing and tax payment requirements for the 2020 federal income tax return provided by the U.S. Treasury Department or the Internal Revenue Service and provide the same return filing and tax payment timeline to taxpayers for comparable return filing and tax payment requirements under Kentucky law, including an extension of time to file a return or report and an extension of time to pay any tax due with that return or report, without the imposition of penalty under KRS 131.180, 141.044, 141.305, or 141.990 on that extended payment, and without the imposition of interest under KRS 131.183 or 141.985.

**Signed by Governor April 9, 2021.**

## CHAPTER 204

( SB 270 )

AN ACT relating to postsecondary education and making an appropriation therefor.

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

➔Section 1. KRS 161.028 is amended to read as follows:

- (1) The Education Professional Standards Board is recognized to be a public body corporate and politic and an agency and instrumentality of the Commonwealth, in the performance of essential governmental functions. The Education Professional Standards Board has the authority and responsibility to:
  - (a) Establish standards and requirements for obtaining and maintaining a teaching certificate;
  - (b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel. *College or university programs may be approved by the board for a college or university with regional institutional level accreditation or national institutional level accreditation that is recognized by the United States Department of Education and is eligible to receive federal funding under 20 U.S.C. secs. 1061 to 1063.* Program standards shall reflect national standards and shall address, at a minimum, the following:
    1. The alignment of programs with the state's core content for assessment as defined in KRS 158.6457;
    2. Research-based classroom practices, including effective classroom management techniques;
    3. Emphasis on subject matter competency of teacher education students;
    4. Methodologies to meet diverse educational needs of all students;
    5. The consistency and quality of classroom and field experiences, including early practicums and student teaching experiences;
    6. The amount of college-wide or university-wide involvement and support during the preparation as well as the induction of new teachers;
    7. The diversity of faculty;
    8. The effectiveness of partnerships with local school districts; and
    9. The performance of graduates on various measures as determined by the board;
  - (c) Conduct an annual review of diversity in teacher preparation programs;
  - (d) Provide assistance to universities and colleges in addressing diversity, which may include researching successful strategies and disseminating the information, encouraging the development of nontraditional avenues of recruitment and providing incentives, waiving administrative regulations when needed, and other assistance as deemed necessary;
  - (e) Discontinue approval of programs that do not meet standards or whose graduates do not perform according to criteria set by the board;
  - (f) Issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate;
  - (g) Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;
  - (h) Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedures in sex offense cases, and effective intervention with victims and offenders;
  - (i) Recommend to the Kentucky Board of Education the essential data elements relating to teacher preparation and certification, teacher supply and demand, teacher attrition, teacher diversity, and employment trends to be included in a state comprehensive data and information system and periodically report data to the Interim Joint Committee on Education;

- (j) Submit reports to the Governor and the Legislative Research Commission and inform the public on the status of teaching in Kentucky;
  - (k) Devise a credentialing system that provides alternative routes to gaining certification and greater flexibility in staffing local schools while maintaining standards for teacher competence;
  - (l) Develop a professional code of ethics;
  - (m) Set the qualifications and salary for the positions of executive director and deputy executive director to the board, notwithstanding the provisions of KRS 64.640;
  - (n) Recruit, select, employ and evaluate the executive director to the board;
  - (o) Approve employment procedures for the employment of policy level staff, subject to the provisions of KRS 12.050;
  - (p) Approve the biennial budget request;
  - (q) Charge reasonable fees for the issuance, reissuance, and renewal of certificates that are established by administrative regulation. The proceeds shall be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder under KRS 161.120;
  - (r) Waive a requirement that may be established in an administrative regulation promulgated by the board. A request for a waiver shall be submitted to the board, in writing, by an applicant for certification, a postsecondary institution, or a superintendent of a local school district, with appropriate justification for the waiver. The board may approve the request if the person or institution seeking the waiver has demonstrated extraordinary circumstances justifying the waiver. Any waiver granted under this subsection shall be subject to revocation if the person or institution falsifies information or subsequently fails to meet the intent of the waiver;
  - (s) Promote the development of one (1) or more innovative, nontraditional or alternative administrator or teacher preparation programs through public or private colleges or universities, private contractors, the Department of Education, or the Kentucky Commonwealth Virtual University and waive administrative regulations if needed in order to implement the program;
  - (t) Grant approval, if appropriate, of a university's request for an alternative program that enrolls an administrator candidate in a postbaccalaureate administrator preparation program concurrently with employment as an assistant principal, principal, assistant superintendent, or superintendent in a local school district. An administrator candidate in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Principal Internship Program, notwithstanding provisions of KRS 161.030, or the Superintendent's Assessment process, notwithstanding provisions of KRS 156.111, as appropriate. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the candidate's successful completion of the program, internship requirements, and assessments as required by the board;
  - (u) Employ consultants as needed;
  - (v) Enter into contracts. Disbursements to professional educators who receive less than one thousand dollars (\$1,000) in compensation per fiscal year from the board for serving on an assessment validation panel or as a test scorer or proctor shall not be subject to KRS 45A.690 to 45A.725;
  - (w) Sponsor studies, conduct research, conduct conferences, and publish information as appropriate; and
  - (x) Issue orders as necessary in any administrative action before the board.
- (2) (a) The board shall be composed of seventeen (17) members. The commissioner of education and the president of the Council on Postsecondary Education, or their designees, shall serve as ex officio voting members. The Governor shall make the following fifteen (15) appointments:
1. Nine (9) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
  2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;



