

## 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**~~fa~~ 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~~~~3~~. Kentucky Retirement Systems board of trustees;
    - ~~7~~~~4~~. Kentucky Teachers' Retirement System board of trustees;
    - ~~8~~~~5~~. The Kentucky Public Employees Deferred Compensation Authority board of trustees;
    - ~~9~~~~6~~. Public Service Commission;
    - ~~10~~~~7~~. Worker's Compensation Board and its administrative law judges;
    - ~~11~~~~8~~. The Kentucky Occupational Safety and Health Review Commission;
    - ~~12~~~~9~~. The Kentucky Board of Education;
    - ~~13~~~~10~~. The Council on Postsecondary Education;
    - ~~14~~~~11~~. County Employees Retirement System board of trustees; and
    - ~~15~~~~12~~. 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.
      - 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 <i>Board of Tax Appeals</i> [ <del>Kentucky Claims Commission</del> ] .....	10,000
<b>Member of Board of Claims</b> .....	<b>10,000</b>
<b>Member of Crime Victims Compensation Board</b> .....	<b>10,000</b>
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;~~+~~
- (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);~~+~~
- (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;~~+~~
- (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;~~+~~
- (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;~~+~~
- (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);~~+~~
- (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;~~+~~
- (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**~~+~~
- (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~~[,]~~ 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 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)~~(c)~~ 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~~ 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. ***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; ~~;~~

~~[(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 164.601(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 waster, 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 ~~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 timeframes 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)~~ (e) 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**~~[164.6041]~~, 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~~~~[164.6041]~~, 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~~~~[164.6041]~~, 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~~~~[164.6041]~~. 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.**