3. One (1) member representative of local boards of education; and
  4. Three (3) members representative of postsecondary institutions, two (2) of whom shall be deans of colleges of education at public universities and one (1) of whom shall be the chief academic officer of an independent not-for-profit college or university.
- (b) The members appointed by the Governor after June 21, 2001, shall be confirmed by the Senate and the House of Representatives under KRS 11.160. If the General Assembly is not in session at the time of the appointment, persons appointed shall serve prior to confirmation, but the Governor shall seek the consent of the General Assembly at the next regular session or at an intervening extraordinary session if the matter is included in the call of the General Assembly.
  - (c) A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.
  - (d) Members of the board shall serve without compensation but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.
  - (e) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from the member's place of employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.
  - (f) A chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman. The executive director shall keep records of proceedings. Regular meetings shall be held at least semiannually on call of the chairman.
  - (g) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.

➔Section 2. KRS 164.785 is amended to read as follows:

- (1) The State of Kentucky shall grant an amount as provided in KRS 164.780 and this section to any applicant who meets the following qualifications:
  - (a) Is a Kentucky resident as defined by the Kentucky Council on Postsecondary Education; and
  - (b)
    1. Has been accepted by or is enrolled as a full-time student in a program of study leading to a postsecondary degree at a Kentucky independent college or university which is accredited by a regional accrediting association recognized by the United States Department of Education and whose institutional programs are not composed solely of sectarian instruction;
    2. Has been accepted by or is enrolled as a full-time student in a program of study leading to a postsecondary degree at an out-of-state postsecondary education institution licensed by the Council on Postsecondary Education to operate in Kentucky which is accredited by a regional accrediting association recognized by the United States Department of Education and whose institutional programs are not composed solely of sectarian instruction; or
    3. Has been accepted or is enrolled as a student in a comprehensive transition and postsecondary program at an institution described in subparagraph 1. of this paragraph. For purposes of this section, a student enrolled in a comprehensive transition and postsecondary program shall be considered a part-time student, and the grant amount shall be adjusted accordingly by the Kentucky Higher Education Assistance Authority.

An otherwise eligible student having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. secs. 12131 et seq.), certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability may also qualify under this paragraph; and
  - (c) Has not previously attended college or university more than the maximum number of academic terms established by the authority in administrative regulations.
- (2) The amount of the tuition grant to be paid to a student each semester, or appropriate academic term, shall be determined by the Kentucky Higher Education Assistance Authority.

- (3) The maximum amount shall not exceed fifty percent (50%) of the average state appropriation per full-time equivalent student enrolled in all public institutions of higher education. Such tuition grants are to be calculated annually by the Kentucky Higher Education Assistance Authority.
- (4) The need of each applicant shall be determined by acceptable need analysis such as use of the free application for federal student aid in conjunction with Part E of the federal act, 20 U.S.C. secs. 1087kk through 1087vv, and such other analyses as the authority may determine, subject to the approval by the United States Secretary of Education.
- (5) An adjustment shall be made in the tuition grant of any student awarded a scholarship from any other source provided the combination of grants and awards exceeds the calculated need of the student.
- (6) Accepted or enrolled students qualifying under the provisions of subsection (1)(b) of this section prior to the 2011-2012 academic year shall be under those provisions and continue under those provisions until June 30, 2014.
- (7) Beginning with the 2011-2012 academic year, and each year thereafter:
  - (a) *A student may enroll and receive a Kentucky tuition grant at* any Kentucky independent college or university whose institutional programs are not composed solely of sectarian instruction ~~and is [shall be] accredited by:~~
    1. The Southern Association of Colleges and Schools; *or*
    2. *a. A national accreditation agency that is recognized by the United States Department of Education; and*
      - b. Is a college or university eligible to receive federal funding under 20 U.S.C. secs. 1061 to 1063* ~~[to remain an eligible institution in which a student may enroll and receive a Kentucky tuition grant];~~
  - (b) Programs or campuses of any out-of-state postsecondary education institution that is licensed by the Council on Postsecondary Education to operate in Kentucky and whose institutional programs are not composed solely of sectarian instruction shall be accredited by the Southern Association of Colleges and Schools in order to qualify as an eligible institution in which a student may enroll and receive a Kentucky tuition grant, except as provided in paragraph (c) of this subsection; and
  - (c) Programs or campuses of any out-of-state postsecondary education institution that is licensed by the Council on Postsecondary Education to operate in Kentucky and whose institutional programs are not composed solely of sectarian instruction, but in which accreditation by the Southern Association of Colleges and Schools is not an option, shall be reviewed and approved by the Council on Postsecondary Education based on accreditation criteria that mirrors Southern Association of Colleges and Schools accreditation criteria in order to qualify as an eligible institution in which a student may enroll and receive a Kentucky tuition grant. All costs associated with the institutional reviews shall be the responsibility of the institution seeking approval by the council. The Council on Postsecondary Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the provisions of this paragraph.

➔Section 3. **West Louisville Historically Black Colleges and Universities Pilot Project:** Kentucky State University shall explore and pursue opportunities to partner with any other historically black college or university in the Commonwealth to offer courses during each fall, spring, and summer academic sessions. These courses shall include, but not be limited to onsite, in-person courses delivered by Kentucky State University at or in conjunction with any other historically black college or university in the Commonwealth. The courses shall include dual credit courses for high school students, undergraduate level courses, graduate level courses, and courses for credit toward certificates and badges. The course credits shall be transferrable in and between Kentucky State University and any other historically black college or university in the Commonwealth, even if the course credits are not expressly articulated for other colleges or universities in the Commonwealth. Any memorandum of understanding or memorandum of agreement between Kentucky State University and any other historically black college or university in the Commonwealth shall be submitted to the Council on Postsecondary Education for review. Kentucky State University and the Council on Postsecondary Education shall submit a report on the results of the pilot project, including but not limited to the number of students served, to the Interim Joint Committee on Education by September 1, 2022.

➔Section 4. **West Louisville Health and Wellness Pilot Project:** The Kentucky State University shall partner with the Cabinet for Health and Family Services and any other historically black college or university

(HBCU) in the Commonwealth to design and implement a pilot project to help address issues of health education, wellness, and food insecurity in African-American communities encompassing or adjacent to an HBCU in West Louisville. Kentucky State University shall make referrals for community employment services and shall coordinate with the Cabinet for Health and Family Services to assist with the delivery of public assistance, social support services, and health and nutrition services to anyone eligible for such assistance and services. The Cabinet for Health and Family Services may utilize a service delivery model as used in the Neighborhood Place or a similar model which is deemed effective to implement the pilot project. The Kentucky State University and the Cabinet for Health and Family Services shall submit a report on the results of the West Louisville Health and Wellness Pilot Project, including but not limited to the number of individuals served and the types of services provided to the Interim Joint Committee on Health, Welfare, and Family Services by September 1, 2022.

➔Section 5. The pilot programs created in Sections 3 and 4 of this Act are mandated programs.

➔Section 6. There is hereby appropriated General Fund moneys in the amount of \$200,000 for fiscal year 2021-2022 to Kentucky State University for the purpose of implementing the pilot programs created in Sections 3 and 4 of this Act.

**Signed by Governor April 9, 2021.**

## CHAPTER 205

( SB 5 )

AN ACT relating to emergencies and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 39A IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Arising from COVID-19" means an injury or harm that allegedly occurred on or after the emergency was declared on March 6, 2020, and until the emergency declaration is withdrawn, revoked, or lapses, caused by or resulting from:*

1. *The actual, alleged, or possible exposure to, transmission of, or contraction of COVID-19;*
2. *Services, treatment, or other action performed to limit or prevent the spread of COVID-19; or*
3. *Services performed by an entity outside the normal course of its business in response to COVID-19;*

(b) *"COVID-19" means the novel coronavirus identified as SARS-CoV-2, or a virus mutating from SARS-CoV-2, or any variant of SARS-CoV-2, and medical conditions associated with the virus;*

(c) *"COVID-19 claim" means any claim or cause of action for an act or omission arising from COVID-19 that accrued on or after the date the emergency was declared on March 6, 2020, and until the emergency declaration is withdrawn, revoked, or lapses;*

(d) *"Executive action" means:*

1. *All orders and guidelines related to a COVID-19 declared emergency issued by the Governor or any state agency, the President of the United States or any federal agency, or a local governmental agency; and*
2. *Industry-specific guidelines related to a COVID-19 declared emergency adopted by a state agency that govern the industry;*

(e) *"Executive action":*

1. *Does not mean informal or indefinite statements or recommendations made by government officials; and*
2. *Does not create a duty of care;*

(f) *"Health care providers" means:*

1. *Any health facility as defined in KRS 216B.015;*
  2. *Any person or entity providing health care or health services, including those licensed, certified, or registered under, or subject to, KRS 194A.700 to 194A.729 or KRS Chapters 310, 311, 311A, 311B, 312, 313, 314, 314A, 315, 319, 319A, 319B, 319C, 320, 327, 333, 334A, or 335;*
  3. *The current and former employers, officers, directors, administrators, agents, or employees of those entities listed in subparagraphs 1. and 2. of this paragraph; or*
  4. *Any person acting within the course and scope of his or her office, employment, or agency relating to a health care provider;*
- (g) *"Owner" means:*
1. *The possessor of a fee simple, reversionary, or easement interest, a tenant, lessee, occupant, or person in control of any premises, and his or her employees and agents; or*
  2. *The possessor of an ownership interest, lessee, occupant, or person in control of an automobile, bus, train, boat, or aircraft, whether or not licensed as a common carrier or motor carrier, and his or her employees and agents;*
- (h) *"Person" has the same meaning as in KRS 446.010, any other profit or nonprofit institution or legal entity, and any employer or employee;*
- (i) *"Political subdivision" has the same meaning as "governmental entity" in KRS 341.069; and*
- (j) *"Premises" means:*
1. *Private or public roads, walking or cycling paths, sidewalks, hiking or multi-use trails, watercourses, or water ways;*
  2. *Buildings and structures, including houses of worship, schools, homes, parks, restaurants, shops, stadiums, arenas, gyms, medical facilities, long-term care facilities, retail facilities, wholesale and manufacturing facilities, and facilities in which individuals charged with or convicted of a crime are incarcerated;*
  3. *Aircraft, automobiles, trains, buses, or watercraft, whether or not licensed as a common carrier or motor carrier; or*
  4. *Any other location where members of the public may engage in personal, commercial, social, religious, or other activities.*
- (2) *Except as provided in subsection (3) of this section, an owner who follows any executive action to prevent the spread of COVID-19 during the COVID-19 declared emergency and either directly or indirectly invites or permits another person to enter the owner's premises while a COVID-19 declared emergency affecting the premises remains in effect or continues, does not:*
- (a) *Extend any assurance that the premises are safe from any risk of exposure to COVID-19 or to conditions caused by the COVID-19 declared emergency;*
  - (b) *Owe a duty to protect from or warn about any risk related to or caused by COVID-19; or*
  - (c) *Assume responsibility, or incur liability, for any alleged injury, loss, or damage to persons or property arising from a COVID-19 claim.*
- (3) *Nothing in this section limits any liability of an owner for gross negligence, or wanton, willful, malicious, or intentional misconduct.*
- (4) *Nothing in this section shall:*
- (a) *Create a duty of care or ground of liability for injury to persons or property;*
  - (b) *Relieve any person entering premises from any obligation that he or she may have in the absence of this section to exercise care in his or her use of the premises, or from the legal consequences of the failure to employ such care;*
  - (c) *Affect the right of persons to receive benefits to which he or she would otherwise be entitled under KRS Chapter 342, nor does it affect the exclusive application of that chapter; or*

- (d) *Affect the applicability of KRS Chapter 338.*
- (5) *Any COVID-19 claim for personal injury against an owner or essential service provider shall be brought within the time set out in KRS 413.140. For purposes of this subsection, such claim shall be deemed to have accrued at the time the injury is first discovered, or in the exercise of reasonable care should have been discovered.*
- (6) *Any COVID-19 claim involving motor vehicle accidents shall be governed by the limitation periods in KRS 304.39-230.*
- (7) *Any COVID-19 claim involving damage to real property shall be brought within the time set out in KRS 413.120.*
- (8) (a) *Any essential service provider during the declared emergency of the COVID-19 pandemic shall not be liable for any COVID-19 claim.*
- (b) *Nothing in this subsection limits any liability of an essential service provider for gross negligence, or wanton, willful, malicious, or intentional misconduct.*
- (9) *The following businesses and service providers shall be deemed essential service providers and shall be considered an agent of the Commonwealth of Kentucky for the limited purpose of providing essential services arising from COVID-19:*
- (a) *The following service providers identified in Executive Order No. 2020-257 dated March 25, 2020:*
1. *Organizations that provide charitable and social services;*
  2. *Individuals and businesses needed for transportation;*
  3. *Financial institutions;*
  4. *Mail, post, shipping, and pick-up services;*
  5. *Individuals and businesses that produce, supply, prepare, and sell food;*
  6. *Home-based care and services; and*
  7. *Individuals and businesses that work in the supply chain for critical medical and pharmaceutical products;*
- (b) *Health care providers;*
- (c) *Medicaid waiver providers;*
- (d) *Elementary and secondary schools, whether public or private;*
- (e) *Child care service providers and facilities;*
- (f) *Funeral directors, morticians, undertakers, and embalmers;*
- (g) *Local government agencies and political subdivisions; and*
- (h) *Manufacturers located in the Commonwealth of Kentucky that produced or are producing, or that distributed or are distributing, medical, medicinal, hygienic items such as face masks and hand sanitizers, or other personal protective equipment.*
- (10) *Nothing in KRS Chapters 39A to 39F amends, repeals, or alters any immunity, defense, limitation of liability, or procedure available or required under any other law or contract.*

➔Section 2. KRS 39A.020 is amended to read as follows:

As used in KRS Chapters 39A to 39F, unless the context requires otherwise:

- (1) "Adjutant General" means the executive head of the Department of Military Affairs vested with general direction and control authority for the department and the division of emergency management;
- (2) "Catastrophe" means a disaster or series of concurrent disasters which adversely affect the entire Commonwealth of Kentucky or a major geographical portion thereof;
- (3) "Chief executive officer" means a:
  - (a) County judge/executive of a county;

- (b) Mayor of a consolidated local government;
  - (c) Mayor of an urban-county government;
  - (d) Chief executive officer of a charter county government;
  - (e) Chief executive officer of a unified local government; or
  - (f) Mayor of a city;
- (4) "Comprehensive emergency management program" means the public safety program developed, organized, implemented, administered, maintained, and coordinated by the Division of Emergency Management and local emergency management agencies created pursuant to the provisions of KRS Chapters 39A to 39F, to assess, mitigate, prepare for, respond to, or recover from, an emergency, declared emergency, disaster, or catastrophe, or threat of any of those, as contemplated in KRS 39A.010 or as defined in this section;
- (5) "Coordination" means having and exercising primary state or local executive branch oversight for the purpose of organizing, planning, and implementing;
- (6) "County" means a county, urban-county government, charter county government, consolidated local government, or unified local government;
- (7) "Declared emergency" means any incident or situation declared to be an emergency, *disaster, or catastrophe* by executive order of the Governor, or a county judge/executive, or a mayor, or the chief executive of other local governments in the Commonwealth pursuant to the provisions of KRS Chapters 39A to 39F;
- (8) "Director" means the director of the Division of Emergency Management of the Department of Military Affairs;
- (9) "Disaster" means any incident or situation declared as such by executive ~~action/order~~ of the Governor, or the President of the United States, pursuant to federal law;
- (10) "Disaster and emergency response" means the performance of all emergency functions, other than war-related functions for which military forces are primarily responsible, including, ~~but~~ but not limited to: direction and control, incident command, or management; communications; fire protection services; police services; medical and health services; ambulance services; rescue; search and rescue or recovery; urban search and rescue; engineering; alerting and warning services; resource management; public works services; nuclear, chemical, biological, or other hazardous material or substance monitoring, containment, decontamination, neutralization, and disposal; emergency worker protection, site safety, site operations and response planning; evacuation of persons; emergency welfare services; emergency transportation; physical plant protection; temporary restoration of public utility services; emergency lighting and power services; emergency public information; incident investigation, hazards analysis, and damage assessment; and other functions related to effective reaction to a disaster or emergency or catastrophe, or the potential, threatened, or impending threat of any disaster or emergency or catastrophe, together with all other activities necessary or incidental to the preparation for and carrying out of the functions set out in this subsection;
- (11) "Division" means the Division of Emergency Management of the Department of Military Affairs;
- (12) "Emergency" means any incident or situation which poses a major threat to public safety so as to cause, or threaten to cause, loss of life, serious injury, significant damage to property, or major harm to public health or the environment and which a local emergency response agency determines is beyond its capabilities;
- (13) (a) *"Executive action" means:*
- 1. *All orders and guidelines related to a COVID-19 declared emergency issued by the Governor or any state agency, the President of the United States or any federal agency, or a local governmental agency; and*
  - 2. *Industry-specific guidelines related to a COVID-19 declared emergency adopted by a state agency that govern the industry; and*
- (b) *"Executive action":*
- 1. *Does not mean informal or indefinite statements or recommendations made by government officials; and*
  - 2. *Does not create a duty of care;*

- (14) "Integrated emergency management system" means the unified and multidisciplinary disaster and emergency response infrastructure developed in the Commonwealth, under the coordination of the division, using methods which align state or local administrative, organizational, and operational resources, to accomplish the mission, goals, and objectives of the comprehensive emergency management program of the Commonwealth;
- (15)~~(14)~~ "Local disaster and emergency services organization" means that organization of public and private entities developed to carry out the multiagency disaster and emergency response of a city, county, urban-county or charter county pursuant to KRS Chapters 39A to 39F;
- (16)~~(15)~~ "Local emergency management agency" means the agency created, operated, and maintained to coordinate the local comprehensive emergency management program and disaster and emergency response of a city, county, and urban-county or charter county government pursuant to KRS Chapters 39A to 39F;
- (17)~~(16)~~ "Local emergency management director" or "Local director" means the executive head of the local emergency management agency, appointed pursuant to the provisions of KRS Chapters 39A to 39F;
- (18)~~(17)~~ "State emergency management agency" means the Division of Emergency Management of the Department of Military Affairs; and
- (19)~~(18)~~ "State emergency management director" means the director of the Division of Emergency Management.

➔Section 3. KRS 39A.070 is amended to read as follows:

The director, with the approval of the adjutant general, shall exercise the following powers, responsibilities, and duties:

- (1) To represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the Commonwealth;
- (2) To coordinate the development of a statewide comprehensive emergency management program, and through it, an integrated emergency management system for the disaster and emergency response of the Commonwealth;
- (3) To promulgate administrative regulations and issue orders, directives, standards, rules, procedures, guidance, or recommended practices necessary to coordinate the development, administration, organization, operation, implementation, and maintenance of the statewide comprehensive emergency management program and the integrated emergency management system of the Commonwealth;
- (4) To coordinate the development of comprehensive emergency management programs by the cities, counties, and urban-county or charter county governments as functional components of the integrated emergency management system of the Commonwealth;
- (5) To supervise the development and maintenance of the Kentucky Emergency Operations Plan, and to review and give concurrence to local emergency operations plans required pursuant to KRS Chapters 39A to 39F;
- (6) To coordinate the comprehensive emergency management program of the Commonwealth with the emergency management or other emergency response-related programs of the federal government, and of other states, to the fullest appropriate extent;
- (7) To advise the Governor and the adjutant general immediately of the occurrence or threatened or impending occurrence of any disaster or emergency, and to recommend to the Governor any emergency **executive action**~~actions, written orders, emergency powers, or executive orders~~ that the Governor should execute;
- (8) To serve as the Governor's primary liaison with local officials in the event of the occurrence, or threatened or impending occurrence, of any disaster or emergency in the cities, counties, urban-counties, or charter counties of the Commonwealth;
- (9) To take any other preparedness or response actions deemed necessary for adequate response to a disaster or emergency situation to include: requesting increased readiness activities by state or local agencies in advance of an actual disaster or emergency; requesting implementation of local emergency operations plans or the activation of local emergency operations centers; requesting reports from state or local agencies regarding emergency situations, damage assessments, or the taking of emergency response actions; and requesting the mobilization or deployment of any trained and equipped forces of state or local government for the disaster and emergency response purposes set forth in KRS Chapters 39A to 39F;
- (10) To request and utilize the personnel, equipment, services, and facilities of existing officers and agencies of the Commonwealth and of all political subdivisions and special districts. All these officers and agencies shall fully

cooperate with and extend their resources to the director as requested to the extent that local public safety is not unreasonably compromised;

- (11) To employ measures and give directions to the state or local boards of health as necessary for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or with the findings or recommendations of the boards of health, because of conditions arising from disasters, emergency situations, national security emergencies, or the threat thereof;
- (12) To request and utilize the services of state and local law enforcement officers for the purpose of securing compliance with the provisions of KRS Chapters 39A to 39F, or any order of the Governor pertaining to disaster and emergency response;
- (13) On behalf of this Commonwealth, with the approval of the Governor or act of the General Assembly, to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a statewide, local, county, or city basis, or with other states or a province of a foreign country. The mutual aid agreements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; National Guard personnel and resources while under the control of the state; health, medical, and related services; firefighting; rescue; search and rescue or recovery; urban search and rescue; hazardous materials response services, transportation and construction services and equipment; personnel necessary to provide or conduct these services and other supplies, equipment, facilities, personnel, and services as needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items for mobile support units, firefighting, search and rescue, and police units, and health units; and on the terms and conditions deemed necessary;
- (14) To sponsor and develop mutual aid plans and agreements among the urban-county or charter county governments, counties, cities, and other political subdivisions and special districts of the Commonwealth, similar to the mutual aid arrangements with other states referred to in subsection (13) of this section;
- (15) To procure motor vehicles, radio and telecommunications equipment, protective clothing, safety equipment, and other necessary supplies and materials to meet the emergency response, operational, and administrative needs of the division;
- (16) To identify deficiencies existing in the emergency management program organization, facilities, and capabilities of the Commonwealth, including but not limited to: personnel and administrative resources; state, sub-state, area, or local emergency operations centers; mobile command posts; emergency telecommunications and computer systems; alerting and warning systems; stockpiles of critical resources; or any other necessary elements, and to recommend to the adjutant general, for consideration by the Governor or the General Assembly or other appropriate funding authority, the administrative or operational funding requirements, and long-range capital construction or improvement projects needed to meet the emergency management infrastructure needs of the Commonwealth;
- (17) To serve as the state coordinating officer and notify the Governor of the appropriations necessary to fund the expected emergency operational or response costs of the division, and the Commonwealth's share of the grants provided by Pub.L.No. 93-288, Title V, Federal Disaster Assistance Programs as amended by Pub.L.No. 100-707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or successor acts or titles, and further, take action necessary to ensure entitlement to all other federal relief or assistance programs;
- (18) To cooperate with the President of the United States, the Federal Emergency Management Agency, and other appropriate federal offices and agencies, and the offices and agencies of other states in matters pertaining to the comprehensive emergency management program of the Commonwealth and nation; and in connection with these, to take any measures considered necessary to implement any request of the President and the appropriate federal offices and agencies, for any action requiring effective disaster and emergency response, including the direction or control and mobilization of disaster and emergency response forces; tests and exercises, warnings, and signals for drills or other emergency response activities and the mechanical devices to be used in connection with these; the shutting off of water mains, gas mains, electric power connections, and the suspension of all other utility services; the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to a drill, emergency, declared emergency, or disaster; public meetings or gatherings; and the evacuation and sheltering of the civilian population; and
- (19) To delegate any authority vested in the director under KRS Chapters 39A to 39F and to provide for the subdelegation of any such authority.

➔Section 4. KRS 39A.090 is amended to read as follows:



The Governor may make, amend, and rescind any executive ~~actions~~ ~~Orders~~ as deemed necessary to carry out the provisions of KRS Chapters 39A to 39F.

→Section 5. KRS 39A.270 is amended to read as follows:

- (1) During the threatened or impending happening of a disaster or emergency, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resources to assist in the mitigation of the potential effects of the disaster or emergency, regardless of whether the use is on public or private property.
- (2) During the actual happening of and any part of the response phase of a disaster or emergency the Governor, the Adjutant General, or the Director, shall, when necessary or desirable, authorize the use of public employees, equipment, supplies, materials, funds, or any other publicly owned or supported resource to assist in the operations of government, or the private sector, necessary to deal with the disaster or emergency, regardless of whether the use is on public or private property.
- (3) ***During the actual happening or any part of the response phase of a disaster or declared emergency, the Governor or the General Assembly may, by executive action, legislation, or administrative regulation promulgated under KRS Chapter 13A, declare which of the following services, if any, are essential:***
  - (a) ***Those individuals and businesses that are necessary to deal with the response to the disaster or declared emergency or that protect the life and health of Kentucky citizens;***
  - (b) ***Individuals and businesses that are engaged in conduct, business, or an activity that otherwise constitutes a critical infrastructure sector as determined by the United States Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, or its successor; or***
  - (c) ***Individuals and businesses that are charged with responsibility for a governmental function related to a declared emergency or that is not in the ordinary course of conduct or business, including responsibilities that require changes to the medical, manufacturing, or educational environment in which they typically operate.***
- (4) After the active or response phase of the disaster or emergency has passed and the recovery phase has begun, the Governor, the Adjutant General, or the Director may authorize the use of public employees, equipment, supplies, funds, or any other publicly owned or supported resources to assist in the recovery phase of the disaster or emergency, regardless of whether the use is on public or private property.
- ~~(5)~~(4) A formal declaration of disaster or emergency shall not be necessary to invoke the provisions of subsection (1) or (2) of this section.

→Section 6. KRS 39A.280 is amended to read as follows:

- (1) Disaster and emergency response functions provided by a state or local emergency management agency, or any emergency management agency-supervised operating units or personnel officially affiliated with a local disaster and emergency services organization pursuant to KRS 39B.070, shall not, in itself, be deemed to be the making of a promise, or the undertaking of a special duty, towards any person for the services, or any particular level of, or manner of providing, the services; nor shall the provision of or failure to provide these services be deemed to create a special relationship or duty towards any person upon which an action in negligence or other tort might be founded. Specifically:
  - (a) The failure to respond to a disaster or other emergency, or to undertake particular inspections or types of inspections, or to maintain any particular level of personnel, equipment, or facilities, shall not be a breach of any duty to persons affected by any disaster or other emergency.
  - (b) When a state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, does undertake to respond to a disaster or other emergency, the failure to provide the same level or manner of service, or equivalent availability or allocation of resources as may or could be provided, shall not be a breach of any duty to persons affected by that disaster or other emergency.
  - (c) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization shall not have or assume any duty towards any person to adopt, use, or avoid any particular strategy or tactic in responding to a disaster or other emergency.

- (d) A state or local emergency management agency, or local emergency management agency-supervised operating unit officially affiliated with a local disaster and emergency services organization, in undertaking disaster and emergency preparedness or prevention activities including inspections, or in undertaking to respond to a disaster or other emergency, shall not have voluntarily assumed any special duty with respect to any risks which were not created or caused by it, nor with respect to any risks which might have existed even in the absence of that activity or response, nor shall any person have a right to rely on such an assumption of duty.
- (2) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any of its political subdivisions, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer emergency management agency member, or disaster and emergency services member, or disaster and emergency response worker, or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity. ~~[[The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.]]~~ This immunity shall not affect the right of any person to receive benefits or compensation to which the person might otherwise be entitled under the Workers' Compensation Law, or this chapter, or any pension law, or any Act of Congress.
- (3) Subject to subsection (6) of this section, neither the state nor any political subdivision of the state nor, except in cases of *gross negligence or wanton, willful, malicious, or intentional* ~~[[willful]]~~ misconduct, ~~[[gross negligence, or bad faith]]~~, the employees, agents, or representatives of the state or any of its political divisions, nor any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity, complying with or reasonably attempting to comply with this chapter or any *executive action* ~~[[order]]~~ or administrative regulation promulgated pursuant to the provisions of this chapter, or other ~~[[precautionary]]~~ measures enacted by any city ~~or~~ ~~off~~ the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of that activity. ~~[[The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or an organization maintains liability insurance or self insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.]]~~
- (4) Decisions of the director, his subordinates or employees, a local emergency management director, or the local director's subordinates or employees, a rescue chief or the chief's subordinates, concerning the allocation and assignment of personnel and equipment, and the strategies and tactics used, shall be the exercise of a discretionary, policy function for which neither the officer nor the state, county, urban-county, charter county, or city, or local emergency management agency-supervised operating unit formally affiliated with a local disaster and emergency services organization, shall be held liable in the absence of *gross negligence or wanton, willful, malicious, or intentional misconduct* ~~[[malice or bad faith]]~~, even when those decisions are made rapidly in response to the exigencies of an emergency.
- (5) Any person owning or controlling real estate or other premises who ~~[[voluntarily and without compensation]]~~ grants a license or privilege, or otherwise permits the designation or use of the whole or any part of the real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster or emergency, together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises for loss of, or damage to, the property of that person. ~~[[The immunity provided by this subsection shall not apply to the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self insurance for an act or omission covered by this subsection. To the extent that the state, a political subdivision of the state, or a person or organization maintains liability insurance or self insurance, sovereign immunity shall not be claimed with regard to an act or omission covered by this subsection.]]~~
- (6) Subsection (3) of this section shall apply to a volunteer or auxiliary disaster and emergency response worker *if the worker is enrolled or registered under KRS 39A.356*, ~~[[only if the volunteer or worker is enrolled or registered with a local disaster and emergency services organization]]~~ or with the *political subdivision* ~~[[division]]~~ in accordance with the *political subdivision's* ~~[[division's]]~~ administrative regulations *and as provided in KRS 39F.020*.

- (7) While engaged in disaster and emergency response activity, volunteers and auxiliary disaster and emergency response workers enrolled or registered with a local disaster and emergency service organization or with the division in accordance with subsection (6) of this section shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions performing similar work, including the provisions of KRS 12.211, 12.212, and 12.215, allowing the Attorney General to provide defense of any civil action brought against a volunteer enrolled or registered ~~with a local disaster or emergency service organization or with the division~~ due to an act or omission made in the scope and course of a disaster and emergency response activity.
- (8) (a) ~~Notwithstanding subsections (3) and (6) of this section,~~ A licensed professional engineer as defined in KRS 322.010 or an architect licensed under KRS Chapter 323, who ~~voluntarily and without compensation~~ provides architectural, structural, electrical, mechanical, or other professional services at the scene of a declared emergency, disaster, or catastrophe, shall not be liable for any personal injury, wrongful death, property damage, or other loss of any nature related to the licensed professional engineer's or licensed architect's acts, errors, or omissions in the performance of the services carried out:
1. At the request of or with the approval of a federal, state, or local:
    - a. Emergency management agency official with executive responsibility in the jurisdiction to coordinate disaster and emergency response activity;
    - b. Fire chief or his or her designee; or
    - c. Building inspection official;
 whom the licensed professional engineer or licensed architect believes to be acting in an official capacity;
  2. Within ninety (90) days following the end of the period for the declared emergency, disaster, or catastrophe, unless extended by the Governor under KRS 39A.100; and
  3. If the professional services arose out of the declared emergency, disaster, or catastrophe and if the licensed professional engineer or licensed architect acted as an ordinary reasonably prudent member of the profession would have acted under the same or similar circumstances.
- (b) Nothing in this subsection shall provide immunity for *gross negligence or* wanton, willful, or intentional misconduct.

➔Section 7. Whereas the need for the citizens of Kentucky who are providing essential services during the COVID-19 pandemic, or who are taking precautions to protect and rehabilitate the Kentucky economy, to immediately be protected from unnecessary legal action is a compelling and immediate requirement, 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.

➔Section 8. Whereas Section 1 of this Act provides liability protection and immunity and sets forth the legal requirements for bringing suit against any owner or person providing essential services during an emergency, disaster, or catastrophe, and whereas the COVID-19 pandemic appeared in Kentucky in early March 2020, leading to executive actions that altered the relationships and interactions among members of the public beginning with the declaration of an emergency on March 6, 2020, Section 1 of this Act shall be retroactive to March 6, 2020.

➔Section 9. It is the intent of the General Assembly that if any part of this Act be held unconstitutional, the remaining parts shall remain in force.

➔Section 10. Section 1 of this Act is repealed effective Dec. 31, 2023. Any causes of action that are prohibited or time-barred under this Act will remain so after its repeal.

➔Section 11. This Act shall not be interpreted to limit liability for non-COVID-19 related motor vehicle accidents, including those negligent acts under the Motor Vehicle Repairs Act.

**Became law without Governor's signature April 12, 2021.**